

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



Notice of Appeal Under Section 40(1) of Fisheries (Amendment) Act 1997 (No.23)

APPEAL FORM

Please note that this form will only be accepted by REGISTERED POST of handed in to the ALAB offices		
Name of Appellant (Block Letters)	Peter Sweetman And on behalf of Wild Ireland Defence clg North Allihies, Beara, Co. Cork. and	
Address of Appellant	[REDACTED]	
Galway Bay Against Salmon Cages [REDACTED]		
Address for all communications [REDACTED]		
Eircode	[REDACTED]	
Phone	*	Email [REDACTED]
Mobile	[REDACTED]	
FEES		
Fees must be received by the closing date for receipt of appeals	Amount	Tick
An appeal by an applicant for a licence against a decision by the Minister in respect of that application	€380	
An appeal by the holder of a licence against the revocation or amendment of that licence by the Minister	€380	
An appeal by any other individual or organisation	€150	<input checked="" type="checkbox"/>
Request for an Oral Hearing* (fee payable in addition to appeal fee) *In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded	€75	
Fees can be paid by way of Cheque or Electronic Funds Transfer		
Cheques are payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 2021 (S.I. No. 771 of 2021)		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D
SUBJECT MATTER OF THE APPEAL		



RL 5526 4003 91E



The decision of the minister is not in accordance with the requirements of the Habitats Directive and the clarifications of the CJEU

Site Reference Number: -
(as allocated by the Department of Agriculture, Food, and the Marine)

T09/093
The Marine Institute

Appellant's particular interest in the outcome of the appeal:

We are interested in the proper implementation of the Habitats Directive.

Outline the grounds of appeal (and if necessary, on additional page(s) give full grounds of the appeal and the reasons, considerations, and arguments on which they are based):

See attached.

Signed by the Appellant

Date

22.01.2023

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The Screening document states.

"The proposed fish farm could potentially affect the following Natura sites!"

The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at.

24. Article 6 of the Habitats Directive, insofar as relevant, provides:

"2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."

25. As appears Article 6(3) envisages a two-stage process which is implemented in greater detail by ss. 177U and 177V of the PDA:

- (i) a screening for appropriate assessment in accordance with s. 177U;
- (ii)

(ii) if, on a screening, the Board determines that an appropriate assessment is required then it must carry out an appropriate assessment in accordance with s. 177V.

- There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 *Sweetman* at paras 47-49:

“47. It follows that the *possibility* of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to *establish* such an effect; it is, as Ireland observes, merely necessary to determine that there *may be* such an effect.

- The requirement that the effect in question be ‘significant’ exists in order to lay down a *de minimis* threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having *any* effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.
- The threshold at the first stage of Article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken on the implications of the plan or project for the conservation objectives of the site [. . .]”

The Appropriate Assessment Screening document is attached at;

Appendix III

Screening statement

Aquaculture license AQ176 variation - Lehannah Pool in Beirtreach Buí Bay (Bertraghboy Bay).

December 2016

The proposed fish farm could potentially affect the following Natura sites.

- Connemara Bog Complex SPA (004181)
- Slyne head to Ardmore Point Islands SPA (004159)
- Inishmore Island SPA (004152)
- Connemara Bog Complex SAC (002034)
- Kilkieran Bay and Island SAC (002111)

- Slyne Head Islands SAC (000328)
- Inishmore Island SAC (000213)
- West Connaught Coast SAC (002998)

The screening document states.

The proposed fish farm could potentially affect the following Natura sites.

The case law states.

There is no need to *establish* such an effect; it is, **as Ireland observes**, merely necessary to determine that there *may be* such an effect.

The Appropriate Assessment Screening for the SPAs is at

7.0 Outcomes

Aquaculture license AQ176 is not located within a designated SPA. The desktop review of potential linkages and analysis of spatial overlap indicate with high confidence that the proposed amendment to licence AQ176 will not have any significant impact on any SCI bird species of the adjacent SPA's. Therefore, the proposal is excluded from further analysis.

There is no screening for the SAC sites which the document found "The proposed fish farm could potentially affect the following Natura sites."

It is with confidence that I state that this development may have an effect on a designated site.

The document also states.

*"The document has been prepared by BIM on behalf of the project proponent (Marine Institute) and should be cited as:
BIM (2016) Screening statement - Aquaculture license AQ176 variation - Lehannah Pool in Beirtreach Buí Bay (Berterghboy bay)."*

The developer (The Marine Institute) and the author of the of the "screening (BIM ... An Bord Iascaigh Mhara) are both under the control of the Minister for the Marine and therefore not independent