Recd by hand 25/9.

ALAB
An Bord Achomhairc 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 in accordance with Section 40(2) of the 1997 Act this form will only be accepted if delivered by **REGISTERED POST or by hand** to the ALAB offices at the following address: **Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois, R32 DTW5**

Name of Appellant (Block Letters)*	WILD IRELAND DEFENCE CLG
Address of Appellant	[redacted]
Eircode	[redacted]
Phone No.	N/A
Email address (enter below)	[redacted]
Mobile No.	[redacted]

AQUACULTURE LICENCES APPEALS BOARD
25 SEP 2026
RECEIVED

* For administrative reasons, please provide one primary contact per appeal to which all correspondence in relation to the appeal will be sent. Please note if there is **any change** to the details given above, the onus is on the appellant to ensure that ALAB is notified accordingly.

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	X
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	X

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

Please note the following:

1. Failure to submit the appropriate fee with your appeal will result in your appeal being deemed invalid.
2. Payment of the correct fees **must be received on or before** the closing date for receipt of appeals, otherwise the appeal will not be accepted.
3. The appropriate fee (or a request for an oral hearing) must be submitted against each determination being appealed.
4. The joinder of Appeals 42 (1) does not give rise to an entitlement to a refund of any fee paid to ALAB.(Appendix 1)

The Legislation governing the appeals is set out at Appendix 1 below.

SUBJECT MATTER OF THE APPEAL

This appeal concerns the Minister's decision to grant the renewal and review of Aquaculture Licence T06/202 at Deenish Island, Co. Kerry, including the proposed material intensification and enlargement of the existing salmon-farming operation. The appeal challenges the jurisdictional and legal basis upon which the development is treated as a renewal, including the status of the expired aquaculture licence, the absence/status of the necessary foreshore authorisation and the consequences of continued operation following the quashing of the previous authorisation. It further challenges the adequacy and lawfulness of the Environmental Impact Assessment, Appropriate Assessment and Water Framework Directive assessment, including the environmental baseline, cumulative effects, currency and adequacy of scientific data, hydrodynamic modelling, sea-lice and disease pathways, escape and structural-integrity risks, benthic and water-quality effects, chemical treatments, and reliance upon post-consent conditions and monitoring to address matters required to be assessed before consent. The Appellant contends that the information before the competent authority was insufficient to permit the findings required under domestic and EU environmental law and seeks refusal of the application. The appeal is detailed in the attached report **Appendix 1**.

Site Reference Number: - (as allocated by the Department of Agriculture, Food, and the Marine)	T06-202 Silver King Seafoods Ltd Aquaculture/Foreshore Licence application, east of Deenish Island

APPELLANT'S PARTICULAR INTEREST

Briefly outline your particular interest in the outcome of the appeal:

Wild Ireland Defence CLG is an independent environmental NGO whose objectives include the protection of Ireland's natural environment, biodiversity, water quality and European protected sites, and the promotion of lawful and effective implementation of domestic and EU environmental law. WID has a particular interest in ensuring that aquaculture development affecting the marine environment is authorised only following legally compliant EIA, Appropriate Assessment and Water Framework Directive assessment, based upon complete and reliable scientific evidence. The outcome of this appeal is therefore directly relevant to WID's environmental and public-interest objectives.

GROUNDS OF APPEAL

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

The full grounds and reasons and considerations, and arguments on which they are based, for the appeal can be found in attached **Appendix 1**.

An Oral hearing is requested and proof of electronic transfer of EUR 225.00 is attached at **appendix 2.**

CONFIRMATION NOTICE ON EIA PORTAL (if required)

In accordance with Section 41(1) f of the Fisheries (Amendment) Act 1997, where an Environmental Impact Assessment (EIA) is required for the project in question, please provide a copy of the confirmation notice, or other evidence (such as the Portal ID Number) that the proposed aquaculture the subject of this appeal is included on the portal established under Section 172A of the Planning and Development Act 2000. (See Explanatory Note at Appendix 2 below for further information).

Please tick the relevant box below:

EIA Portal Confirmation Notice is enclosed with this Notice of Appeal	
Other evidence of Project's inclusion on EIA Portal is enclosed or set out below (such as the Portal ID Number)	X
An EIA was not completed in the Application stage/the Project does not appear on the EIA Portal	

Details of other evidence	An EIA Portal notification was received on 04/02/2021 in respect of this proposed application. The information provided has been uploaded to the EIA Portal on 04/02/2021 under EIA Portal ID number 2021027 and is available to view at http://housinggovie.maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ecbb206e7e5f84b71f1

Signed by the Appellant		Date	24/09/2025

Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices

Payment of fees must be received on or before the closing date for receipt of appeals, otherwise the appeal will be deemed invalid.

This Notice of Appeal should be completed under each heading, including all the documents, particulars, or information as specified in the notice and duly signed by the appellant, and may include such additional documents, particulars, or information relating to the appeal as the appellant considers necessary or appropriate."

DATA PROTECTION – The data collected for this purpose will be held by ALAB only as long as there is a business need to do so. Legal requirements in respect of transparency may necessitate the publication of appeal and appellant details may be included in an online list of appeals.

Appendix 1.

Extract from the Fisheries (Amendment) Act 1997 (No.23)

40. (1) A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.

(2) A notice of appeal shall be served—

(a) by sending it by **registered post** to the Board,

(b) by **leaving it at the office of the Board**, during normal office hours, with a person who is apparently an employee of the Board, or

(c) by such other means as may be prescribed.

(3) The Board shall not consider an appeal notice of which is received by it later than the expiration of the period referred to in subsection (1)

41. (1) For an appeal under section 40 to be valid, the notice of appeal shall—

(a) be in writing,

(b) state the name and address of the appellant,

(c) state the subject matter of the appeal,

(d) state the appellant's particular interest in the outcome of the appeal,

(e) state in full the grounds of the appeal and the reasons, considerations and arguments on which they are based, and

(f) where an environmental impact assessment is required under Regulation 3 of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (SI No 468 of 2012), include evidence of compliance with paragraph (3A) of the said Regulation 3, and

(g) **be accompanied by such fee**, if any, as may be payable in respect of such an appeal in accordance with regulations under *section 63*, and shall be accompanied by such documents, particulars or other information relating to the appeal as the appellant considers necessary or appropriate.

42. (1) The Board may, in its discretion, treat two or more appeals as, and the appellants as parties to, a single appeal and may at any time separate such appeals.

**Please contact the ALAB offices in advance to confirm office opening hours.

Appendix 2.

Explanatory Note: EIA Portal Confirmation Notice/Portal ID number

The EIA Portal is provided by the Department of Housing, Local Government and Heritage as an electronic notification to the public of requests for development consent that are accompanied by an Environmental Impact Assessment Report (EIA Applications). The purpose of the portal is to provide information necessary for facilitating early and effective opportunities to participate in environmental decision-making procedures.

The portal contains information on EIA applications made since 16 May 2017, including the competent authority(ies) to which they are submitted, the name of the applicant, a description of the project, as well as the location on a GIS map, as well as the Portal ID number. The portal is searchable by these metrics and can be accessed at:
https://housinggovie.maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104eebb206e7e5f84b71f1

Section 41(1)(f) of the Fisheries (Amendment) Act 1997 requires that "*where an environmental impact assessment is required*" the notice of appeal shall show compliance with Regulation 3A of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. 468/2012), as amended by the Aquaculture Appeals (Environmental Impact Assessment) (Amendment) Regulations 2019 (S.I. 279/2019) (The EIA Regulations)

Regulation 3A of the EIA Regulations requires that, in cases where an EIA is required because (i) the proposed aquaculture is of a class specified in Regulation 5(1)(a)(b)(c) or (d) of the Aquaculture (Licence Application) Regulations 1998 as amended – listed below, or (ii) the Minister has determined that an EIA was required as part of their consideration of an application for intensive fish farming, an appellant (that is, the party submitting the appeal to ALAB, including a third party appellant as the case may be) must provide evidence that the proposed aquaculture project that is the subject of the appeal is included on the EIA portal.

If you are a third-party appellant (that is, not the original applicant) and you are unsure if an EIA was carried out, or if you cannot find the relevant Portal ID number on the EIA portal at the link provided, please contact the Department of Housing, Local Government and Heritage for assistance before submitting your appeal form.

The Classes of aquaculture that are required to undergo an EIA specified in Regulation 5(1)(a)(b)(c) and (d) of the Aquaculture (Licence Application) Regulations 1998 S.I. 236 of 1998 as amended are:

a) Marine based intensive fish farm (other than for trial or research purposes where the output would not exceed 50 tonnes);
b) All fish breeding installations consisting of cage rearing in lakes;
c) All fish breeding installations upstream of drinking water intakes;
d) Other fresh-water fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting waters.

In addition, under Regulation 5(1) (c) of the 1998 Regulations, the Minister may, as part of his or her consideration of an application for intensive fish farming, make a determination under Regulation 4A that an EIA is required.

Appeal Notice by:
Wild Ireland Defence CLG
[redacted]

Notice of Appeal – Appendix 1:

To: Aquaculture Licencing Appeals Board.

Re: Appeal of Aquaculture/ Foreshore licence application T06-202 - Silver King Seafoods Ltd Aquaculture/Foreshore Licence application, east of Deenish Island, Co. Kerry

Date: 24th September 2025

Introduction

Wild Ireland Defence CLG pursue the objectives of education, advocacy, and activism of all types in the protection, conservation, preservation and defence of the natural environment and the species that habituate it. WID make this submission as an observer in order to ensure that the planning application is in progressed in compliance with environmental and planning and development laws at local, national and EU level.

This appeal from section 1 onwards was compiled by [redacted] (WID's planning and environmental consultant) and is adopted by Wild Ireland Defence CLG entirely and formally appeals the Ministers and Departments Determinations for the proposed Aquaculture / Foreshore licences listed above for T06-202 on the basis of serious deficiencies in the application, non-compliance with Irish and EU environmental and planning legislation, safety risks, and potential socio-economic and environmental damage. Ms [redacted] holds an advanced diploma in Planning and Environmental Law and a diploma in Legal Studies from the Honorable Society of Kings Inns.

The development is described on the departments various consultation pages as follows:

Application to cultivate salmon at a site on the foreshore east of Deenish Island, between Ballinskelligs Bay and Kenmare Bay, Co. Kerry

This appeal identifies deficiencies that prevent the renewal of the marine aquaculture licences in question operated by MOWI Ireland trading as Silver King Seafoods Ltd. The appeal is based on significant environmental concerns, including harm to water quality, impacts on wild salmon populations, and biodiversity loss in Kerry waters. This submission identifies deficits in surveys and

data, contradictions within the Natura Impact Statement (NIS), EIAR (or in these cases out of date EIS) the absence of a compliant Water Framework Directive (WFD) assessment, in addition to the failure to assess land-based operations, which may require planning permission. As such these issues collectively demonstrate that the proposed activity poses a significant risk to protected sites and species and does not comply with environmental regulations, including the EU Habitats Directive (92/43/EEC), the Water Framework Directive (2000/60/EC) and EIA Directive.

1. Preliminary Ground: Legal status of the Application.

1.1 The Appellant submits that a preliminary question arises as to the proper legal characterisation of the application determined by the Minister. The application has been processed as a combined "renew and review" of aquaculture licence T06/202. That description should not be accepted as determinative. ALAB must examine the substance of the authorisation sought, the legal status and terms of the licence capable of renewal, and the extent to which the development now proposed differs materially from that previously authorised.

1.2 EIA Portal registration and materially different project: A procedural concern arises from the EIA Portal registration relied upon in the application record. The EIA Portal confirmation is dated 4 February 2021 (Portal ID 2021027), whereas the application ultimately before the Minister was subsequently revised and lodged in materially different form, including the proposed enlargement of the site and intensification of production. The validity and relevance of the 2021 Portal registration therefore require clarification. ALAB should establish precisely what project was notified to the EIA Portal in 2021 and whether its site boundary, area, cage configuration, biomass and description correspond to the development ultimately assessed and authorised as a renewal and review.

1.3 If the Portal registration relates to an earlier or materially different iteration of T06/202, it should not simply be treated as the EIA Portal notification for the later project without identifying the statutory basis upon which that registration remained applicable notwithstanding the material alteration of the development. This concern is compounded by the fact that the underlying Portal material appears to be access-restricted by password, such that a member of the public may be unable independently to verify what project was actually notified. In circumstances where the identity and scale of the project changed during the application process, ALAB should satisfy itself that the EIA administrative record, public notification and environmental assessment all relate to the same development for which consent is now sought.

1.4 The Department's own recommendation records that aquaculture has been licensed at Deenish since 1989 and states that the site is presently operating pursuant to s.19A(4) of the Fisheries (Amendment) Act 1997. It identifies the existing licence as permitting an annual input of 400,000 smolts and an annual harvest of 500 tonnes. The development now sought is fundamentally different in scale: the applicant seeks a maximum allowable biomass of 2,200 tonnes, enlargement of the licensed area from 14.5 ha to 33.48 ha, and an increase from 10 to 15 pens.

1.5 That intensification is important in light of the statutory scheme. Section 19 provides for the renewal of an aquaculture licence on expiry. Section 70 separately provides for a review, under which the Minister may alter terms and amend, delete or add conditions. The legislation therefore distinguishes renewal from review and from the grant of an aquaculture licence. The 1998 Regulations likewise separately define "renewal" by reference to s.19 and "review" by reference to s.70.

1.6 Section 19A does not confer a freestanding entitlement to conduct whatever development may subsequently be sought in a renewal application. Its legislative function is materially narrower. It permits a licensee who has applied for renewal to continue notwithstanding expiry, but expressly makes that continuation subject to the terms and conditions of the expired licence.

1.7 Accordingly, the environmental and legal baseline for the present application cannot simply be a 2,200-tonne operation because operations approaching that scale may have occurred in the past. The relevant consideration is to identify between what was lawfully authorised by the licence capable of renewal and what is now sought to be authorised.

1.8 That distinction between what was authorised and what is proposed is of particular importance because the historical record discloses that an alteration of stocking arrangements was previously authorised only temporarily. Inland Fisheries Ireland records that the 2012 amendment was for approximately two years and contained an express special condition that it was: *"strictly a once-off pilot for this site only"* with any repetition requiring further consideration in light of monitoring and licensing policy. IFI contrasts that temporary arrangement with the present application for 2,200 tonnes MAB, biennial input of 650,000 smolts and enlargement from approximately 14.5 ha to 33.5 ha.

1.9 A submission made by Salmon Watch Ireland to the application further records that the temporary amendment ended in March 2015 and that, in the subsequent appeal concerning the Ministerial action under ss.68 and 19A(4), Mowi acknowledged having sought permission to repeat the trial or obtain a more permanent amendment, requests which the submission states had been rejected by the Department. Those matters should be verified by ALAB against the Department's primary licensing record, but they cannot simply be disregarded when identifying the development which was actually authorised.

1.10 The difference in operations authorised and applied is also recognised within the Appropriate Assessment itself. The February 2026 AA identifies T06/202 as currently licensed for 500 tonnes/400,000 smolts on 14.48 ha, and separately describes the "renewal plans" as an increase to 2,200 tonnes MAB on 33.5 ha with fifteen 126-metre circumference pens. The environmental assessment therefore itself recognises that the project now proposed is materially different from the licensed development. ALAB must ascertain if and when the operations intensified for the purposes of a possible remedial NIS/ AA.

1.11 The unresolved 2019 regulatory history: There is a further issue which ALAB should determine expressly rather than assume away. Salmon Watch Ireland's submission placed the

Minister on notice that in April 2019 the Minister had taken a decision to discontinue the applicant's entitlement to continue aquaculture operations under s.19A(4), that this was appealed to ALAB, and that questions remained concerning both ALAB's jurisdiction and the status of the original 2007 renewal application.

1.12 Before determining this appeal, ALAB should establish from the primary administrative and court record the precise status of the 2019 decision, the appeal against it, the subsequent judicial-review proceedings, and the legal status of the 2007 renewal application. That exercise is necessary because the Minister's 2026 decision appears simply to proceed upon the proposition that the site "is currently operating under Section 19A.(4)". Given the regulatory history expressly raised during consultation, that proposition required a reasoned legal and factual foundation rather than assumption.

1.13 Material intensification: Material intensification cannot disappear behind the word "renewal". WID therefore submits that ALAB must distinguish between the renewal of an expired authorisation and the environmental assessment of the materially intensified project for which permission is actually sought. The proposed site area represents an increase of approximately 131%, from 14.5 ha to 33.48 ha. The number of pens increases by 50%, from 10 to 15. More importantly, the historic licence condition identified by the Department is 500 tonnes annual harvest and 400,000 smolts, whereas the proposed authorisation would permit 2,200 tonnes MAB. These alterations materially alter its physical scale, production regime and potential environmental pressures.

1.14 Section 70 undoubtedly permits terms and conditions to be altered following review. However the competent authority must assess the environmental effects of the project actually being authorised under the correct legal provisions. Such an approach is consistent with the High Court's treatment of aquaculture licensing in *Salmon Watch Ireland CLG & Ors v Aquaculture Licences Appeals Board & Ors.* So ALAB must ask itself, what was permitted, what is currently legally authorised, on the basis of that information is this a renewal or in fact a review and is there jurisdiction for a review under Section 19?

1.15 WID wishes at this point to note that the making or processing of a subsequent licence while substantive judicial proceedings concerning the legal status or validity of an earlier licence for materially the same operation may remain before the Courts. The constitutional separation of powers requires particular caution where the exercise of an executive or administrative power during pending proceedings could determine, pre-empt or render nugatory the controversy which the Court has been asked to decide. In Buckley v Attorney General [1950] IR 67, the Supreme Court affirmed the exclusive constitutional function of the Courts to determine justiciable controversies and held unconstitutional an attempt by another organ of State effectively to determine the outcome of pending proceedings. The principle is therefore relevant if, while the validity or legal effect of the earlier Deenish authorisation remained sub judice, a State licensing authority granted or progressed a further authorisation whose legal effect was to replace, duplicate, regularise or otherwise alter the very licensing position under consideration by the Court. ALAB should accordingly identify the respective dates, legal effects and relationship of previous licensing processes and satisfy itself that the subsequent process represented the independent exercise of a statutory licensing function rather than an administrative act which purported, directly or indirectly,

to pre-empt the determination or practical effect of any pending judicial proceedings.

Ground 2. Historic operation cannot be absorbed into the environmental baseline. A separate but connected error arises from the exceptionally long period between expiry of the licence and determination of the present application.

2.1 The Marine Institute records that the licence expired on 15 February 2007, that the site subsequently operated under s.19A(4), and that it was fallow between 2007 and 2010. The present environmental decision was not made until 2026. The assessment therefore concerns a site on which the activity under consideration has itself been capable of influencing environmental conditions for many years before the competent authority undertook the present EIA and AA.This creates an obvious baseline problem.

2.2 WID submits that the competent authority cannot assess only the incremental difference between the intensified project and an environmental baseline which already incorporates the consequences of years of operation of the project itself. Doing so risks converting the project's historical environmental effects into characteristics of the receiving environment.

2.3 The significance of this problem is demonstrated by the historical evidence already before the Minister. Salmon Watch Ireland's submission identified materially different stocking levels during the post-expiry period, including 838,000 smolts in 2013, figures concerning substantial stocks in 2015, 560,000 smolts in 2017 and approximately 507,119 in 2019. the submission expressly argued that the increased stocking necessarily increased organic outputs from the site. Those are allegations/evidence requiring evaluation; they should not simply be adopted as established causal findings. But they demonstrate why the historical operating period cannot be omitted from the assessment and may need to be dealt with on a remedial NIS/ EIAR, AA/EIA basis.

2.4 The issue is particularly relevant where the competent authority itself relies upon historic operation and monitoring as evidence that future operation is environmentally acceptable. Evidence generated by the historic operation cannot operate on a one-way evidential basis, historical observations favourable to the project cannot be relied upon while historical adverse effects are excluded because they have already become part of the contemporary environmental condition.

2.5 EIA. The principle in Wells, Case C-201/02, is relevant to underlying EU-law issues. The Court of Justice considered a project which had proceeded without the EIA required by EU law and held that Member States must take the measures necessary to remedy the failure, while recognising that later consenting decisions can engage the EIA obligation. An assessment undertaken after years of operation must be capable of identifying the environmental effects attributable to that operation if it is to provide a genuine assessment of the project rather than merely a snapshot of an environment already modified by it.

2.6 The EIA should therefore distinguish, insofar as the evidence permits, between the receiving environment, changes occurring during the prolonged post-expiry operational period, effects

attributable to T06/202, and the additional effects reasonably foreseeable from the proposed intensified development.

2.7. Appropriate Assessment. The position under Article 6(3) is stricter. The competent authority may authorise the project only where, having regard to the appropriate assessment and the site's conservation objectives, it has made certain that the project will not adversely affect site integrity. That requires the absence of reasonable scientific doubt.

2.8 A baseline which incorporates potentially project-induced deterioration not yet assessed is therefore especially problematic. If a qualifying interest or the ecological conditions supporting it deteriorated during the lengthy operation of T06/202, measuring the future project only against that degraded contemporary condition could conceal the very effect which Article 6 is intended to identify.

2.9 This is particularly important where the applicable conservation objective is restoration rather than mere maintenance. The assessment cannot then be confined to whether the intensified project would make the present condition appreciably worse. ALAB must determine whether continued and intensified operation is compatible with achievement of the conservation objective itself. Accordingly, for each relevant qualifying interest and conservation objective, the AA should be capable of answering:

What was the condition of the receptor; what changed during the relevant operational period; what contribution, if any, did T06/202 make to that change; what is the present condition; and can the proposed 2,200-tonne operation be authorised without reasonable scientific doubt that it will adversely affect site integrity or frustrate the applicable conservation objective?Where the available scientific information cannot answer those questions, the Article 6(3) precautionary standard does not permit uncertainty simply to be converted into a conclusion of no adverse effect.

2.10 Appropriate Assessment: Failure to demonstrate the absence of adverse effects on site Integrity. WID submits that the Appropriate Assessment does not provide a sufficiently complete, precise and scientifically certain basis upon which ALAB can conclude that the proposed development, alone or in combination with other plans or projects, will not adversely affect the integrity of the relevant European sites.

2.11 Under Article 6(3) the competent authority may authorise the project only after identifying, in light of the best scientific knowledge all aspects capable of affecting the relevant conservation objectives and only where no reasonable scientific doubt remains as to the absence of adverse effects. That is the test established in Waddenzee, Case C-127/02.

2.12 In Sweetman, Case C-258/11, the Court further held that authorisation requires certainty that the project will not have lasting adverse effects upon the integrity of the site, applying the precautionary principle. In Holohan, Case C-461/17, the Court confirmed that the assessment must examine all project implications liable to affect the conservation objectives, including implications for relevant species and habitats outside the geographical boundary of the protected site. The AA itself describes T06/202 as currently licensed for 500 tonnes/400,000 smolts on 14.48 ha

and the proposal as an increase to 2,200 tonnes MAB on 33.5 ha with fifteen 126-metre circumference pens.

Ground 3. The Appropriate Assessment must assess the intensified project, not merely historic operation.The basic question for ALAB is therefore whether the scientific evidence establishes the absence of adverse effects from the 2,200-tonne project now sought, rather than whether the existing farm has operated historically without some particular environmental threshold being exceeded.

3.1 This requirement is particularly important because the AA repeatedly draws upon historical monitoring of the existing operation. In relation to benthic effects, for example, the assessment relies upon annual surveys extending from 2008 through 2023. It acknowledges that effects of organic enrichment were at times evident beneath the pens and out to 10 metres, although it states that fauna remained present and that azoic conditions or outgassing were not recorded.

3.2 Such observations are relevant evidence, but they do not by themselves answer the Article 6(3) question presented by the substantially enlarged development. Evidence demonstrating the effects of a historically smaller operation must be connected scientifically to the loading, stocking, waste generation and spatial footprint of the development for which consent is now sought.

3.3 This is also where the historic-baseline issue identified at Ground 2 becomes material. The AA cannot simultaneously rely upon years of post-expiry operation as empirical evidence of environmental acceptability while treating any ecological effects produced by that same operation as merely part of the existing environment.

3.4 Atlantic salmon, sea trout and freshwater pearl mussel. The relationship between farmed salmon operations, wild salmonids and freshwater pearl mussel requires particularly careful assessment because the pathways are interconnected. Public consultation expressly raised the conservation objectives for Atlantic salmon and freshwater pearl mussel and contended that the abundance of juvenile salmonids is relevant to the freshwater pearl mussel life cycle. The AA itself records objections concerning the condition of freshwater pearl mussel populations and the importance of salmonids as glochidial hosts.

3.5 The legal issue is therefore not confined to whether an effect occurs physically within the boundary of the aquaculture site. Holohan makes clear that implications for species outside a European site's boundary must be examined where those implications are liable to affect the site's conservation objectives. The assessment must consequently follow the complete source-pathway-receptor relationship:

aquaculture operation → sea lice/disease/escape pressure → migrating or resident wild salmonids → salmon population/conservation objective → availability of appropriate host fish → freshwater pearl mussel conservation objective.

If a link in that chain can be excluded scientifically, the AA should identify the evidence which permits its exclusion. If it cannot, the pathway cannot simply disappear because the freshwater

receptor is geographically remote from the pens.

3.6 Sea lice: modelled effects must be reconciled with observed conditions. The consultation record identified a particularly important scientific dispute concerning sea lice. Objections during consultations challenged the relationship between the applicable lice thresholds and effects upon wild fish, raised Caligus elongatus as well as Lepeophtheirus salmonis, questioned the modelling of larval transport, and expressly contended that modelled predictions should be tested against observed conditions. The Minister therefore had before him not merely a generalised objection to salmon farming, but a specific challenge to the scientific basis upon which the pathway had been assessed.

3.7 For Article 6(3) purposes, the answer cannot simply be that the operator will comply with a regulatory sea-lice protocol. Compliance with a management threshold and proof of no adverse effect upon a European site's conservation objectives are analytically different questions. ALAB must be satisfied that the threshold relied upon is scientifically capable of protecting the relevant qualifying interests at the proposed stocking and biomass, including during the periods when migrating wild salmonids are potentially exposed.

3.8 That difference in mitigation on paper and effective mitigation in practice becomes more important given the increase sought. A lice metric/ figure expressed as an average number of lice per farmed fish does not necessarily represent the total infection pressure emanating from a site independently of the number of host fish. If the assessment relies upon such a threshold as demonstrating ecological protection, it should establish the scientific relationship between the threshold, total farm biomass/host abundance, larval production and exposure of wild salmonids. The Appellant accordingly requests ALAB to identify the evidence establishing that the proposed lice-management regime, applied to the 2,200-tonne development, removes reasonable scientific doubt as to adverse effects upon the relevant conservation objectives.

3.9 Disease and Amoebic Gill Disease. Disease transmission was also specifically raised during consultation. The AA records the concern that Amoebic Gill Disease could potentially pass to wild salmonids. The later EIA material records the applicant's response that good husbandry and veterinary supervision are employed and that farmed fish are periodically treated by freshwater bathing, with water generated by reverse osmosis aboard the MV Aqua Transporter. The Marine Institute considered that veterinary supervision and appropriate treatment would also mitigate potential impacts upon wild stocks. There is, however, an important evidential distinction between controlling disease in farmed stock and demonstrating the absence of a pathway or adverse effect upon wild stock.

3.10 The consultation material expressly asserted that the threat posed by AGD to wild salmon remained uncertain. ALAB should therefore determine whether the scientific evidence actually demonstrates that transmission from the proposed concentration of farmed salmon to wild salmonids can be excluded, rather than infer such a conclusion of on paper mitigation from veterinary management designed principally to protect the farmed fish. Under Article 6(3), an acknowledged absence of scientific knowledge cannot itself constitute evidence of absence of an adverse effect.

3.11 Escapes and genetic introgression. The escape assessment presents an especially significant difficulty. The applicant's own EIA acknowledges that farmed-salmon introgression can alter wild populations and states that long-term consequences may include changes in life-history traits, reduced population productivity and reduced resilience. It further identifies the Kenmare Bay sites as having a "High Risk for susceptibility to storm damaged" because of the local wave climate and hydrographic regime. The same document acknowledges: *"Large escape events have the potential to have a significant effect on wild salmon populations in the area especially considering the low returns within many salmon rivers."* Yet its ultimate conclusion rests upon the proposition that an escape event is unlikely because measures have been adopted to prevent one.This is not supported by the evidence of notifications of numerous escapes from Irish Finfish Farms in the last 5 years.

3.12 The AA notes that Mowi's Fish Escape Prevention Policy identifies Deenish as a high-risk site, that the NIS identifies high susceptibility to storm damage, and that the screening assessment recognised the potential for significant effects from escapees. ALAB must ask itself whether those measures are sufficiently established and effective to enable ALAB to exclude the identified adverse-effect pathway beyond reasonable scientific doubt. That question is reinforced by the engineering evidence already before the decision-maker. MED identified an issue concerning seabed clearance and ultimately considered the structures acceptable for licensing subject to a future detailed design statement by a Competent Person, including review of clearance between the net and seabed under all tidal and wave conditions. This is potentially important in light of *Holohan.* The CJEU permits some parameters to be determined subsequently only where the conditions imposed at consent stage are sufficiently strict to guarantee that those parameters will not adversely affect site integrity, But those potential parameters must be clearly outlined in a Rochdale envelope approach and the worst case assessed for EIA and AA now at application stage. No operations or development can take place outside of that Rochdale envelope without further licencing and assessment.

3.13 ALAB must therefore establish at the consent stage whether the design actually authorised is sufficiently specified and demonstrated to withstand the conditions reasonably foreseeable at this acknowledged high-risk location.

3.14 The assessment must address the consequence, not merely the probability, of a major escape. There is a further assessment required between the probability of an escape occurring and the ecological consequences if it occurs. The applicant's material accepts that large escapes may significantly affect wild salmon populations, while relying upon prevention measures to characterise the probability as remote. A recent report by Inland fisheries https://www.fisheriesireland.ie/sites/default/files/2025-01/occurrence-of-farmed-atlantic-salmon-in-wrbd-during-august-and-september-2024.pdf demonstrates that escape of farmed stock is not a remote proposition.

3.15 Where a low-probability event has potentially serious consequences for a qualifying interest already subject to low returns, Article 6(3) requires an evidential basis for excluding the risk. It appears with increasing climate change causing inclement weather and storms that escapes will increase. The assessment cannot reduce the exercise to the assertion that the event is unlikely

without establishing the reliability of the measures upon which that probability judgment depends.This matters particularly because the proposed stocking regime involves up to approximately 650,000 smolts and because the consultation evidence specifically raised the consequences of a large escape for local wild salmon populations.

3.16 Benthic effects and the enlarged footprint. The benthic assessment similarly requires separation of historical monitoring from the proposed development. The applicant's NIS identifies organic enrichment from fish faeces and waste feed as the principal pathway affecting benthic habitats and identifies Large shallow inlets and bays [1160] and Reefs [1170] as qualifying habitats for which significant effects could not be excluded at screening. The later AA relies heavily upon the historic survey series and concludes that impacts were generally confined beneath or close to the pens. But that evidence relates substantially to operation of the existing development. The proposal now increases the licensed area from approximately 14.5 to 33.5 ha and substantially increases authorised biomass. The legally relevant question is therefore not simply whether historic monitoring found azoic sediment beneath the existing cages. It is whether the evidence demonstrates, with the required certainty, the spatial and ecological effects of organic deposition generated by the proposed maximum operation, including its interaction with the distribution and conservation objectives of habitats 1160 and 1170.

3.17 The fact that fauna remained present within historically enriched sediments is not itself the Article 6(3) test. The assessment must demonstrate that the characteristics relevant to the qualifying habitat's conservation objective will be maintained.

3.18 SPA birds and the age of ecological information. There is also a potentially serious survey-issue. The AA records figures of 1,960 pairs of Manx shearwater on Scariff Island and 351 pairs on Deenish Island from the 2000 survey, together with 1995 Arctic tern figures and other breeding-bird information from 2000. The application was determined approximately a quarter-century after those surveys.

3.19 The CIEEM Advice Note https://cieem.net/wp-content/uploads/2019/04/Advice-Note.pdf is therefore relevant as professional ecological guidance. It states, that data more than three years old are unlikely still to be valid and that most, if not all, surveys are likely to require updating, subject to professional ecological assessment. For data between 18 months and three years it already recommends ecological review of validity and consideration of updated surveys. The concern here is therefore not simply that the bird data are "old". It is whether ALAB possesses current scientific information sufficient to make the Article 6(3) finding in 2026 concerning a SPA designated for breeding seabirds.

3.20 The NIS itself identifies boat movement as the greatest potential source of human disturbance to birds. The consultation response challenged the metric used to assess disturbance and contended that effects upon breeding birds, including energetic costs and potential consequences for breeding success from flushing, had not been assessed. Where the project involves a larger site, additional pens and associated operational activity, reliance upon breeding-population information from 1995/2000 requires a clear scientific justification. In the absence of contemporary surveys or a reasoned ecological determination that the historic data remain representative, it is difficult to see

how those data alone could constitute the best scientific knowledge required by Article 6(3).

3.21 In-combination assessment. The AA itself states that multiple salmon sites occur within the relevant area and assumes them fully operational for purposes of its in-combination assessment. That assessment must, however, be receptor-specific. For migratory salmonids in particular, the issue is not merely whether the spatial footprints of two farms overlap. A fish moving through waters influenced sequentially by different aquaculture operations may encounter cumulative biological pressures even where the farms themselves are geographically discrete. The same applies to disease, sea-lice exposure, escapes and organic or chemical pressures where the relevant pathways overlap. Article 6(3) expressly requires assessment both individually and in combination. Waddenzee requires all aspects capable of affecting conservation objectives, alone or in combination, to be identified using the best scientific knowledge.

3.22 ALAB should therefore be satisfied that the assessment addresses cumulative effects upon the receptor, rather than merely cataloguing neighbouring aquaculture sites.The proposed development represents a substantial intensification of the historically authorised operation. The evidence identifies pathways involving sea lice, disease, escapes and genetic introgression, organic enrichment, disturbance and interactions with wild salmonids. The applicant itself accepts potentially significant consequences from a major escape and characterises the locality as presenting high storm-damage susceptibility. Historic benthic monitoring demonstrates that organic enrichment has occurred beneath and adjacent to pens. Bird information relied upon includes survey data approximately 25 years old. Structural matters relevant to containment have been left in part to subsequent detailed design.

3.23 The CJEU requires the assessment to contain findings capable of removing reasonable scientific doubt. The Court has repeatedly emphasised that the assessment must be complete and directed specifically to the conservation objectives. Accordingly, the Appellant submits that ALAB should not affirm the Minister's Appropriate Assessment determination on the material presently available. Before any positive Article 6(3) determination could lawfully be made, the evidential lacunae identified above would require resolution by scientific information capable of establishing, in relation to each affected conservation objective, that the project actually proposed — 33.5 ha, 15 pens and 2,200 tonnes MAB, alone and in combination — will not adversely affect the integrity of the relevant European sites. That conclusion must be reached before authorisation, not established retrospectively through monitoring after the intensified operation has commenced.

4. Environmental Impact Assessment: Insufficient Information to Support the Reasoned Conclusion

4.1 The Minister adopted a reasoned conclusion on 1 July 2026 that the EIAR, application documentation and Marine Institute assessment provided an adequate basis for a reliable EIA and that the proposed development was not likely to have significant adverse effects on the environment. The Appellant submits that this conclusion is not supported by the underlying assessment because material uncertainties remain concerning the project actually proposed, the

hydrodynamic model upon which several conclusions depend, escape risk, cumulative effects and the use of historic conditions as the baseline for a substantially intensified development.

4.2 The EIA Directive requires assessment of the direct and indirect significant effects of the project and a reasoned conclusion on those effects based upon examination of the EIAR and other relevant information obtained through the assessment process. The issue on appeal is therefore not whether environmental matters were mentioned somewhere within the documentation, but whether the information before the competent authority was sufficiently complete and reliable to permit the significant effects of the project actually proposed to be identified and assessed.

4.3 The EIA must assess the project actually proposed. As set out in Ground 2 in detail, effects produced by the project during the prolonged post-expiry period cannot simply be absorbed into the baseline and thereafter relied upon to reduce the apparent magnitude of the project now requiring consent.

4.4 Hydrodynamic modelling:with reference to modelling there is currently an unresolved evidential conflict. The hydrodynamic model is of fundamental importance because it is subsequently used to predict the transport and fate of sea lice and informs conclusions concerning nutrients, phosphorus, biochemical oxygen demand and other discharges.

4.5 The consultation material on the application site identifies specific deficiencies in that model. It records that model performance was compared only generally with a single 1997 drogue survey; that drogue observations represent surface currents while modelled mid-depth and bottom velocities were not rigorously validated; and that no statistical measures of model error, such as RMSE or MAE, were presented against appropriate in-situ observations throughout the water column. The criticism concludes that, without such validation, the accuracy of the hydrodynamic model cannot objectively be evaluated.

4.6 The Marine Institute's own EIA report reproduces the same criticism, including the proposition that the model methodology would require major revision to meet ordinary scientific peer-review standards and that the statement that predicted hydrodynamics "reasonably reproduce" mixing characteristics was not substantiated by observational validation. If the underlying hydrodynamic model has not been adequately validated, every environmental conclusion materially dependent upon its predictive output requires corresponding caution.

4.7 Omission of wind forcing. The criticism in submissions before the decision-maker identified that the boundary conditions used to force the hydrodynamic model did not include wind and instead relied upon tidal elevation and velocities. Wind information from Valentia was apparently used for extreme-wave assessment, but not to drive the circulation model subsequently used for lice dispersion.

4.8 That omission was specifically challenged because sea-lice larvae occur predominantly in the upper water column where wind-driven circulation may materially affect their transport. The consultation evidence further pointed to the predominant south-southwest-west wind climatology and questioned whether surface transport could therefore occur landward towards salmonid migration routes.

4.9 The applicant's answer was not additional modelling incorporating wind. Instead, it argued that wind forcing would provide a more complete picture but would produce further dilution and

therefore lower lice densities and concentrations of nitrogen, phosphorus and BOD. It consequently characterised the tidally forced model as conservative.That response does not resolve the evidential issue. Dilution and transport pathway are separate questions. A model may predict lower concentrations while simultaneously predicting transport towards a receptor not reached, or insufficiently reached, under the original simulation. Whether inclusion of wind produces that result is a matter for modelling or other scientific evidence; it cannot safely be assumed.

4.10 The omission is particularly material because the purpose of the lice model was expressly to determine whether farm-origin lice could reach estuaries or migration routes in sufficient numbers to affect wild stocks. A model which does not adequately reproduce the physical mechanisms determining whether particles reach those receptors cannot provide a reliable answer merely because additional forcing is assumed to cause dilution.

4.11 Particle behaviour and release depth. The same issue arises from the treatment of sea lice as passive particles. The consultation submissions records that the model released lice at mid-cage depth, greater than approximately four metres below the surface, while lice may be concentrated in surface layers. It further identifies active vertical behaviour, including responses to salinity, light, hosts and tidal conditions, and notes that the EIAR itself recognises that copepodids may alter their position in the water column in ways capable of assisting retention around estuaries and inshore margins.

4.12 The biological organism being modelled is acknowledged not to behave simply as a passive particle, yet the model used to determine its environmental pathway assumes passive advection and dispersion, where the model assumptions were specifically challenged as not adequately representing the relevant physical and biological processes, the reasoned conclusion required a scientific basis demonstrating why the resulting predictions nevertheless remained reliable.

4.13 The modelling uncertainty extends beyond sea lice. This issue is not confined to salmon lice. The same hydrodynamic framework informs consideration of soluble pollutants, nitrogen, phosphorus, BOD and other water-quality pressures. The consultation evidence expressly identified that connection. Consequently, deficiencies in model validation and forcing cannot be isolated within a single biodiversity subsection. They potentially affect conclusions concerning water quality, wild salmonids, nutrient dispersion and cumulative effects.

This also creates a direct connection with the Water Framework Directive assessment addressed separately below. An EIA conclusion that a discharge will disperse or dilute without significant effect cannot substitute for reliable evidence of its actual environmental pathway.

4.14 Escape risk and structural design. The EIAR acknowledges that large escape events have the potential significantly to affect wild salmon populations, particularly given low returns in some rivers, and recognises the long-term consequences of genetic introgression, including reduced population productivity and resilience. It nevertheless concludes that significant effects will not arise because the probability of escape is considered remote and mitigation measures are proposed. At the same time, Mowi identifies Deenish as a high-risk site for fish escapes and acknowledges high susceptibility to storm damage because of the local wave climate and hydrographic regime. This issue must be addressed under the EIA regeime in addition to the AA regeime and the issues and arguments raised in earlier grounds in relation escapes, apply under EIA too.

4.15 The proposed licence condition requiring compliance with the Structural Design Protocol is therefore mitigation of an assessed risk; it is not a substitute for establishing, before consent, the significant environmental effects associated with the design and operation actually authorised. The Minister's reasoned conclusion itself recommends adherence to the structural-design protocol specifically "in terms of preventing escape incidences from occurring".

4.16 Monitoring cannot substitute for assessment. As previously argued in the AA section a similar problem arises in relation to benthic effects. The reasoned conclusion recommends continuing benthic monitoring and provides that, if the receiving environment proves unable to absorb sustained pressures, production levels or processes should subsequently be reviewed through a Benthic Amelioration Plan. Monitoring is plainly capable of being a legitimate environmental condition. It cannot, however, perform the function of identifying the significant effects required to be assessed before development consent is given. Monitoring to verify a prediction and monitoring to discover after consent whether the receiving environment was capable of accommodating the authorised pressure are very different. The wording of the proposed measure expressly contemplates the latter possibility: production is to be reconsidered if subsequent monitoring establishes that the site cannot absorb the sustained pressure.

4.17 Where environmental assimilative capacity is material to the conclusion that 2,200 tonnes can be authorised without significant adverse effects, that capacity must first be established by the assessment. A future remedial mechanism cannot fill an evidential lacuna in the EIA itself.

4.18 Cumulative effects are dependent upon the disputed hydrodynamic model. The applicant's cumulative assessment initially identifies other salmon farms at Doon Point, Kilmakilloge Harbour and Inishfarnard. It excludes cumulative discharge effects principally because modelling predicts that discharge plumes do not combine, with the deep Kenmare Bay channel said to limit hydrological connection. The Marine Institute subsequently recognised a broader legal and methodological requirement, stating that cumulative assessment should consider permitted activities, projects in progress, applications, activities requiring no consent and natural processes, and identifying four other licensed salmon-production sites together with 41 licensed shellfish or seaweed sites within the SAC.

4.19 However, the conclusion concerning finfish sites again depends materially upon the modelling proposition that the sites lack sufficient hydrological connectivity and that their discharge footprints do not overlap. The reliability of the cumulative assessment therefore cannot be divorced from the unresolved hydrodynamic-model issue. If the model has not adequately represented wind-driven circulation, or has not been sufficiently validated against observed currents throughout the water column, the same model cannot simultaneously be treated as determinative evidence that environmentally relevant pathways between projects do not exist.

4.20 Further, cumulative effects cannot be confined to physical overlap of modelled discharge plumes. The Marine Institute itself identifies biological dispersion, including parasites and disease, as potential in-combination risk factors. Migratory receptors may themselves move between different pressure fields. The appropriate question is therefore whether the same receptor may experience additive or sequential pressure, not simply whether two computer-generated plumes overlap geographically.

4.20 The EIA draws extensively upon historic environmental information. Historic data are not inherently inadmissible or scientifically irrelevant. Their evidential value depends upon whether they remain representative of the environment and project being assessed. WID again invokes the CIEEM guidance.

4.21 Conditions cannot cure an incomplete EIA. The reasoned conclusion recommends a substantial suite of future controls: benthic monitoring, a Benthic Amelioration Plan if parameters are breached, sea-lice monitoring, fallowing, secure chemical and feed storage, responsible disposal of mortalities and waste, and compliance with the structural-design protocol. Those measures may mitigate environmental effects once those effects have first been adequately identified and assessed. They cannot supply missing baseline information, validate a hydrodynamic model, determine an unresolved transport pathway or establish after consent the environmental consequences that the EIA Directive required the competent authority to examine beforehand. Mitigation addresses an identified effect; monitoring tests or supervises an assessed prediction. Neither can lawfully substitute for the assessment itself.

4.22 The Minister's reasoned conclusion states that the supplied information permits a reliable assessment and that the likely significant effects have been identified. The underlying record does not adequately support that conclusion. The project represents a material intensification of the historically licensed operation. The hydrodynamic model relied upon for several important environmental pathways was specifically challenged for inadequate observational validation, absence of wind forcing, unrealistic release depth and treatment of biologically active lice as passive particles. The answer that wind would merely increase dilution is an assumption rather than a demonstrated model result. The cumulative assessment itself then relies upon the same disputed hydrodynamic framework to exclude interaction between aquaculture sites. Significant escape consequences are acknowledged at a location which the applicant itself classifies as high risk, while structural containment remains dependent upon future regulatory controls. Benthic assimilative capacity is likewise proposed to be tested through post-consent monitoring and remedial action.

4.23 The Appellant accordingly submits that ALAB cannot simply adopt the Minister's EIA reasoned conclusion. The Board must undertake its own assessment on the appeal and resolve these evidential deficiencies before reaching a reasoned conclusion as to the significant environmental effects of the project actually proposed. If those deficiencies cannot be resolved from the information presently before it, further information and, where required by the applicable procedural provisions, renewed public participation are necessary before a lawful EIA conclusion can be reached.

5. Water Framework Directive: Failure to Establish Compliance with Article 4

5.1 WID submits that the Water Framework Directive assessment does not provide a sufficient evidential basis for the conclusion that the proposed development will comply with Article 4 of Directive 2000/60/EC, will not cause deterioration of any relevant waterbody and will not jeopardise achievement of the applicable environmental objectives.

5.2 This ground of appeal does not depend upon demonstrating that deterioration will occur. The legal question arises at the authorisation stage. In *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland*, Case C-461/13 ("*Weser*"), the Court of Justice held that the

Article 4 obligations apply to individual projects and that, unless a derogation applies, a Member State must refuse authorisation where a project may cause deterioration of the status of a surface waterbody or jeopardise attainment of good surface-water status, good ecological potential or good chemical status.

5.3 Importantly, deterioration is not confined to a change in the overall classification of the waterbody. The *Weser* judgment requires consideration of the individual quality elements used to assess ecological status. The Department's own EIA record correctly records the issue raised during consultation: deterioration of a single quality element by one class may constitute deterioration notwithstanding that the overall classification of the waterbody does not change. That is the test against which the Deenish WFD Compliance Report must be examined.

5.4 The WFD assessment itself identifies relevant pathways. The Marine Institute did not screen the project out as having no hydrological relationship with WFD waters. Its assessment identified pathways to three coastal waterbodies: South Western Atlantic Seaboard, Ballinskelligs Bay and Outer Kenmare River. (WID would contend that the ability of escaped salmon to enter river waterbodies may also require assessment of inland waterbodies functionally linked to the operation site, by way of lifecycle migration to freshwater spawning grounds).

5.5 For all three it identified potential hazards to biological elements including phytoplankton, aquatic flora, macroalgae and invertebrates; nutrient conditions including nitrogen, phosphorus and orthophosphate; and supporting chemical conditions including oxygenation and dissolved oxygen. The WFD Compliance Report further expressly identifies the hazards generated by the proposed activity as organic enrichment, settled solid waste and chemical stressors.

5.6 Accordingly, this is not a case in which absence of a source-pathway-receptor relationship permits the WFD issue to be dismissed at screening. The Department itself identified the source, pathways and potentially affected quality elements. The remaining question was whether the evidence was sufficient to establish that those elements would not deteriorate and that achievement of their environmental objectives would not be jeopardised.

5.2 Outer Kenmare River is already an "At Risk" waterbody, outer Kenmare River and requires particular scrutiny. The Department's own WFD Compliance Report records its ecological status as Good but classifies the waterbody as "At Risk". It explains that an "At Risk" waterbody is one which is not achieving its environmental objective, or where a trend indicates that it may cease to meet its objectives by the end of the cycle, and that actions to restore water quality are required.

5.3 More importantly, the individual quality-element history reveals an existing weakness directly relevant to pressures generated by intensive aquaculture. Oxygenation Conditions declined from High to Moderate, while Dissolved Oxygen likewise declined from High to Moderate and remained Moderate in the reported periods. Chemical Surface Water Status is recorded as "Failing to achieve good", attributed to PBDE unspecified isomers.

5.4 The significance of the PBDE failure should not be overstated. The proposed aquaculture operation is not identified as a source of PBDE and the WFD Report expressly records that PBDEs are banned and that the proposed activity will not be a PBDE source. The waterbody is already failing its chemical objective and is classified At Risk, while oxygenation and dissolved oxygen —

quality elements to which the Department itself identifies a pathway from the project — are only Moderate.

5.5 The relevant Article 4 question is consequently not answered by saying that the project will not emit the pollutant responsible for the existing PBDE failure. The assessment must separately establish that the project will not deteriorate those quality elements which its own screening identifies as susceptible to the project's organic enrichment, settled solids and chemical pressures.

5.6 Moderate oxygenation issues are particularly important under *Weser*. Outer Kenmare River's oxygenation condition is already Moderate. The project introduces an acknowledged source of organic material through feed losses and fish excretion and the Department itself identifies oxygenation and dissolved oxygen among the potentially affected supporting chemical conditions.The assessment therefore had to address whether those pressures could cause deterioration of that quality element from its existing class or otherwise compromise the applicable environmental objective. Instead, the WFD Report reasons that because the proposed site is more than 5 km away, it is "not likely to have an impact on oxygen parameters in this waterbody".

5.7 Distance may plainly be relevant, but distance is not itself an assessment of environmental effect where hydrological connectivity exists (see Bradán Beo Teoranta judgment). Indeed, the same report had already identified Outer Kenmare River as one of the three waterbodies having an impact pathway from the project. The scientific question is what quantity and concentration of oxygen-demanding material can reach the waterbody under relevant hydrodynamic conditions and what effect that additional pressure could have upon an oxygenation quality element already classified Moderate. The project before ALAB represents a substantial intensification to a maximum biomass of 2,200 tonnes.

5.8 The WFD conclusion depends materially upon the disputed hydrodynamic model. The principal answer given in the WFD assessment is dispersion. For Outer Kenmare River, the report relies upon applicant-provided nutrient data and model outputs said to show that DIN and phosphate dissipate within the licensed boundary. It concludes from modelling and historic monitoring that nutrient discharges will not significantly affect surrounding waterbodies.

5.9 The underlying EIA provides further detail. The Telemac-3D model uses monthly nitrogen and phosphorus loads of 11.87 tonnes and 1.77 tonnes respectively at peak biomass and feed output. However, the Marine Institute expressly records that "it is not clear what nutrient concentrations have been incorporated into the model as background".The same assessment records that the monitoring data comprise only three or four winter sampling events annually.

5.10 More importantly, earlier grounds have identified the unresolved limitations of the hydrodynamic model itself. The decision record records criticism that the model lacked adequate statistical validation against observed currents throughout the water column and omitted wind forcing, notwithstanding the potential importance of wind-driven circulation. The Marine Institute's assessment records that wind-forced surface currents could transport material substantially further and expressly states that the possibility of concentration at near-shore locations could not be ruled out in the sea-lice context.The significance for WFD is that the physical hydrodynamic representation relied upon to determine where discharges travel is itself contested.

5.11 The WFD assessment cannot therefore rely upon the proposition that DIN and phosphate dissipate within the licence boundary without resolving whether the model upon which that spatial conclusion depends adequately represents the circulation determining their transport.

5.12 "No significant impact" is not the *Weser* test. There is also a potentially important mismatch between the language of the environmental assessment and the legal test under Article 4. The EIA concludes that nutrient discharges will not "significantly impact" surrounding waterbodies. Elsewhere the assessment repeatedly uses concepts such as "significant elevation", "significant impact" and "negligible impact". That is conventional EIA terminology. It is not, however, the WFD deterioration test.

5.13 Article 4 and *Weser* require the competent authority to determine whether the project may cause deterioration of status, including deterioration of an individual quality element within the meaning identified by the Court. A conclusion that an effect is not environmentally "significant" for EIA purposes does not by itself establish that no WFD deterioration will occur. This differentiation is particularly important for an element already classified Moderate. The competent authority must assess the change against the applicable WFD classification criteria rather than merely determine whether the environmental effect appears significant in general terms.

5.14 Dangerous substances have not been modelled. The evidential difficulty is considerably clearer in relation to chemotherapeutants. The EIA identifies deltamethrin and emamectin benzoate as substances used for parasite treatment and records applicable environmental quality standards. It notes that crustaceans are particularly sensitive to both substances. The Marine Institute then expressly states: "the EIAR does not detail any modelling of substance dispersion from the site as a point source" and records that a 1,000-fold dilution of the identified deltamethrin well-boat treatment concentration would be required to reach the applicable EQS.

5.15 For emamectin benzoate, it similarly records that no specific information is included in the EIAR concerning potential discharge to and dispersion within sediment, while noting a reported half-life of approximately 250 days. The Marine Institute's own conclusion is equally explicit:"modelling to ascertain dispersion of substance discharge has not been reported."That is an identified evidential lacuna.

5.18 The response to that lacuna is largely regulatory. The proposed conditions require chemical inputs not to breach applicable EQS, require pre-notification of chemotherapeutant discharges from well boats with evidence that EQS will not be breached, require nutrient inputs not to cause deterioration, and require subsequent monitoring and reporting of DIN and DIP. Those are potentially appropriate operational controls. They do not answer the prior Article 4 question. A condition stating that the operator must not cause deterioration does not itself establish that the development which the competent authority is authorising will not cause deterioration.

5.19 Similarly, requiring the operator to demonstrate immediately before a chemotherapeutant discharge that an EQS will not be exceeded effectively postpones part of the environmental assessment until after development consent. The material before the Minister expressly records that the dispersion modelling necessary to establish the behaviour of those substances had not been undertaken. This issue / lacunae is especially material where the project is authorised for an extended operational period and where the assessment acknowledges that veterinary treatments may be required in response to disease or parasite events.

5.20 The assessment must address each relevant quality element. The WFD Compliance Report correctly describes ecological status as incorporating biological elements, supporting physico-chemical elements, river-basin-specific pollutants and hydromorphological quality elements. Its screening then identifies potential project effects upon biological elements, nutrient conditions and oxygenation/dissolved oxygen. The final conclusion, however, is expressed principally at waterbody level: that the activity is WFD compliant, will not cause deterioration of the assessed coastal waterbodies and will not jeopardise Good biological or chemical status.

5.21 Such a conclusion is lawful only if supported by the necessary assessment of the individual elements identified as potentially affected. In particular, ALAB should require a demonstrable evidential chain for:

source → discharge/load → hydrodynamic pathway → affected waterbody → relevant quality element → predicted change → applicable class boundary/environmental objective.

Without that chain, a general conclusion of WFD compliance does not demonstrate application of the *Weser* test.

5.22 Existing deterioration cannot become the baseline for future deterioration. The historical baseline problem identified in earlier grounds also arises under the WFD. The assessment relies upon water-quality monitoring undertaken while Deenish was already operating and uses that evidence to support the proposition that existing aquaculture has not materially affected surrounding waters. The EIA records applicant monitoring from 2010–2018 together with later 2021–2023 data.

5.23 Historic operational data may provide useful empirical evidence. But it cannot automatically establish the pre-project condition where the activity being assessed was itself operating during the monitoring period. ALAB must distinguish the environmental condition against which Article 4 objectives apply from any changes already attributable to historical operation, and must then assess the additional pressures from the development now proposed. Otherwise, deterioration caused during a lengthy post-expiry operational period risks becoming embedded in the baseline against which further deterioration is measured.

5.24 Temporary or periodic effects cannot simply be disregarded. The WFD Report characterises pressures on Outer Kenmare River as "periodic", referring to the production cycle, two-month fallowing period and ad hoc chemotherapeutant use. Periodicity does not remove an effect from Article 4. In Case C-525/20, *Association France Nature Environnement*, the Court of Justice considered temporary, short-term impacts without lasting consequences and confirmed the importance of assessing such impacts within the Article 4 framework rather than simply excluding them because they are temporary. Accordingly, the intermittent nature of treatment discharges, fallowing or peak biomass does not dispense with assessment. Indeed, the relevant environmental pressure may be greatest precisely during a short treatment discharge or at maximum biomass.

5.25 Cumulative effects. The WFD Report records four other intensive finfish sites within Outer Kenmare River but concludes that an in-combination effect is unlikely because the modelled plume from Deenish does not combine with them to an extent capable of affecting WFD elements. That conclusion again depends upon the disputed hydrodynamic model.

5.26 More importantly, cumulative WFD assessment should not be confined to geometric overlap between modelled plumes. Where several activities contribute nutrients, organic matter, oxygen

demand or chemical pressure to the same waterbody, the relevant question is whether their combined pressure may deteriorate an individual quality element or jeopardise its environmental objective. No data identifying Wastewater discharges (primary or overflow), Industrial discharges etc appears to be contained in teh application. This is a considerable lacuna. Such uncertainty is especially important for Outer Kenmare River because oxygenation and dissolved oxygen are already Moderate and the waterbody is At Risk.

5.27 The Marine Institute's WFD assessment represents an important improvement upon the original EIAR because it expressly identifies the relevant waterbodies, hazards and WFD elements. The difficulty lies in the evidential step between that identification and the ultimate conclusion of compliance. The assessment establishes that the proposed activity is a source of organic enrichment, settled solid waste and chemical stressors; identifies pathways to three WFD waterbodies; identifies biological, nutrient and oxygenation elements as potentially affected; records Outer Kenmare River as At Risk with Moderate oxygenation and dissolved oxygen; and acknowledges that dangerous-substance dispersion modelling has not been reported. Yet it concludes that deterioration will not occur substantially by reference to distance, dilution, historic monitoring and modelled dispersion.

5.28 Those conclusions depend materially upon a hydrodynamic model whose validation and omission of wind forcing were themselves specifically challenged in the environmental assessment. In relation to dangerous substances, the necessary dispersion modelling is expressly absent. Subsequent licence conditions then require the operator to avoid deterioration, comply with EQS and provide future monitoring. That does not establish the absence of deterioration at the authorisation stage.

5.29 Under *Weser*, Article 4 is a binding constraint upon individual project authorisation, not merely an objective to be monitored after consent. ALAB must therefore satisfy itself, for each relevant waterbody and each potentially affected quality element, that the proposed 2,200-tonne operation in cumulation with any other development with emissions to water, will not cause prohibited deterioration and will not jeopardise achievement of the applicable environmental objectives.

5.30 On the information presently identified, the Appellant submits that the Minister's conclusion that the development complies with the Water Framework Directive has not been demonstrated to the standard required by Article 4. ALAB should not affirm that conclusion unless the identified modelling and evidential deficiencies are first resolved and the Article 4 assessment is undertaken by reference to the individual quality elements and environmental objectives actually applicable to each affected waterbody.

6. The preliminary review identified substantial inconsistencies in the description of the project.

6.1 Scientific reliability and absence of reasonable scientific doubt depends upon a stable and accurate description of what is being assessed. The Department's Preliminary Non-Technical Review identified significant inconsistencies between the application documents. The application form described cages with a diameter of 40.1 metres and circumference of 126 metres, whereas the EIAR stated a diameter of 40 metres and circumference of 100 metres. It identified inconsistent

cage depths, with an 11-metre wall and 20-metre total depth in the application documents but an 8-metre wall and 10-metre total depth in the EIAR. Most strikingly, it recorded total cubic capacity as 265,577 m³ in the application form but 41,422 m³ in the EIAR. Mesh sizes were also inconsistent. The same review identified differing site boundaries between the submitted drawings and GIS coordinates.

6.2 If the differing parameters entered, directly or indirectly, into environmental modelling or assessment. Cage dimensions, depth, volume, mesh configuration and spatial footprint may affect stocking density, waste distribution, hydrodynamic interaction, containment and the physical project assessed. ALAB should therefore be satisfied that all subsequent EIA, AA, modelling and technical assessments were undertaken against the same final project specification and should identify where the discrepancies detected in 2022 were formally resolved.

6.3 The production cycle was also internally inconsistent. The Preliminary Non-Technical Review further identified contradictory descriptions of the proposed stocking, harvesting and fallowing cycle. One part of the EIAR and the Single Bay Management Plan indicated a cycle beginning in January of year one and ending in September of year two. Elsewhere the EIAR stated that harvesting continued until December of year two followed by three months' fallowing and March restocking. The latter 24-month March-to-March cycle was also represented in several tables and figures.The timing and duration of maximum biomass, feeding, waste production, fallowing, parasite pressure and treatment requirements depend upon the production cycle actually proposed.

6.4 Again, the issue for ALAB is not whether a drafting error once existed. It is whether the final environmental assessments demonstrably used a single, corrected production scenario corresponding to the licence now proposed.

6.5 The evidential chain must distinguish monitoring from prediction. A recurring feature of the assessment is reliance upon historic monitoring to predict future environmental performance. That is legitimate only where the relationship between historic conditions and the proposed development is demonstrated. For example, the Department relies upon fifteen years of benthic surveys to conclude that the receiving environment can tolerate the proposed biomass. But the historic surveys principally document the effects of the operation which actually occurred during those years. They do not themselves expose the seabed experimentally to the maximum 2,200-tonne operation now proposed. A predictive step therefore exists between the observed historic evidence and the conclusion concerning future assimilative capacity.

6.6 That step should be scientifically identified and justified rather than concealed by describing the historic monitoring record as though it directly applies the future project. The same applies to historic water-quality monitoring, sea-lice records, escape history and other operational information. Evidence that an event has not previously been observed is relevant to probability; it is not necessarily proof that the event cannot occur under a materially different authorised scale.

6.7 Survey information must be assessed against the date of decision. There is more repetition here but the relevant question of the quality of the information available when the environmental

decision is made, is a central test of AA. Precise and deifinate up to date scientific information shall be used to inform the decision, dated data introduces reasonable scientific doubt. The application process extended over several years. Information which may have been current when the EIAR was prepared can therefore become materially older by the time of the 2026 determination.

The competent authority should ask whether ecological circumstances have changed during the intervening period and whether new surveys, monitoring, conservation assessments, water-status information or other environmental evidence alter the baseline.Where the decision-maker relies upon older information without updating it, the assessment should contain a reasoned explanation of why it remains representative.

6.8 The standard differs between EIA and Appropriate Assessment. The legal consequence of an evidential deficiency must be kept regime-specific. For EIA, the issue is whether the information is sufficient to identify, describe and assess the likely significant direct and indirect effects of the project and to support the competent authority's reasoned conclusion. An imperfect dataset does not automatically invalidate an EIA. For Appropriate Assessment the test is more demanding. Where outdated, incomplete or unvalidated information concerns a pathway capable of affecting a European site's conservation objectives, the competent authority must determine whether the remaining uncertainty prevents it from excluding adverse effects beyond reasonable scientific doubt.

7. Public participation must relate to the project ultimately assessed. The chronology also raises a procedural issue. Public consultation ran from December 2023 to February 2024. MED subsequently produced a further addendum on 28 October 2025 containing additional information relating to aspects of the EIA. The AA determination was adopted in February 2026 and the EIA reasoned conclusion in July 2026. The existence of later technical material does not automatically require renewed consultation. The relevant question is whether information introduced or generated after consultation contained material environmental information, altered the project, resolved a material deficiency or otherwise formed part of the basis upon which the competent authority reached its environmental conclusions. ALAB should therefore identify the material generated after February 2024, determine whether it contained significant new environmental information and establish whether the applicable public-participation requirements were satisfied. That exercise is particularly important where the application had already undergone substantial revision before consultation and where technical questions continued to be addressed afterwards.

8. **The sequencing proposed by the Department requires explanation**. There is a further logical difficulty in deciding the aquaculture appeal before determining the foreshore authorisation. The Department says both that the licences are mutually dependent and that the foreshore application will not be considered until after the aquaculture licensing process has concluded. If the aquaculture development cannot lawfully operate without a foreshore licence, ALAB should explain how it can finally authorise the aquaculture project without knowing whether the legally necessary foreshore occupation will itself be authorised and upon what terms.

8.1 This is especially important because the development now proposed is materially different from

the historic project. The foreshore question therefore concerns not merely continued occupation of an unchanged 14.5 ha site, but occupation associated with the proposed enlargement to approximately 33.5 ha and fifteen pens.The environmental assessment must correspond to the whole project ultimately capable of implementation. Fragmenting the consenting sequence cannot result in each decision-maker assessing only the part falling formally within its own licence while environmental effects of the development as a whole fall between the two regimes.

8.3 ALAB should therefore determine, as a preliminary matter, whether a valid foreshore licence presently exists for T06-202. If one exists, it should be identified and its legal and spatial relationship with the development now proposed established. If none exists because the previous authorisation was quashed, ALAB should identify the statutory basis upon which occupation and operation on the foreshore have continued and address the consequence for s.19A(4).

8.4 Most importantly, ALAB should not proceed on the assumption that a future foreshore licence can retrospectively regularise the intervening occupation without consequence under EU environmental law. If the proposed foreshore decision would in substance regularise development already undertaken, the competent authority must identify the lawful mechanism by which past, continuing and future effects are assessed consistently with the EIA and Habitats Directives.

8.5 Until those questions are resolved, the Department's proposed sequence, final aquaculture authorisation first, foreshore authorisation afterwards, leaves unresolved both the legal basis of the existing operation and the environmental assessment of the period which the later foreshore licence would effectively regularise.

8.6 Cumulative legal consequence. The issues identified in this appeal must ultimately be considered together. The question for ALAB is not whether each individual deficiency can, viewed in isolation, be characterised as minor. It is whether the evidence as a whole permits the Board to make each of the findings required by domestic and European Union law before the development may be authorised. EU law does not permit retrospective regularisation to become a means of circumventing environmental assessment. In Commission v Ireland, C-215/06, the Court addressed the incompatibility of regularisation arrangements which undermine the preventive purpose of EIA. In the Habitats context, Grüne Liga Sachsen, C-399/14, confirms that subsequent assessment of an already implemented project must satisfy the substantive requirements of the Directive and be capable of removing reasonable scientific doubt. EIA/AA and WFD all require cumulative impact assessment both within those regime and between all three regimes.

9. Document Integrity and Record Deficiencies: WID wish to note that the WFD Compliance Report contains unresolved document-production fields, including references rendered as "Table Error! No text of specified style in document.-12" and "Table Error! No text of specified style in document.-1". These should be checked against the intended tables and corrected before reliance is placed upon the associated cross-references.

9.1 Before determining the appeal de novo, ALAB is requested to ensure that the administrative record contains the final version of every document relied upon; that missing or incorrectly referenced documents are identified; that figures, tables, appendices and hyperlinks resolve to the

material intended; that superseded versions are clearly distinguished from operative documents; and that the environmental assessments correspond to one definitive set of site coordinates, cage dimensions, production parameters and drawings.

Conclusion.

Wild Ireland Defence CLG respectfully requests that the Aquaculture Licences Appeals Board allow the appeal, overturn the Minister's decision and refuse the application for the renewal and review of Aquaculture Licence T06/202. The deficiencies identified are not merely procedural or technical: they concern the legal status and proper characterisation of the development, the completeness and reliability of the scientific evidence, and whether the findings required under the EIA Directive, Habitats Directive and Water Framework Directive can lawfully be made. Where those statutory and EU-law requirements have not been satisfied, the appropriate course is not to defer unresolved matters to subsequent licensing, monitoring or operational conditions, but to refuse the licence. WID therefore respectfully asks ALAB, exercising its independent appellate function, to set aside the Minister's decision and refuse the application.

Yours Sincerely

Peter Sweetman

On behalf of Wild Ireland Defence CLG.