

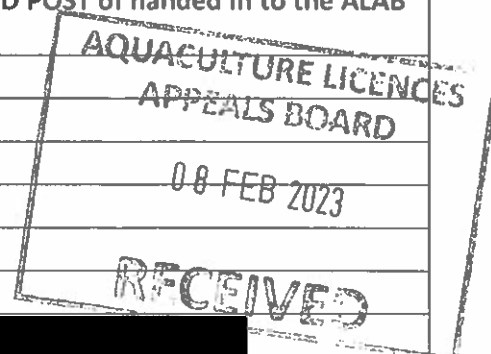
An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



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

APPEAL FORM

Please note that this form will only be accepted by REGISTERED POST of handed in to the ALAB offices		
Name of Appellant (Block Letters)	JIM HURLEY	
Address of Appellant	[REDACTED]	
	[REDACTED]	
Eircode	[REDACTED]	
Phone		Email [REDACTED]
Mobile	[REDACTED]	
FEES		
Fees must be received by the closing date for receipt of appeals	Amount	Tick
An appeal by an applicant for a licence against a decision by the Minister in respect of that application	€380	
An appeal by the holder of a licence against the revocation or amendment of that licence by the Minister	€380	
An appeal by any other individual or organisation	€150	✓
Request for an Oral Hearing* (fee payable in addition to appeal fee)	€75	
<small>*In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded</small>		
Fees can be paid by way of Cheque or Electronic Funds Transfer Cheques are payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 2021 (S.I. No. 771 of 2021)		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D
SUBJECT MATTER OF THE APPEAL		
I am appealing the recent determination made by the Minister for Agriculture, Food and the Marine to grant aquaculture licences for two sites adjacent to Ballyteige Burrow, Co Wexford (details in Annex 1 attached).		
Site Reference Number: - (as allocated by the Department of Agriculture, Food, and the Marine)	T03/038A [REDACTED]	
Appellant's particular interest in the outcome of the appeal:		
My particular interest in the outcome of the appeal is the conservation of the natural heritage resource values of the South Wexford Coast, a heritage coastal area, for the common good. For further information see www.southwexfordcoast.com .		



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

My grounds of appeal are twofold:-

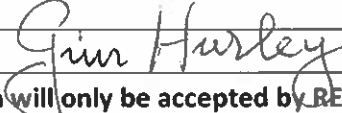
1. That, considering the context of the determinations, especially with regard to the many outstanding uncertainties regarding impacts on wild birds, there is an obligation on the Aquaculture Licences Appeals Board to robustly apply the precautionary principle when determining this appeal bearing in mind the poor record to date of both Ireland and the Minister for Agriculture, Food and the Marine for protecting Ireland's natural heritage. My reasons, considerations, and arguments are detailed in Annexes 2, 3, and 5 attached.
2. That the Minister's decision is, in my view, unsound in that it is based on incomplete information provided by the two Natura Impact Statements. In my view, these two documents fail to inform the Minister adequately in that they do not fully address in-combination impacts regarding water quality. My reasons, considerations, and arguments are detailed in Annex 4 and Annex 5 attached.

The following five attached Annexes are to be read in tandem with this appeal form:-

- Annex 1 – Press notice, 11 January 2023
- Annex 2 – Ireland's poor record
- Annex 3 – Submission, 9 December 2021
- Annex 4 – Water Quality
- Annex 5 – Letter regarding hedgerows

Since the transposition of four EU Directives is involved, I will be informing DG Environment of the European Commission of the subject matter of this appeal.

The appropriate appeal fee of €150 was paid by electronic funds transfer on 7 February 2023.

Signed by the Appellant		Date	7 February 2023
Please note that this form will only be accepted by REGISTERED POST of handed in to the ALAB offices			
Fees must be received by the closing date for receipt of appeals			

This notice should be completed under each heading and duly signed by the appellant and be accompanied by such documents, particulars or information relating to the appeal as the appellant considers necessary or appropriate and specifies in the Notice.

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 and may include publication on the ALAB website

Send money

Person,
Details
or log
out

DeepLink



Success

From: SWC Promotions ~ 4638
€150.00
To: ALAB
IBAN IE89AIBK93104704051067

Your balance may not update immediately.

Back to payments

Back to home

Time of request: 07/02/2023 09:22

Session Timeout

Annex 1: Press notice, 11 January 2023

Fisheries (amendment) Act, 1997 (no. 23) Notice of Decisions to Grant Aquaculture Licences.

The Minister for Agriculture, Food and the Marine has made determinations on the Aquaculture Licence applications as set out in the table below:

Site Ref No	Applicant	Species & Method	Minister's Decision	Location
T03/038A	Ballyteigue Oysters Ltd. Lacken, Duncormick, Co Wexford.	Oysters using bags and trestles	Grant new Licence	Ballyteigue Bay
T03/095A	Johnny Neville & Jeannette Brugman, Danescastle, Wellingtonbridge, Co Wexford	Oysters using bags and trestles	Grant new Licence	Ballyteigue Bay

The reasons for these decisions are elaborated on the Department's website at: www.gov.ie

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail info@alab.ie or website at www.alab.ie/

Note: As marine aquaculture operations require separate Aquaculture and Foreshore Licences, a separate determination on the foreshore licence applications will be made once the licensing authority, or if appealed, the Aquaculture Licences Appeals Board (ALAB) have made a determination on the aquaculture licence application.



An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine

(Source: *Wexford People*, issue dated 11 January 2023, page 74)

Annex 2. Ireland's poor record

Regrettably, Ireland has a poor record for protecting the country's significant natural heritage resource values. Determination of the appeal needs to be put in context of that poor record.

1. The issue of unauthorised aquaculture at the appeal sites has been the subject of controversy for forty years. Since the early 1980s, unauthorised aquaculture has been practiced with State support by several different interests on the foreshore adjoining the townland of Duncormick Hill in the estuary adjoining Ballyteige Burrow. A 1989 press item (copy appended labelled A), reported that Duncormick Aquaculture Ltd, farming clams and oysters, operated "*one of the biggest shellfish farms in the country*". The farm was located at the site of a former native cockle bed that no longer exists. In 1995 it was reported that the National Parks and Wildlife Service (at the time operating as part of the Office of Public Works) opposed the granting of a licence to an oyster farmer at Duncormick because the farm was in the Ballyteige Burrow Special Protection Area (SPA) (copy appended labelled B). Over the years, several public warnings were published in the local press regarding shellfish toxicity issues at Ballyteige Burrow (sample appended labelled C).
2. Ireland has a poor record regarding the transposition and implementation of European Union environmental Directives. The European Commission logs 150 infringement cases against Ireland, 16 of which are still active (https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=0&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=IE&DG=ENV&title=&submit=Search). On 13 December 2007, in case C-418/04 Commission v Ireland, the judgement of the Court declared that Ireland failed "*to take all the measures necessary to comply with Article 6(3) of Directive 92/43 in respect of authorisation of aquaculture programmes*" (<https://curia.europa.eu/juris/document/document.jsf?sessionId=8BDC4D7140DE1E3EC149228AFB19BC0E?text=&docid=71717&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=9577>). That case is still open as Ireland strives to retrospectively regularise ongoing unauthorised activities.
3. In 2019, the Article 17 Report submitted by Ireland to the European Commission on the implementation of the EU Habitats Directive in the Republic of Ireland showed that the conservation status of very many habitats and species were rated 'Unfavourable', 'Inadequate', or 'Bad' (NPWS, 2019a, b and c). In that same year, Dáil Éireann voted upon and declared a national Biodiversity Emergency.

4. In the most recent assessment (January 2023) conducted for the European Commission of the implementation of the measures established in Special Protection Areas (SPAs) and their effectiveness, results for Ireland were particularly disappointing (EC, 2023 page 41 Table 2 and page 53). The assessment was carried out by the N2k Group using its network of experienced independent experts for each of ten SPAs selected in each of ten Member States (Croatia, Finland, France, Italy, Ireland, Latvia, Poland, Romania, Slovakia and Spain).

Table 2. Overall progress results for each country

	HR	FI	FR	IT	IE	LV	PL	RO	SK	ES	TOTAL
PLANNING	73%	65%	69%	53%	16%	48%	61%	53%	88%	71%	59%
IMPLEMENTATION	52%	40%	58%	37%	5%	65%	40%	20%	58%	52%	41%
SITE MANAGEMENT	55%	23%	56%	49%	1%	53%	46%	64%	64%	51%	44%
MONITORING	52%	70%	58%	33%	27%	53%	47%	17%	55%	46%	44%
CONSERVATION OUTCOMES	44%	71%	52%	39%	28%	54%	35%	25%	49%	47%	43%

Overall assessment of the 10 SPAs analysed for Ireland



5. Ballyteige Burrow is subject to the following designations.
- Ballyteige Burrow Special Area of Conservation (SAC), Site Code IE0000696 (<http://www.irishstatutebook.ie/eli/2021/si/435/made/en/pdf>).
 - Ballyteige Burrow Special Protection Area (SPA), Site Code IE0004020 (<http://www.irishstatutebook.ie/2010/en/si/0383.html>).
 - Ballyteige Burrow Nature Reserve (<https://www.irishstatutebook.ie/eli/1987/si/279/made/en/print> and <https://www.irishstatutebook.ie/eli/1990/si/8/made/en/print>).
 - A *de facto* Marine Protected Area (MPA).

While the area enjoys paper protection, the State and its agencies regularly appear to see the designations as constraints standing in the way of economic development.

6. While Ballyteige Burrow is not a designated area for shellfish aquaculture and is not listed in either the 2006 Regulations or the 2009 Regulations (SI No 268 of 2006 *European Communities (Quality of Shellfish (sic) Waters) Regulations 2006* and SI No 55 of 2009 *European Communities (Quality of Shellfish(sic) Waters) (Amendment) Regulations 2009*), it features in the '2022/23 List of Classified Bivalve Mollusc Production Areas in Ireland (26th July 2022)' (Source: <https://www.sfpa.ie/What-We-Do/Molluscan-Shellfish/Classified-Areas>). A map (Figure 1) published on 12 December 2018 shows the Ballyteige (sic) Bay area as extending from Ballymadder Point to Crossfarnoge Point, that is, enclosing the Ballyteige Burrow SPA in its entirety (Source: <https://www.sfpa.ie/LinkClick.aspx?fileticket=HPMo53Df9Q8%3d&portalid=0&resourceView=1>). Note that Ordnance Survey Ireland spells the placename 'Ballyteige' and recognises Ballyteige Bay as the large, near-shore, marine feature whereas SFPA usage adds a 'u' to the placename, the local preferred variant, and labels the estuary rather than the bay as 'Ballyteigue Bay' (Figure 1).

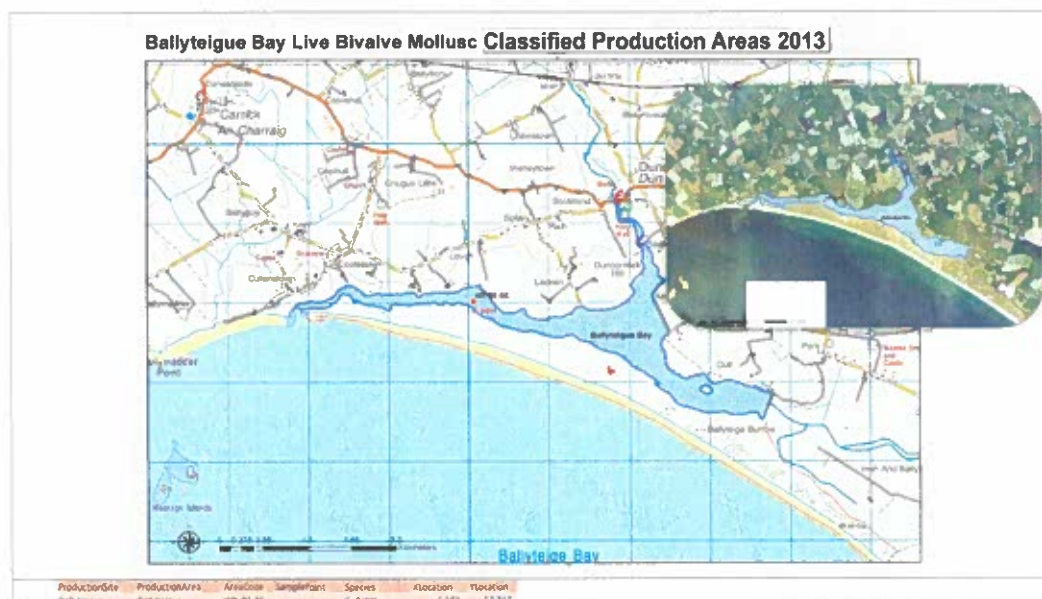


Figure 1. Sea-Fisheries Protection Authority (SFPA) map.

(Source: <https://www.sfpa.ie/LinkClick.aspx?fileticket=HPMo53Df9Q8%3d&portalid=0&resourceView=1>)

Conclusion

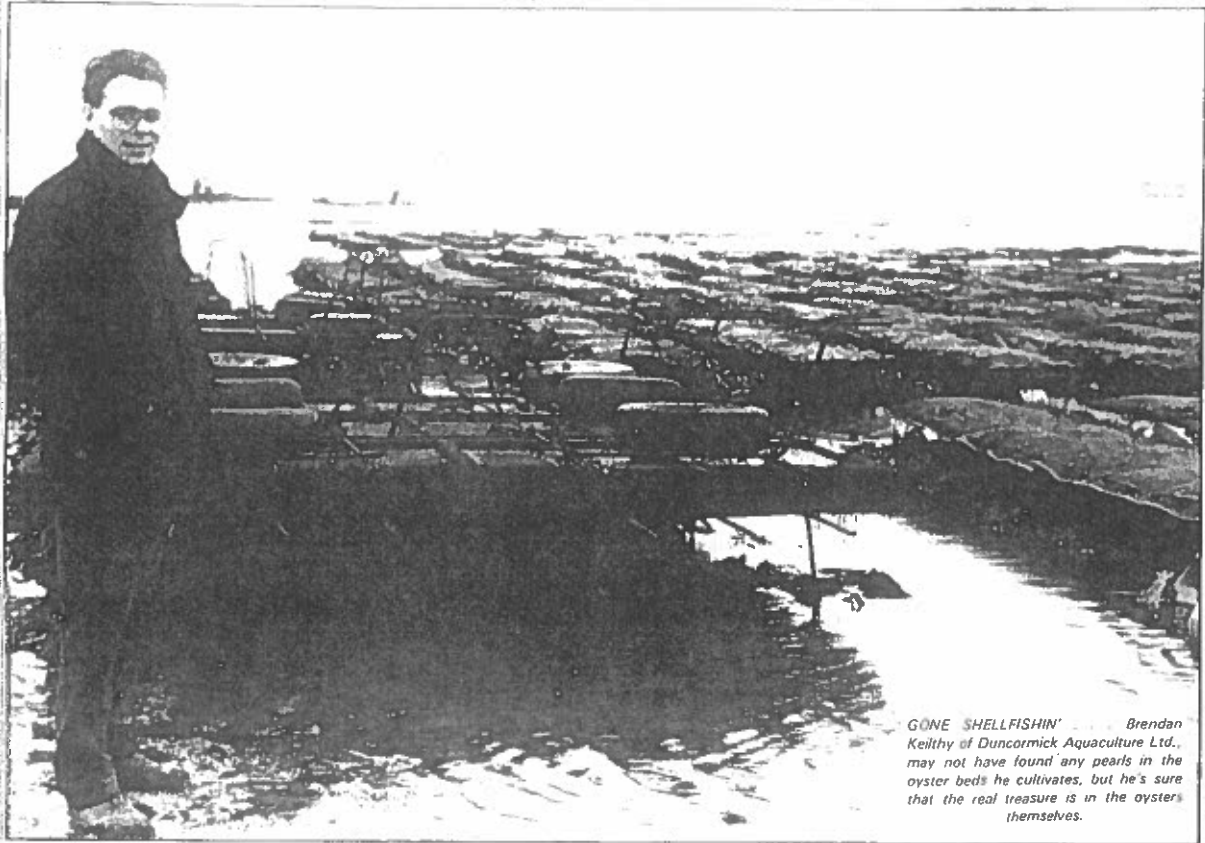
Ireland's record regarding nature conservation is poor. Consequently, the conservation status of many habitats and species is unfavourable, inadequate, or bad. Dáil Éireann voted upon and declared a national Biodiversity Emergency. While Ballyteige Burrow is a statutory protected area for wildlife, the paper protection afforded to the site is meaningless if the habitats and species that the area supports are not safeguarded from threats posed by shellfish aquaculture. Licencing of aquaculture by the State in a protected area during a biodiversity emergency is unacceptable when Natura Impact Statements indicate that uncertainty exists regarding potentially adverse impacts.

Additional points made in my original submission dated 9 December 2021 (Annex 3 attached) should be noted in tandem with this Annex.

- SWC Promotions: promoting the natural heritage resource values of the South Wexford Coast •

References

- BIM. 2008. *Irish National Seafood Plan*. Environmental report prepared for, and on behalf of, Bord Iascaigh Mhara by ERM consultancy. Available online at https://bim.ie/wp-content/uploads/2021/02/National_Seafood_Plan_Environmental_Report.pdf.
- Burke, B., Lewis, L. J., Fitzgerald, N., Frost, T., Austin, G. and Tierney, T. D. 2018. Estimates of waterbird numbers wintering in Ireland, 2011/12-2015/16. *Irish Birds* Number 41, pages 1-12.
- EC. 2023. *Assessment of the measures established in Special Protection Areas and their effectiveness*. Final report submitted by the N2K GROUP, European Economic Interest Group. Brussels: European Commission. Available online at https://op-europa-eu.translate.google.es/publication-detail/-/publication/b81bea2f-8fd0-11ed-b508-01aa75ed71a1?x_tr_sl=es&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc.
- NPWS. 2014a. *Conservation Objectives Series: Ballyteige Burrow SAC 000696*. Version 1.0, 7 July 2014. Dublin: National Parks and Wildlife Service of the Department of Arts, Heritage, and the Gaeltacht. Available online at http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000696.pdf.
- NPWS. 2019a. *The Status of EU Protected Species and Habitats in Ireland*. Unpublished Article 17 reports 2019 in three volumes: Volume 1, Summary Overview [101 pages, 53.58 MB]; Volume 2, Habitats Conservation Assessments [1128 pages, 51.02 MB] and Volume 3, Species Conservation Assessments [985 pages, 36.49 MB]. Edited by Deirdre Lynn and Fionnuala O'Neill. Dublin: Department of Culture, Heritage and the Gaeltacht, National Parks and Wildlife Service (NPWS). Available online at <https://www.npws.ie/article-17-reports-0/article-17-reports-2019>.
- NPWS. 2019b. *The Status of EU Protected Species and Habitats in Ireland*. Volume 1: Summary Overview. Unpublished Article 17 report 2019 edited by Deirdre Lynn and Fionnuala O'Neill. Available online at https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf.
- NPWS. 2019c. *The Status of EU Protected Species and Habitats in Ireland*. Volume 2: Habitat Assessments. Unpublished Article 17 report 2019 edited by Deirdre Lynn and Fionnuala O'Neill. Available online at https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol2_Habitats_Article17.pdf.
- NPWS. 2019d. *The Status of EU Protected Species and Habitats in Ireland*. Volume 3: Species Assessments. Unpublished Article 17 report 2019 edited by Deirdre Lynn and Fionnuala O'Neill. Available online at https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol3_Species_Article17.pdf.
- NPWS. 2019e. *Ireland's Biodiversity Sectoral Climate Change Adaptation Plan*. Dublin: National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht. Available online at [https://www.npws.ie/sites/default/files/files/32631_NPWS_Climate%20Change%20Report_15Feb\(1\).pdf](https://www.npws.ie/sites/default/files/files/32631_NPWS_Climate%20Change%20Report_15Feb(1).pdf).
- NPWS. 2019f. *Biodiversity Climate Change Adaptation Plan*. Prepared under the National Adaptation Framework. Dublin: National Parks and Wildlife Service, Department of Culture, Heritage, and the Gaeltacht. Available online at <https://www.chg.gov.ie/heritage/climate-change/the-biodiversity-climate-change-sectoral-adaptation-plan/>.
- NPWS. 2020. *Draft Prioritised Action Framework (PAF) for Natura 2000 in Ireland*. Draft for consultation. Dublin: Department of Culture, Heritage, and the Gaeltacht. Available online at <https://www.npws.ie/news/public-consultation-draft-paf>.



GONE SHELLFISHIN' Brendan Keilthy of Duncormick Aquaculture Ltd., may not have found any pearls in the oyster beds he cultivates, but he's sure that the real treasure is in the oysters themselves.

BRENDAN KEILTHY talks quickly and animatedly, his eyes conveying as much enthusiasm for his subject as his words. He stares out intently from behind the glasses below his short wavy hair.

"Ireland is sitting on a gold mine. We're surrounded by water. Mariculture is still only beginning in Ireland, but it has so much potential that it would be a shame to waste it," he says.

He gives the impression of being a young man who knows what he is talking about. No doubt that is because he does. He has spent the past three years pursuing his dream: researching, financing, and establishing one of the biggest shellfish farms in the country.

Now his company, Duncormick Aquaculture Ltd., is farming over three million clams and 1 1/2 million oysters in picturesque Ballyteigue Bay, just outside Duncormick.

The wavelets still race one another up the shore, sea gulls still hover low over the broken surface of the sea. Water sucks loudly at the sandy gravel on the beach. It looks deserted at this time of the year. Outwardly, there is nothing to suggest that here a fledgling industry is taking its first cautiously optimistic steps.

Brendan is confident that shellfish farming is an industry with great potential. So far, he feels, the relatively small number of farms around the coast have just barely skimmed the surface of a huge pool of natural resources and foreign markets.

Earlier this year the company founded by this 24-year-old Wexford entrepreneur made its first sales of Duncormick oysters. He is confident that the first clams will be ready to go on the market next summers. The vast majority of

shellfish will be exported. Brendan sends most of his oysters to a procession company in Northern Ireland, while he is currently approaching buyers in Spain and Italy and marketing next summer's clam harvest.

Most shellfish are exported. The home market is relatively small. "The Irish palate is very conservative but I think it's definitely becoming more sophisticated." The problem is that the Irish don't like to eat raw shellfish and it would never occur to people to cook them," Brendan believes.

Another advantage of shellfish farming is that it is a very "clean" industry. It is not bedevilled by the bad press which a number of salmon farms have suffered because of dosing stock against parasites with chemicals.

"We don't have to add anything to the water. Shellfish can cope with anything in the water themselves," says Brendan.

He finds the local people very supportive. "The locals down there are very good and I think the majority of them are very pleased to see that somebody is doing something with an area that hasn't been utilised before. We've had tractors and Land Rovers get stuck and they've always come to our rescue, which is great."

When he decided to begin shellfish farming in Ballyteigue Bay, after twelve months of trials and tests had been successfully

By EOIN QUINN

completed, Bord Iascaigh Mhara and the local AIB manager helped Brendan to discover that raising finance was the easy part.

The hard part was keeping the business afloat long enough for the first harvests of oysters and clams to reach maturity - two years, to be precise. That took guts and brass neck, two qualities which have stood Brendan in good stead in a high risk business like shellfish farming.

Baby clams are ten times smaller than the nail on your little finger. They are grown on trays which have an alarming tendency to float away on the tide. Oysters, meanwhile, are kept in mesh bags. One tear in the mesh and the oysters could be scattered between here and France. This year, Brendan lost 150,000 clams because of bad weather.

"If things go well it can be quite a profitable business; but if things go wrong they go badly wrong. You've got to be prepared to lose stock, and to do your homework so that you can still survive. If you can't do that, or aren't prepared to, it's pointless getting into aquaculture."

"This is a high risk business. You don't think six months ahead. You have to work at least three years ahead if you're serious about it."

It helps, too, to be serious about the business when it comes time to clean and grade the shellfish. After all, spending hours up to your neck in ice-cold water from five o'clock in the morning is not for the faint-hearted. "Your hands stop working after a while in that cold, but it's a bit of fun. It's interesting. That's what I like about it," insists Brendan.

It also helps if you're not alone in such madness, and Brendan has a very obliging family who are always willing to lend a hand. In particular, his brother Sean never balks when asked to spend early mornings in cold water being buffed by the waves. (Well, nearly never.)

Brendan is confident that there is a big future for the shellfish farming industry in this country. For Duncormick Aquaculture Ltd. he predicts future growth, all going well. Next year he hopes to employ one or two local people, possibly only part-time, but with a view to expansion.

His aim is to produce prime-quality products for export to some of the most demanding markets in Europe. Within two years, Duncormick oysters and clams could find themselves on the tables of some of the finest shellfish connoisseurs in the world.

Pearls of the sea

Bannow senior citizens' party

IT seemed that half of those who were eligible for Bannow Senior Citizens' Christmas Party chose to say at home and watch Glenroe and the Daniel O'Donnell Show. They missed an outstanding meal and superb entertainment last Sunday night in Carrig Community Centre.

Carrig-on-Bannow Guild of I.C.A. President, Mrs. Ann Crosbie, welcomed everyone to the party.

Very Rev. Henry Sinnott, P.P., said he was very pleased to be invited. He paid tribute to the I.C.A. for their work in preparing for the party.

Chancellor Ernest Brandon thanked the I.C.A. for inviting him and his wife and said Christmas would not be the same without Bannow I.C.A.

Fr. Finian, O.S.A., said he was a newcomer to the parties, and was very impressed by the warmth and friendliness as he walked into the hall. He hoped the bond between the parishioners of Bannow and Grantstown would be strengthened in the coming years.

Before the entertainment commenced Fr. Sinnott prayed for the deceased, especially mentioning late Rev. Tom Butler, O.S.A., Grantstown Priory, and an ex-guild President, late Kathleen Codd.

Musicians who played old-time waltzes and Irish traditional music were: Maureen Barry, Michael and Jim Boyce, Dick Hillis, Dominic Broaders, Andy Monahan, John Cousins, Eoin Galvin, Sean Marshall, John Browne, Michael Byrne and Alan O'Dwyer.

Members of the I.C.A. and old Bannow Dramatic Classes put on sketches. Ballymitty mummies gave a delightful exhibition of mummifying. Carrig half-set performed and the Festival Carol Singers provided the highlight of the night with their singing and harmony.



DROVER MEATS COCKTAIL SAUSAGES

The sure way to keep people very happy at your Christmas Party



ORDER THEM TODAY **DROVER COCKTAIL SAUSAGES** THE QUALITY SNACK THAT IS SIMPLICITY ITSELF AND REMEMBER SPECIALLY PACKED DROVER SAUSAGE MEAT MAKES BEAUTIFUL STUFFING

DROVER MEATS Industrial Estate, Wexford. Tel. 053-41434

Law cuts Lifeline

“BARMY BIRD LAW TARGETS FISHERMEN”

For the first time ever in Ireland, a Wexford oyster fisherman has been refused a licence because his business is in a Special Protection Area for birds, writes Tom Mooney.

The worst fears of fishermen throughout Wexford was confirmed this week by Wexford Regional Game Council who disclosed that the Department of the Marine has told a Wexford fisherman that he can no longer operate his fish farm on the Wexford coastline in a protected area.

The implications for Wexford harbour trawler owners is considerable and costly. Trawlers operating in the harbour are likely to switch from mussels to oysters once the

Report by Tom Mooney

Wexford Main Drainage Scheme, which will alter the environment in which mussels grow, is finished.

However, Wexford Harbour is a Special Protection Area, supported by an EU directive, which means the Department can ban oyster farming in the traditional harvesting home of Wexford trawlers.

“The evidence clearly shows that an oyster fisherman in

Wexford has been refused a licence to continue because his area is in a Special Protection Area,” explained Turlough Coffey, Secretary of Wexford Regional Game Council.

The oyster fisherman, Duncormick, has already invested almost half a million seed oysters on the site but his application was rejected because of the Birds Directive. This is the first case of this ever happening.

Yet the designation of Wexford Harbour as an SPA under the Bird Directive 1979, has been opposed by 30 game associations. Mr. Coffey feels that the National Parks and Wildlife Services is not suitable to administer or carry the responsibility for an SPA in Wexford.

The Office of Public Works is responsible for administering the SPA directive and, claims the magazine The Irish Skipper, it does not want any farming in such areas in Wexford as Ballyteigue or Bannow Bay.

In a letter to Wexford Co. Council, the OPW has stated that no grant aid will be given to business projects undertaken in SPA locations.



Kelly's Resort Hotel, Rosslare, has won the Hotel of the Year Award in the Egon Ronay Guide 1995 in association with Jameson Irish Whiskey. Pictured receiving the award are (from left to right): Andrew Elliot, Egon Ronay Guide 1995, Richard Burrows, Irish Distillers, Billy Kelly, Kelly's Resort Hotel, Clara Kelly, Laura Kelly and Minister Sean

McKEONS

Putting on the style

BALLY

DILARA
€59.99



B

DEATHS

BEARDWOOD (Nee Curley), Barryville, Rosslare Harbour, Co. Wexford, 7 Sept. 2006, Margaret (Peggy), beloved wife of the late William, deeply regretted by her loving son Billy, daughter Madeline, son in law Paul, family, grandchildren Kieran & Dominic, nephews, nieces, relatives and friends. R.I.P. Interred in St. Aidan's Cemetery Killarney after Requiem Mass in St. Patrick's Church, Rosslare Harbour, on Sunday.

BURKE September 6th 2006 peacefully at St. John's Hospital, Mary Ann (Maureen) Nickerson (Duncoinnick), deeply regretted by her loving sons Paul, Michael, Tom and John, daughters Eileen, Peg and Mary, grandchildren, great grandchildren, nieces, nephews, brothers, sisters in-law, brother, sister, Betty, nephews, nieces, relatives and friends. R.I.P. Interred in Rosslare Cemetery on Friday September 8th after 11 o'clock Mass in The Church of The Assumption, Rosslare.

DELAINE (Cherry Orchard, Rosslare, Co. Wexford) 10th September 2006, (in the loving care of the matron and staff Kerlogue Nursing Home). Ivory, beloved mother of Audrey and dear friend of the Furlong and O'Reilly families, deeply regretted by his loving sister, relatives and friends. Funeral service took place in St. Peter's Church, Kilsaran, on Tuesday followed by burial in the adjoining Churchyard. At Rest.

DOHERTY (Nee Byrne) September 7th 2006 at Wexford General Hospital, Kathleen, 79 Bishopswater, Wexford, predeceased by

MOLONEY (Nee Burke) Bulgan, Glynn, Enniscorthy, Co. Wexford and formerly Kilmuck, Co. Clare) 10 September 2006, at her residence, Mary, beloved wife of the late Thomas (retired Garda Sergeant) and sister of the late Bridie (affluent), deeply regretted by her loving family Michael, Mary, Patrick, Joseph, Terence, Siobhan, Deirdre, son-in-law Damian, daughters-in-law Una and Magda, grandchildren Helen, Owen and Oliver, relatives and friends R.I.P. Reposing at Mulligans Funeral Home, The Faythe, Wexford from 20 o'clock, on Wednesday, with removal from Funeral Home at 7.30 o'clock. This (Wednesday) evening to St. Lawrence's Church Glynn, Funeral after 12 o'clock, Requiem Mass tomorrow Thursday to adjoining Cemetery.

NOLAN (Wexford) September 6th 2006 Patrick (Pat) Conish Park, beloved husband of the late Florence and loving father to Theresa, Clare, Sean, Patrick, Brendan, Anthony, Rita and Laura, deeply regretted by his loving daughters, grandchildren, sons-in-law, daughter-in-law, relatives and friends. Rest in peace Interred in St. Mary's Cemetery Enniscorthy after 11 o'clock funeral Mass in Church of the Annunciation Clonard on Friday.

O'REILLY September 11th 2006, Elizabeth, Tomcoote, Barnown. Deeply regretted by her loving son Paul, daughters Maire, Marion & Susan, son-in-law Michael, sister-in-law Maggie, grandchildren Eilis, Laurence, Aine and Martina, great grandchildren, nephews, nieces, relatives and friends. R.I.P. Funeral

Public warned not to eat shellfish from Ballyteigue



PEOPLE have been warned not to eat mussels, oysters, clams, scallops and similar bivalve shellfish harvested from Ballyteigue because of fears the shellfish could be toxic.

The HSE said that during routine monitoring by the Department of Communications, Marine & Natural Resources, Diarrhetic Shellfish Poisoning toxicity has been detected in oysters from Ballyteigue by the Marine Institute Fisheries Research Centre.

People are advised not to eat bivalve shellfish from the area, and restaurateurs and fishermen are also advised not to offer for sale shellfish harvested from these localities.

Additionally, the public is advised not to collect and consume shellfish from Ballyteigue, Co. Wexford until further notice. Cooking does not destroy the toxins, said

inner estuary from the Cull bank at Ballyteigue Burrow, including Duncormick estuary to the outlet to the sea east of Cullinstown.

The toxins are produced naturally by microscopic marine plants (phytoplankton) which are eaten by the shellfish. The shellfish can occasionally accumulate the toxins to a level which render them unsafe for human consumption.

Anyone member who has consumed shellfish from Ballyteigue and who has developed any gastro-intestinal symptoms should seek medical attention.

Monitoring in all areas will continue and the public will be advised when the harvesting, sale and consumption of shellfish from Ballyteigue, Co. Wexford can be carried out safely. The warning applies to shellfish gathered on or after September 5, 2006.

the HSE, adding that the toxins can cause severe gastro-intestinal symptoms including nausea, vomiting, diarrhoea, abdominal pain, chills and fever.

Ballyteigue, is the body of water in the

A 'bridge' too far for trawler

EVEN experienced fishermen can get caught out by unusual sea conditions as this picture goes to show. The Kilmore Quay-based 'Barracuda' was only just out of the harbour on Friday when

Annex 3: Submission, 9 December 2021

SWC Promotions

Grange, Kilmore, Co Wexford Y35 YN35

Mobile: [REDACTED]

Email: [REDACTED]

Website: www.southwexfordcoast.com



SWC Promotions: promoting the natural heritage resource values of the South Wexford Coast

9 December 2021

Minister for Agriculture, Food and the Marine,
Department of Agriculture, Food and the Marine,
Aquaculture and Foreshore Management Division,
National Seafood Centre,
Clonakilty,
Co Cork.

By email to APC@agriculture.gov.ie.

Re: Your Refs: T03/038A [REDACTED]

Dear Minister,

Thank you for the opportunity to comment on foot of your online public consultation posting, updated on 16 November 2021, at <https://www.gov.ie/en/collection/6ee2f-aquacultureforeshore-licence-applications-wexford/?referrer=http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/> regarding the aquaculture applications detailed below, the special notice on page 91 of the *Wexford People* newspaper, issue dated 16 November 2021, regarding the application by Johnny Neville and Jannette Brugman, and the public notice on page 102 of the *Wexford People* newspaper, issue dated 16 November 2021, regarding the application by Ballyteigue Oysters Ltd.

Applicant(s)	Ballyteigue Oysters Ltd
Site Ref No	T3/38
Site size	1.6983ha
No of trestles	694
No of bags	5,600

Note. It is assumed that the variants T03-038A, T03/038A, and T3/38, [REDACTED] [REDACTED] used in the application file refer to the same application sites respectively.

Preamble. The two applications need, in my view, to be placed in their historical context. The Ballyteige Burrow area was first identified an area of scientific interest in 1979 (Goodwillie, 1979 pages 73-75 and 54-57). The clear intention at the time was that the area would be protected to conserve its significant natural heritage resource values. It is regrettable that some agencies the State surreptitiously aided practitioners to undermine that intention by unlawfully occupying the intertidal area of State foreshore at Lacken since the early 1980s and conducting unauthorised aquaculture there. During the 1990s, I objected by writing to the relevant authorities. My letters were neither answered nor acknowledged. Prompted by successful legal action by the European Commission against Ireland (Case C-418/04), the 2007 judgment of the Court of Justice of the European Union resulted in a programme of measures to be taken by Ireland to ensure full compliance with the judgment of the Court. A large element of the judgment concerned a failure by the State to put in place a system for data collection, definition of scientific interests and adequate assessment of aquaculture licence applications in Natura 2000 areas (NPWS, 2017). Now, fourteen years after the judgment of the Court, the present applications regarding the Ballyteige Burrow complex seek to regularise the wrongs of the past in a transparent way and as such, though belated, are welcome. That said, the two applications are, in my view, unacceptable for a number of reasons. Consequently, I object to any licences being granted supporting their advancement. My grounds for objecting are as follows.

1. **Ballyteige Burrow is not a Designated Shellfish Waters Area.** Both applicants seek to farm oysters in bags on trestles in the intertidal at two sites at S9107, Lacken, Duncormick, Co Wexford. Since the application sites are not located in a Designated Shellfish Waters Area (<https://data.gov.ie/dataset/shellfish-waters-directive-areas>), or a Special Unified Marking Schemes (SUMS) area (<https://bim.ie/aquaculture/advisory-services/special-unified-marking-schemes-sums/>), the applications are premature, set an unacceptable precedent, and should not be permitted.

2. **Ballyteige Burrow is a protected nature area.** The application sites are located in an area subject to the following statutory designations for nature conservation.

- a) **Nature Reserve** (SI No [279/1987](#) and [8/90](#)). With regard to the foreshore at Lacken, the Explanatory Note attached to statutory instrument 8/90 advises: *“The Order, establishes an area of land comprising portion of the foreshore at Ballyteige Burrow in the county of Wexford as a nature reserve so that it can be managed in such a way as to ensure the conservation of the marine ecosystem which it constitutes.”*

That aquaculture and nature conservation were not compatible at Lacken was reinforced in Dáil Éireann in March 1995 in the following written answer concerning a query from Deputy Hugh Byrne if the Minister would be prepared to review his objections to on-going, unauthorised aquaculture at Lacken:

“The National Parks and Wildlife Service — NPWS — is opposed to commercial aquaculture at Ballyteigue Nature Reserve. I am advised that such development is not compatible with its nature reserve status and would be detrimental to the proper conservation of the site. In particular, the NPWS is concerned that aquaculture operations might disturb wildfowl which frequent the site and might cause damage to the delicate sand dune habitat and rare floral species contained in the reserve.

Aquaculture development was proposed at this site in 1987 and the then Wildlife Service objected on conservation grounds. No licence was issued for

any development in this area. I understand however that there has been an unlicensed development in the area but the Deputy will appreciate that it would not be appropriate to allow unauthorised development in an important conservation area and then to give retrospective authorisation.

In circumstances where substantial investment has been made. I would be prepared to allow the developer to harvest the existing crop, provided he will then relocate to another area and vacate this important State-owned conservation area. I understand that the Department of the Marine will assist the developer in finding an alternative location.

With regard to the consultation process when the site was designated a special protection area. I have been advised that as Ballyteigue Burrow was State-owned land and already statutorily protected under the Wildlife Act, 1976, further consultation on the designation of the State-owned site as a special protection area was not considered necessary at the time.

I am not aware that BIM has encouraged oyster growers to locate within the nature reserve at Ballyteigue Bay but I am satisfied that it would not be appropriate for it to do so without reference to the NPWS and the Department of the Marine." (<https://www.oireachtas.ie/en/debates/debate/dail/1995-03-28/60/>).

- b) A dual-designated Natura 2000 site: (1) [Special Protection Area \(SPA\)](#) (SI No 383/2010) and (2) [Special Area of Conservation \(SAC\)](#) (SI No 435/2021). Aquaculture is rated a threat to the objective to conserve habitats in the Natura 2000 site. 'Threats, pressures and activities with impacts on the site' identified in the Natura 2000 - Standard Data Form for Ballyteigue Burrow SAC include aquaculture (Code F01) The threat posed by aquaculture is rated 'High' (Field 4.3; <https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF000696.pdf> and Section 12) at <http://cdr.eionet.europa.eu/help/natura2000>).

The Ballyteigue Burrow site is described as follows: "This coastal site is of major ecological value for its range of good quality coastal habitats, including three habitats given priority status on Annex I of the E.U." (NPWS, 2020 page 3). Since nature conservation is the existing and primary management objective for the application sites and their environs, and since aquaculture is rated a high threat to achieving these objectives, the applications should not be permitted.

3. **Current biodiversity crisis.** The applications are not compatible with the identification of the application sites as being located in a site "of major ecological value" (NPWS, 2020 page 3) and the biodiversity crisis declared in Dáil Éireann in May 2019. To conserve the existing level of habitat richness in the Ballyteigue Burrow complex, there is a need, in my view, to ratchet up actions for nature conservation rather than dilute them by licencing the site for multi-use activities such as aquaculture. Aquaculture has been identified by the competent authorities for nature conservation as a threat to conserving habitat quality in the protected area. The applications should, therefore, not be permitted.
4. **SAC AA.** Since the authors of the Appropriate Assessment report regarding the Ballyteigue Burrow Special Area of Conservation (AQUAFAC, 2020) submitted to inform decision-making by the consent authority
- a) Make the surprising statement that they have no specific details regarding what they are assessing: "No specific details have been received about the existing or proposed aquaculture activities at Ballyteigue Burrow." (*ibid.*, page 23).

- b) Accept that damage can result: *“Cultivation of oysters on intertidal trestle can alter the surrounding environment, both physically and biologically, not only due to the presence of the culture organisms (e.g. increased deposition, disease, shading, fouling, alien species) but also due to the activities associated with the culture mechanisms (e.g. structures resulting in current alteration, sediment compaction).”* (*ibid.*, page 27, Sections 6.1-6.4, and summary Table 6.1 on page 31).
- c) Accept that the two proposed application sites are located in two Annex 1 habitats that are two qualifying interests for which the Ballyteige Burrow SAC is designated: ‘Estuaries [1130]’, and ‘Mudflats and sandflats not covered by seawater at low tide [1140]’.
- d) Justify the loss and/or deterioration of habitat, via a 15% threshold of overlap between a disturbing activity and a habitat (*ibid.*, pages 7, 36, 37, 39, 43, 44 and 45). The 15% threshold has no legal standing, is not compatible with the spirit of the Habitats Directive that seeks to conserve and restore Annex 1 habitats, and cannot therefore be used to justify the loss, deterioration and/or disturbance of more than 3.3ha of protected habitat from the Ballyteige Burrow complex together with a further area of ground impacted on and compacted by tractors and trailers servicing the aquacultural enterprises.
- e) Accept that since both applications intend to farm Pacific Oysters (*Crassostrea gigas*), a non-native species, the applications pose a threat via the introduction of invasive aliens, and possibly diseases, into the nature reserve together with oyster stock: *“The site is at risk from the introduction of non-native (alien) invasive species on and among culture stock.”* (*ibid.*, pages 8, 27, 29, 30, 31, 47 and 49). Examples of non-native species that may be introduced on and among culture stock are given as *“slipper limpet, leathery sea squirt and carpet sea squirt”* (*ibid.*, page 49).
- i. The Natura 2000 - Standard Data Form for Ballyteige Burrow SAC identifies the introduction of ‘invasive non-native species’ (Code I01 a threat to the protected area (Field 4.3; <https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF000696.pdf> and Section 12) at <http://cdr.eionet.europa.eu/help/natura2000>).
 - ii. Infringement proceedings have been taken against Ireland by the European Commission for failure to prevent and manage the spread of invasive alien species [INFR (2018) 2319] and for failing to fulfil obligations under the Invasive Alien Species Regulation (INFR (2021) 2015) (https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=IE&DG=ENV&title=&submit=Search).
 - iii. The independent consultants advise: *“To manage the risk of introduction of alien species into the SAC all movement of stock in and out of the bay should adhere to relevant legislation and follow best practice guidelines (e.g. <http://invasivespeciesireland.com/cops/aquaculture/>).”* (*ibid.*, pages 8 and 49). While the advice to follow best practice guidelines is admirable, compliance is neither assured nor guaranteed.
- f) Assert that damage due to physio-chemical effects is not likely to be significant based on data *“derived from published primary literature and review documents*

that have specifically focused upon the environmental interactions of mariculture" (*ibid.*, page 27). That conclusion is based on a desk study of literature sources referring to other sites. It ignores the reality that unauthorised aquaculture has been practiced at T03/038A since the 1980s and is still being conducted there, thereby affording a lost opportunity to quantify impacts site-specific to Lacken with its particular characteristics regarding substrate structure and sediment regimes, benthic community composition, range of tidal dynamics, etc.

aquaculture clearly poses a threat to the conservation of the Ballyteige Burrow complex, and since these threats cannot be mitigated, the applications should, in my view, be refused.

5. **SPA AA.** The Appropriate Assessment report regarding the Ballyteige Burrow Special Protection Area (SPA) (Atkins, 2020) makes the following points.
 - a) **In the SPA.** *"The aquaculture sites are within the Ballyteige Burrow SPA" (ibid., page 6, paragraph 1.4).*
 - b) **Constraints.** Constraints to the assessment are significant: *"There was very limited information available on the current and proposed aquaculture activities in Ballyteige Bay. This has meant that we have had to make assumptions about details of the activities, based on experience of oyster trestle cultivation at other Irish coastal sites. This is a particular issue for the assessment of potential disturbance impacts, where the predicted impacts are sensitive to the assumptions made about the likely patterns of husbandry activities. There was also very limited waterbird data available for this assessment. The Irish Wetland Bird Survey counts the Ballyteige Burrow SPA as a single count unit, so I-WeBS data cannot be used to examine waterbird distribution patterns within the SPA. We made efforts to consult with the I-WeBS counter, but these were unsuccessful. Our assessment has relied mainly on data from the 2011/12 Waterbird Survey Programme counts. This means that we had a very limited dataset of four low tide counts from one winter to use for our displacement analyses. Therefore, a high degree of uncertainty applies to inferring detailed distribution patterns of waterbirds within Ballyteige Bay from these counts."* (*ibid.*, page 7, paragraphs 1.10- 1.12).
 - c) **Grey Plover.** Grey Plover is named as a species of Special Conservation Interest (SCI) of the Ballyteige Burrow SPA. *"There is likely to be a measurable displacement impact to Grey Plover, and this may be significant when potential displacement due to disturbance is factored in."* (*ibid.*, pages iv, 38, 40-41, 43-44, 51).
 - d) **Light-bellied Brent Goose and Wigeon.** Light-bellied Brent Goose and Wigeon are also named as species of Special Conservation Interest (SCI) of the Ballyteige Burrow SPA. *"The predicted displacement impacts to Light-bellied Brent Goose and Wigeon are significant. However, there is a high level of uncertainty about these predictions due to the variable nature of their responses to oyster trestle cultivation, and the likely significant overestimation of subsite occupancy levels in the displacement calculations."* (*ibid.*, pages iv, 38, 41, 43-44, 51, 52).
 - e) **Lesser Black-backed Gull.** *"Due to lack of information on the diet of the Saltee Islands Lesser Black-backed Gull colony, the occurrence of Lesser Black-backed Gull in Ballyteige Bay during the summer, and/or the response of Lesser Black-backed Gull to oyster trestles, it is not possible to make an*

assessment of the potential impact of aquaculture activities in Ballyteige Bay on the colony.” (ibid., pages iv, 46-48, and Appendix B pages 57-72: pages 57, 58, lix, and 1-12).

- f) **Fish.** Aquaculture could, theoretically, have a negative, though probably insignificant, impact on fish. *“In addition to the alteration of the physical habitat, aquaculture could also, theoretically, have impacts on fish populations through reduced recruitment (due to direct consumption of eggs and larvae by the cultured bivalves), and/or through indirect food web effects (e.g., consumption of organic matter by the cultured bivalves that would have otherwise been available to support fish; Gibbs, 2004).” (ibid., page 46).*

Since *“Intertidal trestles can cover extensive areas of intertidal and shallow subtidal habitat. For waterbirds, the presence of trestles can therefore be equivalent to habitat loss as the habitat becomes unsuitable due to the cover itself, and the deleterious effects on the benthic prey due to the smothering of the habitats with faecal and pseudofaecal material, as well as other detritus generated by the culture process.” (Lewis et al., 2019 page 195),* where predictions are considered to be indicative rather than firm, where there is a lack of certainty that a plan or project will not have lasting adverse effects on the integrity of a Natura 2000 site, or where no reasonable scientific doubt remains as to the absence of such effects, legislation requires that the precautionary principal must apply and consent cannot be granted (Case C-258/11 and C-404/09), the applications should, in my view, be refused.

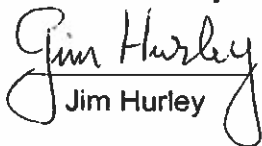
In summary, I object to the grant of licences to farm Pacific Oysters at Ballyteige Burrow because

1. The area is not a Designated Shellfish Water.
2. The proposed development is not compatible with nature conservation objectives.
3. The proposed development is not compatible with the current biodiversity crisis.
4. The SAC AA accepts that damage could result to protected habitats and aliens could be introduced.
5. The SPA AA accepts that species of wild bird that the site is designated for could be disturbed.

Consequently, in my view, the precautionary principal must apply and the applications refused to conserve the integrity of the designated Natura 2000 site.

I trust the points made above will receive due consideration in your determination of the two licence applications.

Yours sincerely,


Jim Hurley

References

- AQUAFACT. 2020. *Report supporting Appropriate Assessment of Aquaculture in Ballyteigue Burrow SAC (Site code: 000696)*. Report produced by AQUAFACT International Services Ltd on behalf of the Marine Institute. Galway: AQUAFACT International Services Ltd. Available online at <https://www.gov.ie/en/collection/6ee2f-aquacultureforeshore-licence-applications-wexford/?referrer=http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/>
- Atkins. 2020. *Ballyteige Bay: Appropriate Assessment of Aquaculture*. Report produced by Atkins Ecology for the Marine Institute for the specific purpose of the Marine Institute Bird Studies project. Available online at <https://www.gov.ie/en/collection/6ee2f-aquacultureforeshore-licence-applications-wexford/?referrer=http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/>
- Goodwillie, R. 1979. *A preliminary Report on Areas of Scientific Interest in County Wexford*. Unpublished report for the National Heritage Inventory. Dublin: An Foras Forbartha. Available online at https://www.npws.ie/sites/default/files/publications/pdf/Goodwillie_1979_ASI_Wexford.pdf.
- Lewis, L. J., Burke, B., Fitzgerald, N., Tierney, T. D., and Kelly, S. 2019. Irish Wetland Bird Survey: Waterbird Status and Distribution 2009/10 – 2015/16. *Irish Wildlife Manuals*, No 106. Dublin: National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht, Ireland. Available online at https://www.npws.ie/sites/default/files/publications/pdf/IWM_106_Irelands_Wintering_Waterbirds.pdf.
- NPWS. 2017. *Judgment of the Court of Justice of the European Union in Case C 418/04 Commission v Ireland "The Birds Case": A Programme of measures by Ireland to ensure full compliance with the Judgment of the Court of Justice of the European Union*. Update - May 2017. Dublin: National Parks and Wildlife Service of the Department of Arts, Heritage and the Gaeltacht. Available online at <https://www.npws.ie/sites/default/files/files/Birds%20Case%20PoM%20May%202017%20Final.pdf>.
- NPWS. 2020. *Site Synopsis: Site Name: Ballyteige Burrow SAC, Site Code: 000696*. Version date: 20.10.2020. Dublin: Department of Housing, Local Government and Heritage. Available online at <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000696.pdf>.



Figure 1. Aerial image of unauthorised bag-and-trestle aquaculture on the foreshore at Lacken, Duncormick, Co Wexford.

(Source: <https://www.bing.com/maps/aerial>
accessed 9 December 2021)

Annex 4: Water Quality

The two Natura Impact Statements submitted with the applications fail, in my view, to fully address the in-combination issue of water quality at the application site and its estuarine environs considering that both the SAC and the SPA are water-dependant sites and that their future welfare is dependant of good water quality (Aquafact, 2020 pages 47-48, paragraph 9.2 and Atkins, 2020 page 50, paragraph 9.13).

The water at the two application sites is a combination of waters originating from the following sources (Figure 1).

1. Tidal seawater flooding into the estuary from the Celtic Sea.
2. Freshwater discharging from the Duncormick River.
3. Freshwater discharging from the Bridgetown Canal.
4. Brackish water pumped from the Ballyteige Channels.
5. Drainage and runoff from the surrounding farmland.
6. Sewage effluent with secondary treatment from the Duncormick village treatment plant and run-off from private septic tanks and farmyards.
7. Groundwater, rainwater, and other sources.

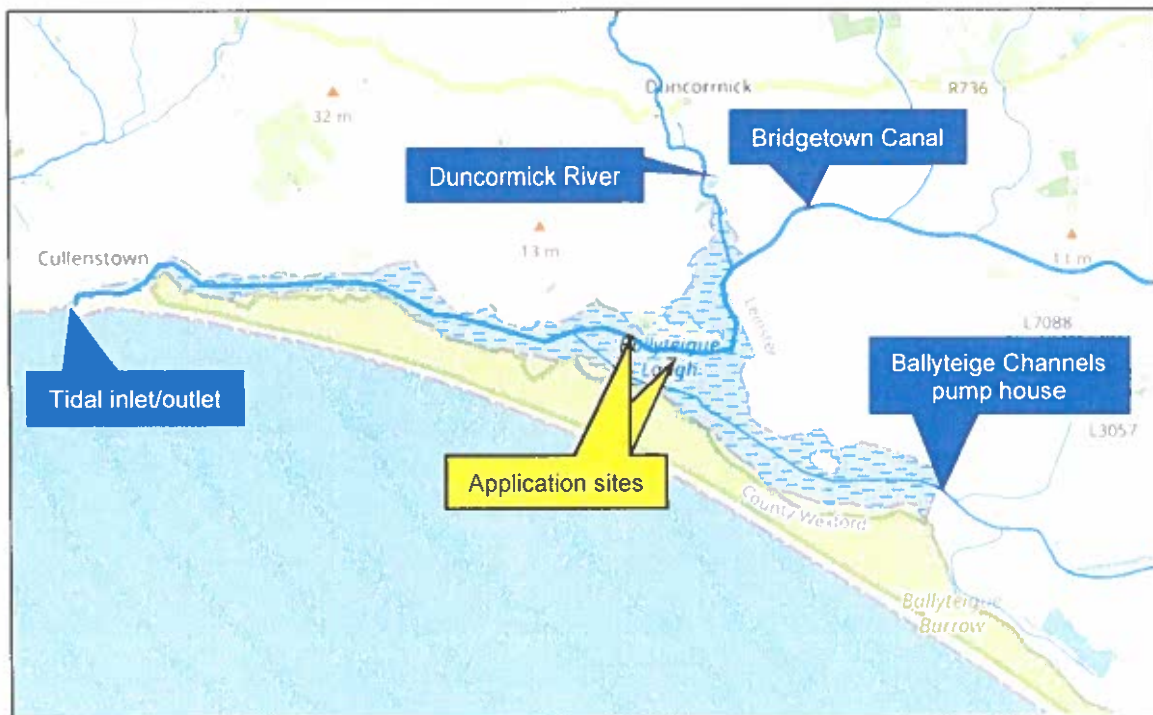


Figure 1. Water features in Ballyteige Lough.

(Source: <https://gis.epa.ie/EPAMaps/AAGeoTool>)

Water quality for the sampling period 2013-2018 was rated 'Moderate' for both the Duncormick River and the Bridgetown Canal, 'Bad' for the Ballyteige Channels, 'Good' for the coastal water from the Celtic Sea, and 'Intermediate' for Ballyteige Lough (<https://gis.epa.ie/EPAMaps/AAGeoTool>). Water quality in Ballyteige Lough for the period 2018-2020 was again rated 'Intermediate' (<https://gis.epa.ie/EPAMaps/default>).

Pursuant to the Water Framework Directive, waters are required to reach 'Good' status by 2027. The number of waterbodies in the Ballyteige-Bannow catchment assessed to be 'At Risk' of not reaching 'Good' status increased between Cycle 2 (2018-2021) and Cycle 3 (2022-2027); presently, most of the surface waterbodies discharging to the application site are rated to be 'At Risk' (EPA, 2021 page 14 and Figure 8 on page 15). Significant pressures are identified as agriculture, urban run-off, and domestic waste water (*ibid.*, pages 19 and 21).

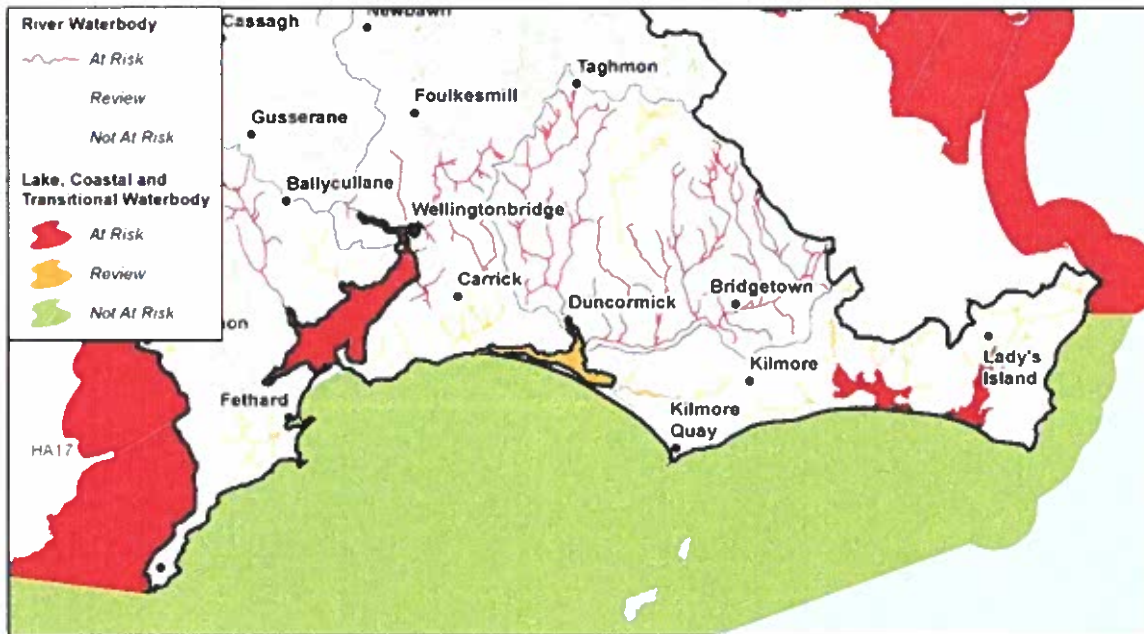


Figure 2. Cycle 3 surface water risk assessments.

(Source: EPA, 2021 Figure 8, page 15)

Fertiliser in run-off to the estuary from surrounding farmland adds to the enrichment loading of the receiving waters. The issue is intensified by the ongoing removal of hedgerows to facilitate the enlargement of fields (see example detailed in Annex 5).

Both the Ballyteige Burrow SPA and the habitats in the marine element of the Ballyteige Burrow SAC are water dependent.

Since shellfish aquaculture enriches the water, advancement of the proposed developments on the foreshore at Duncormick Hill, is unlikely to contribute to achieving the requirements of the

- **Habitats Directive** by failing to contribute towards the maintenance and/or restoration of the two water-dependent habitats that the site is selected and designated for: Estuaries [1130] and Mudflats and sandflats not covered by seawater at low tide [1140] at 'Favourable Conservation Status'.
- **Birds Directive** by adding to the pollution loading of a water-dependent site selected and designated for: Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Shelduck (*Tadorna tadorna*) [A048], Golden Plover (*Pluvialis apricaria*) [A140], Grey Plover (*Pluvialis squatarola*) [A141], Lapwing (*Vanellus vanellus*) [A142], Black-tailed Godwit (*Limosa limosa*) [A156], Bar-tailed Godwit (*Limosa lapponica*) [A157], and Wetland and Waterbirds [A999], thereby failing to contribute towards these species achieving 'Favourable Conservation Status'.

- **Water Framework Directive** by failing to control pollution at the application site especially regarding inputs from the Ballyteige Channels, a priority lagoonal habitat. The most recent overall assessment for the Ballyteige Channels site concluded: *"Eutrophication is a severe problem in the main drainage channel"* (Aquafact, 2018 page 33, paragraph 3.4.5). While eutrophication was, and still is, a severe problem in the Ballyteige Channels, the very poor rating does not take away from the fact that the rare plant Foxtail Stonewort (*Lamprothamnion papulosum*), an alga, recently managed to colonise an adjoining, recently dug and subsequently flooded gravel pit evidencing that biodiversity could flourish if the pollution issue was addressed and the site restored: *"Because of the eutrophic state of the main channel the site must be rated BAD but this assessment conceals the site's value for conservation both because of the appearance of the rare Lamprothamnion in a newly dug gravel pit but also because this appearance points to the possibility of new habitat creation or restoration. (ibid., page 33, paragraph 3.4.5). Lamprothamnion papulosum is rated very rare in Ireland with the South Wexford Coast one of its strongholds: "A very rare Stonewort in Ireland, confined to a few sites on the coast. In Co. Wexford it is found in brackish lakes, lagoons and drainage channels."* (Green, 2022 page 571).

The estuarine site of the present shellfish aquaculture appeal supports Perennial Glasswort (*Sarcocornia perennis*), a protected species under the *Flora (Protection) Order, 2022* (<https://www.irishstatutebook.ie/eli/2022/si/235/made/en/pdf>) and a species found growing nowhere else in Ireland outside of the South Wexford Coast.

Failure to control pollution does not contribute towards water in the estuary achieving 'Good Ecological Status' as required by the Directive.

On 26 January 2023, the European Commission decided to refer Ireland to the Court of Justice of the European Union for failing to correctly transpose the Water Framework Directive (Directive 2000/60/EC) into national law. The Commission considers that *"efforts by the Irish authorities have to date been unsatisfactory and insufficient and is therefore referring Ireland to the Court of Justice of the European Union"* (https://ec.europa.eu/commission/presscorner/detail/en/inf_23_142).

- **Marine Strategy Framework Directive** by failing to contribute to the achievement of 'Good Environmental Status' in both the estuary and its marine habitats.

References

- AQUAFACT & Roden Oliver Associates. 2018. *Coastal Lagoons Monitoring Programme 2016-2017*. Volume II: Monitoring and Assessment of Irish Lagoons for the purpose of the EU Water Framework Directive. Unpublished report on behalf of the Environmental Protection Agency. Galway: Aquafact International Services Ltd.
- AQUAFACT. 2020. *Report supporting Appropriate Assessment of Aquaculture in Ballyteigue Burrow SAC (Site code: 000696)*. Report produced by AQUAFACT International Services Ltd on behalf of the Marine Institute. Galway: AQUAFACT International Services Ltd. Available online at <https://www.gov.ie/en/collection/6ee2f-aquacultureforeshore-licence-applications-wexford/?referrer=http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/>
- Atkins. 2020. *Ballyteige Bay: Appropriate Assessment of Aquaculture*. Report produced by Atkins Ecology for the Marine Institute for the specific purpose of the Marine Institute Bird Studies project. Available online at <https://www.gov.ie/en/collection/6ee2f-aquacultureforeshore-licence-applications-wexford/?referrer=http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/>
- EPA. 2021. *3rd Cycle Draft Ballyteigue - Bannow Catchment Report (HA 13)*. Version no. 1, August 2021. Wexford: Catchment Science & Management Unit, Environmental Protection Agency. Available online at <https://catchments.ie/wp-content/files/catchmentassessments/13%20Ballyteigue-Bannow%20Catchment%20Summary%20WFD%20Cycle%203.pdf>.
- Green, P. 2022. *Flora of County Wexford*. Self-published. Wexford: Ballycullane.

-o0o-

Annex 5: Letter regarding hedgerows

SWC Promotions

Grange, Kilmore, Co Wexford. [REDACTED]

Landline: [REDACTED], Mobile [REDACTED]

Email: [REDACTED]



SWC Promotions: promoting the natural heritage resource values of the South Wexford Coast.

25 November 2019

Minister Michael Creed, TD,
Department of Agriculture, Food and the Marine,
Agriculture House
Kildare Street,
Dublin 2.
DO2 WK12

Re: Your file Ref Nos: AIE/19/053, 2019/EIA/29 and 2019/EIA/30

Dear Minister,

The file reference numbers listed above refer to applications made to your Department for Screening Decisions under Environmental Impact Assessment (EIA) Regulations regarding the removal of 915m of hedgerow from a recently-purchased farm at Lacken, Duncormick, Co Wexford (location map attached). The reasons given in the applications by the new landowner were that significant hedgerow removal and land restructuring were needed to *"facilitate modern day machinery and ensure fertiliser & pesticide inputs are used more efficiently"*. Your Department screened out the need for EIA and granted permission for the proposed works to proceed.

Since the farm in question has an area of 45.38ha (112 acres) in one compact block that was formerly divided into 11 fields, the fields were already large (average 4ha or 10 acres approximately). The removal of 915m of hedgerow and the restructuring of the land has resulted in the creation of large featureless areas and significant changes to the character of the local landscape.

The hedgerows in question have now been removed so nothing further can be done in that regard. The purpose of this letter is to ask you to initiate a review to ensure that any such applications made in the future are subject to more rigorous scrutiny and consultation in light of the following that I see as weaknesses in your Department's screening procedure regarding the farm at Lacken.

1. The length of hedgerow involved was 915m. Two applications were made; both dated 24 May 2019: one for 535m (2019/EIA/29) and one for 380m (2019/EIA/30). Each application was deemed to have no significant impact. When asked if the cumulative effect was likely to have a significant environmental impact (Criterion 3), the answer given was 'No' without comment, explanation or evidence as to how that conclusion was arrived at.

2. The farm at Lacken is in direct hydrological connection with the adjoining Ballyteige Burrow Natura 2000 site (SAC IE000696 and SPA IE004020) and the Ballyteige Burrow statutory Nature Reserve. Land drainage impacts, if any, on the designated sites from the adjoining farm are unknown.
3. When asked if the site was within a prime scenic area identified in the County Development Plan (Criterion 17), the answer given was 'No' although the entire farm is within a designated coastal 'Landscape of Greater Sensitivity' in the Wexford County Development Plan 2013-2019 (Volume 1, Map No 13 between pages 335 and 336). In 'Landscapes of Greater Sensitivity' hedgerows are specifically mentioned as significant landscape features. Furthermore, the entire farm is located in the south coastal landscape unit (County Plan, Volume 3). When asked if Wexford County Council was consulted (Criterion 18), the answer given was again a perfunctory 'No', without comment or explanation.
4. As a compensatory measure for removing 915m of hedgerow at Lacken, the developer offered to plant new hedgerow on leased land at some unknown location. While that offer has laudable benefits in creating both new habitat for nature conservation and a new source of carbon sequestration to combat global warming, it does nothing to address the significant loss of the wealth of biodiversity that the former hedgerows at Lacken supported.

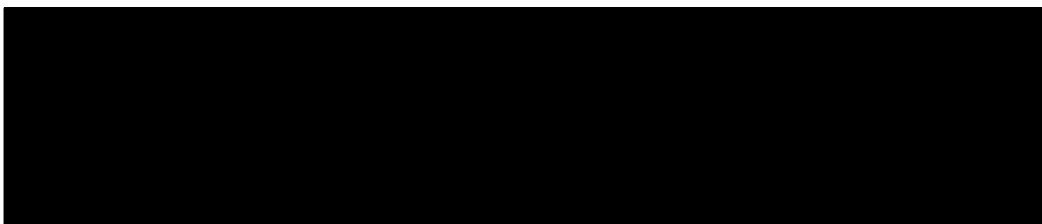
While your statement of 6 March 2019 regarding the illegal removal of hedgerows was, and still is, most welcome and heartening (copy attached), I feel that in the case detailed above, by screening out the need for EIA for hedgerow removal, and by doing so without interested parties who live in the area having knowledge of the proposed works until they saw that the removal had been completed, your Department facilitated the intensification of tillage farming on the south Wexford heritage coastline without having due regard for policies seeking to conserve the natural heritage resource values of that important coastal strip.

I trust these points will receive due consideration.

Yours sincerely,

Jim Hurley

Cc:



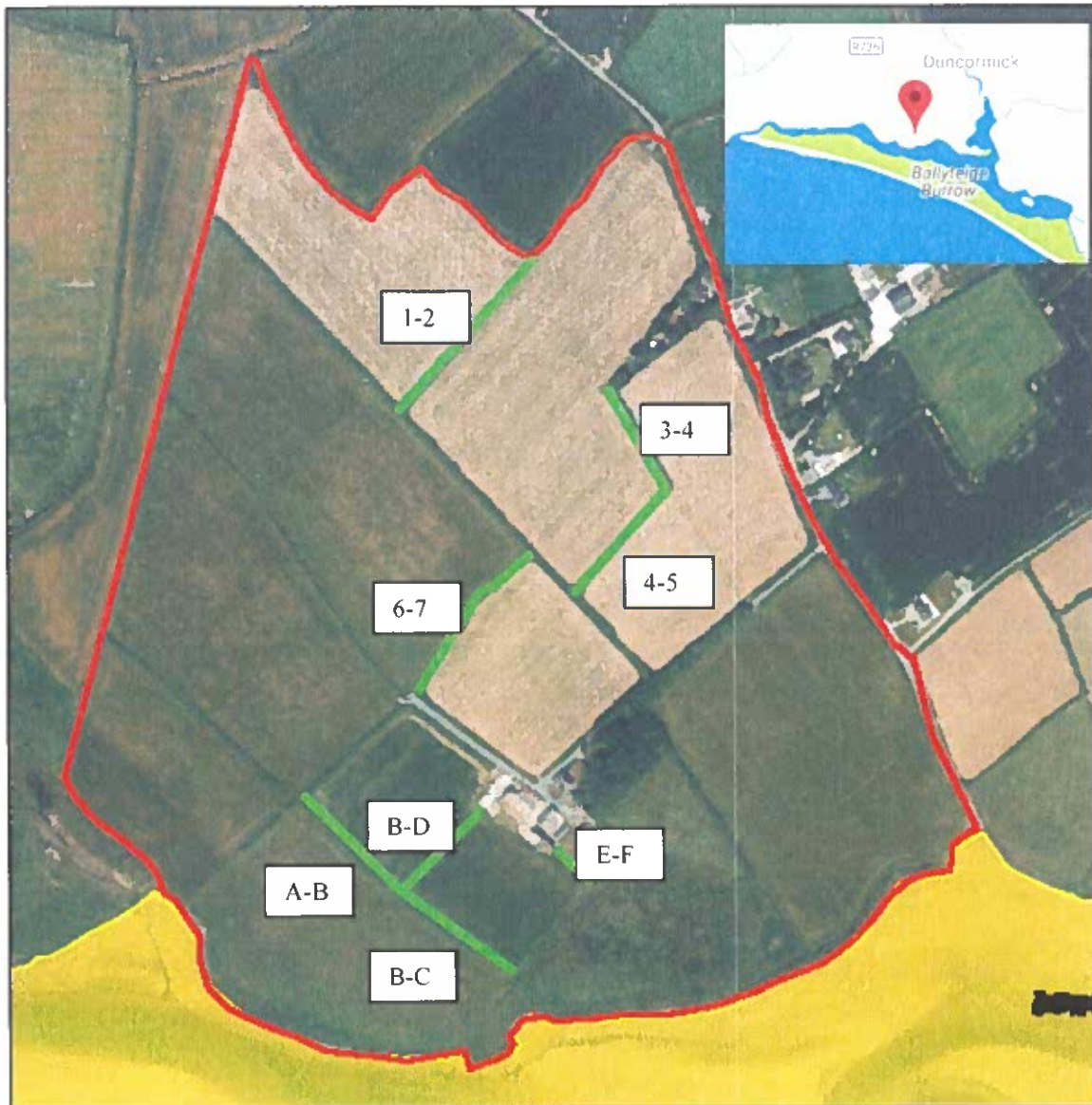


Figure 1. Location map of the farm at Lacken, Duncormick.

(Drawing: Jim Hurley. Base map source: 2016 aerial image at <https://maps.wexford.ie/imaps/>)

Notes on Figure 1.

- **Red line** = farm boundary.
- **Green lines** = Eight lengths of hedgerow as detailed in the table (right).
- **Yellow fill** = Estuarine wetland; part of Ballyteige Burrow Natura 2000 site (SAC IE000696 and SPA IE004020) and Ballyteige Burrow statutory nature reserve.
- **Black** = Western extremity of oyster trestles in an unlicensed shellfish farm.

All of the area shown in Figure 1 is in the south coastal 'Landscape of Greater Sensitivity' unit.

DAFM file ref No	Hedgerow	Length	
2019/EIA/S/29	1-2	170m	
	3-4	90m	
	4-5	120m	
	6-7	155m	
		Subtotal	535m
2019/EIA/S/30	A-B	110m	
	B-C	130m	
	B-D	100m	
	E-F	40m	
		Subtotal	380m
		TOTAL	915m

By using this website, you consent to our use of cookies. For more information on cookies see our [privacy_policy_page](#). [Close](#)



An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine

Statement on Illegal Removal of Hedgerows

The Minister for Agriculture, Food and the Marine, Michael Creed, T.D., has issued a strong reminder to farmers and advisors that hedgerows, trees in a line and drains / ditches are designated as landscape features under Good Agricultural and Environmental Condition (GAEC). **Under GAEC 7 beneficiaries are obliged to retain and maintain designated landscape features.** Landscape features are eligible for payments under the Basic Payment Scheme and other area based schemes.

In addition, field boundaries such as hedgerows, stone walls and clay banks are afforded protection under the Environmental Impact Assessment (Agriculture) Regulations (EIA) S.I. 456 of 2011 (as amended by S.I. No. 142 of 2013 and S.I. No. 407 of 2017). Any proposed land restructuring works may require screening and approval by the Department of Agriculture, Food and the Marine under the EIA regulations.

Where hedgerow removal has been deemed to have occurred in breach of EIA screening requirements:

- Land will be subject to inspection by Department officials
- Reinstatement and / or mitigation works will be required and enforced and prosecution may occur.
- Works carried out will be reported to relevant divisions within DAFM including the Basic Payment Scheme

Note for Editors

Landscape Features under Good Agricultural and Environmental Condition (GAEC) 7 were designated in 2009 and include:

- Hedgerows including gappy hedgerows
- Trees in a line
- Drains and ditches
- Combinations of hedge, drain and area within fence

They are eligible for payments under the Basic Payment Scheme and must be retained on the holding.

The Environmental Impact Assessment (Agriculture) Regulations (S.I. No. 407 of 2011 as amended) set down clear requirements in respect of screening and approval of certain works on farms including the removal of hedgerows. Guidance is available on the DAFM website and is summarised below.

If the length of field boundary to be removed is greater than 500 metres or the area of lands to be restructured by removal of field boundaries is above 5 ha then an application to DAFM for screening is required.

Screening is also required

If the proposed activity is within, is near, or may affect a proposed Natural Heritage Area or nature reserve;

If the proposed activity may have a significant effect on the environment. In assessing whether the development is likely to have a significant effect on the environment, the person concerned must consider matters such as the relative abundance of the habitat in the area (which may be

lost as a result of the proposed works), the environmental sensitivity of the areas likely to be affected by the project (more detail is provided in the handbook).

If the proposed activity is identified as 'requiring consent' or is a 'notifiable action' in a European site (e.g. Special Area of Conservation or Special Protected Area), or an NHA. In such circumstances, the National Parks and Wildlife Service (NPWS) may direct a landowner to apply to DAFM for screening in the case of sub-threshold works that have been brought to their attention (via notifiable actions system or otherwise) or

If the proposed activity may impact on an archaeological monument, the National Monuments Service may direct a landowner to apply for screening in the case of sub-threshold works that have been brought to their attention'.

ENDS

Date Released: 06 March 2019

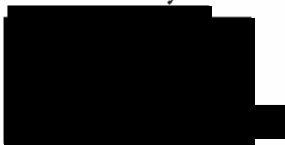


Office of the Minister for Agriculture, Food and the Marine, Dublin 2.

Oifig an Aire Talmhaíochta, Bia agus Mara, Baile Átha Cliath 2.

25 November 2019

Mr. Jim Hurley



PLEASE QUOTE REF NUMBER ON ALL CORRESPONDENCE.

Our Ref: 2019/62639N /AS

Dear Mr. Hurley

I wish to acknowledge receipt of your recent correspondence addressed to the Minister for Agriculture, Food and the Marine, Michael Creed, TD concerning the Removal of Hedgerows.

I will bring your correspondence to the Minister's attention as soon as possible. In the interim I have forwarded your correspondence for the attention of relevant Department officials.

Yours sincerely,

Graham Lennox
Private Secretary

All personal data processed by this Office will take place in accordance with the law on Data Protection and will only be for the purpose(s) connected to the functions of the Office. Further information is available on the Department's Data Protection page <https://www.agriculture.gov.ie/dataprotection/>