

**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 or handed in to the ALAB offices**

Name of Appellant (block letters)		LOCH GARMAN HARBOUR MUSSELS LIMITED	
Address of Appellant		84 NORTHUMBERLAND ROAD, BALLSBRIDGE, DUBLIN 4	
Phone:		See Cover Letter	
Mobile:		See Cover Letter	
Email:		See Cover Letter	
Fax:		See Cover Letter	

Fees

Fees must be received by the closing date for receipt of appeals	Amount	Tick
Appeal by licence applicant	€380.92	✓
Appeal by any other individual or organisation	€152.37	
Request for an Oral Hearing * (fee payable in addition to appeal fee)	€76.18	✓

* In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.

(Cheques Payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))

Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D
-----------------------------------	---------------------------------	---------------

Subject Matter of the Appeal

Decision of the Minister for Agriculture, Food and the Marine in the matter of an Application under Section 10 of the Fisheries (Amendment) Act 1997 (the "Act") and Foreshore Act 1933 for authorisation for the bottom cultivation of mussels on the foreshore on a 12.2 ha site (T03/047A) (the "Site") in Wexford Harbour, Co. Wexford.

Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T03/047A
---	----------

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

Loch Garman Harbour Mussels Limited (the "Appellant") has, both by itself and its predecessors in title, been active in the bottom cultivation of mussels at the Site for several years. It would be severely adversely affected by the Minister for Agriculture, Food and the Marine's (the "Minister") decision to vary the licence sought (the "Decision") by reducing the footprint of the Site from 12.2 ha to 8.13 ha.

AQUACULTURE LICENCES APPEALS BOARD
16 OCT 2019
RECEIVED


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):

The Appellant considers that the Decision is legally flawed for two over-riding reasons:

- (1) The Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Act.
- (2) The Minister has breached fundamental principles of public/administrative law in the Decision, both in terms of its substance and the procedure whereby it was reached.

Further details are included in the Submission.

Signed by appellant:


Julien Barbé, Director

Date: 16 October 2019

**Please note that this form will only be accepted by
REGISTERED POST or 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

Extracts from Act

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) **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.

WILLIAM FRY

Our Ref 026536.0001.CKL

16 October 2019

By Hand

The Aquaculture Licences Appeals Board (ALAB)
Kilminchy Court
Dublin Road
Portlaoise
Co Laois
R32 DTW5

Our Client: Loch Garman Harbour Mussels Limited

Dear Sirs

We enclose five notices of appeal (the "**Appeals**") on behalf of our client, under Section 40(1) of the Fisheries (Amendment) Act 1997 (the "**Act**"). Please also find attached to this letter proof of payment of the relevant fees to ALAB.

The Appeals are against five separate determinations of aquaculture/foreshore licensing applications (the "**Decisions**") by the Minister for Food, Agriculture and the Marine (the "**Minister**") in September 2019. The Decisions relate to the following sites in Wexford Harbour: T03/047A; T03/047B; T03/047C; T03/083A; and T03/085A.

On behalf of our client, we submitted requests for information under the Freedom of Information Act 2014 ("**FOI**") and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("**AIE**") to a number of relevant public bodies on 8 October 2019 in connection with the Decisions. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decisions, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, our client has had to bring the Appeals before receipt of any responses to those requests.

Our client expressly reserves the right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions relating to information obtained from responses received to those FOI/AIE requests.

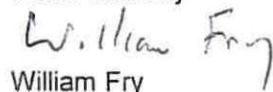
The enclosed Appeals (and the annexes thereto) contain commercially sensitive information. For the purposes of Section 36 of the Freedom of Information Act 2014 and Section 30 of the Act, this information should not be disclosed to any persons except for the relevant officials of ALAB on a strictly "need to know" basis.

Please direct any correspondence in relation to the Appeals to:

Cormac Little

Eoin O'Cuilleainain

Yours faithfully



William Fry

WF-25218269-1

APPEAL UNDER SECTION 40(1) OF THE FISHERIES (AMENDMENT) ACT 1997

SUBMISSION BY LOCH GARMAN HARBOUR MUSSELS LIMITED (T03/047A)

16 OCTOBER 2019

To:

**The Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5**

Appellant:

**Loch Garman Harbour Mussels Limited
84 Northumberland Road
Ballsbridge
Dublin 4**

Agent for Appellant:

**William Fry
2 Grand Canal Square
Dublin 2
D02 A342**

Appeal Against: Decision of the Minister for Agriculture, Food and the Marine

Determination Reference: T03/047A

Applicant: Appellant

Date and Place of Publication of Notice of Decision: 17 September 2019 in the *Wexford People*

Summary

1. This is an appeal against a decision by the Minister for Agriculture, Food and the Marine (the "**Minister**") to grant a variation of the aquaculture licence for the bottom cultivation of mussels on the foreshore at site (T03/047A) (the "**Site**") in Wexford Harbour, Co. Wexford (the "**Decision**") to the Appellant. In the Decision, the Minister cites several positive impacts of the aquaculture activities carried out at the Site. Notwithstanding this, the Minister has decided to reduce the Appellant's licensed area from 12.2 ha to 8.13 ha, with potentially devastating impacts on the Appellant's business. Please see the Decision at **Annex 1**.
2. As outlined in further detail below, the Decision is vitiated by a number of serious flaws. Firstly, the Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Fisheries (Amendment) Act 1997 (the "**Act**"). Secondly, the Minister has breached fundamental principles of public/administrative law in reaching the Decision, both in terms of its substance and the procedure whereby it

was reached. This appeal is supported by a report on mussel cultivation activities in Wexford Harbour dated 16 October 2019 by Aquafact, an environmental consultancy specialising in marine environments (the "**Aquafact Report**"). Please see the Aquafact Report at **Annex 2**.

3. The Aquaculture Licences Appeals Board ("**ALAB**") will also have received the Appellant's appeals against the Minister's decisions to vary the Appellant's licences in adjacent sites (the "**Associated Decisions**" and the "**Associated Appeals**", respectively).
4. By the present appeal, the Appellant respectfully requests ALAB to exercise its power under Section 40(4)(c) of the Act to substitute its decision on the Appellant's licence application by granting the Appellant a licence over the entire portion of the Site of which it has hitherto carried on aquaculture activities, and in respect of which it has applied for a licence (the "**Total Area**"). In the alternative, the Appellant respectfully requests ALAB, under Section 40(4)(b) of the Act, to determine the Appellant's licence application as if it had been made to ALAB in the first instance, by similarly granting a licence over the Total Area.
5. Separately, for ease of administration and given the commonality of facts and issues arising, the Appellant requests ALAB, exercising its discretion under Section 42 of the Act, to join the present appeal with the Associated Appeals, including for the purpose of an oral hearing.

The Appellant

6. The Appellant was incorporated in 2006, for the purpose of acquiring mussel-growing sites in Wexford Harbour, previously operated by a local business man, Mr Billy Gaynor.
7. The sites had been farmed for many years prior to the introduction of the statutory licensing regime. The Appellant is a wholly-owned subsidiary of Hibernian Mussel Holdings Limited, which in turn is 100% owned by Barbé Holding BV, a Dutch company. Barbé Holding BV is owned by the Barbé family who have over 100 years' experience of mussel farming in Yerseke, Netherlands. The Barbé family controls the Barbé Group, an international mussel producer trading under the Aquamossel brand. All of the Appellant's produce is exported to the Netherlands, where it is processed in the Barbé Group's factory.
8. At its Wexford Harbour operations, the Appellant employs three people full-time to work on its boats, and also employs Billy Gaynor in an administrative function. The company's average annual turnover is approximately EUR 700,000.
9. The Appellant has three sites under licence at Wexford Harbour.
10. The Appellant is appealing the recent Ministerial decision in respect of each of these licences.
11. For further information see <http://www.aquamossel.nl/EN/home-en.html>

Licence Application Process

12. The Appellant's previous licences, which were granted in 2002, were due to expire in 2012. On 28 August 2011, the Appellant applied to the Department of Agriculture, Food and the Marine (the "DAFM") for renewal of its licences. (Whereas, previously, the Appellant had one licence covering all its sites, the Minister decided during the 2000s to separate each licence into several sites, with one licence per site.)
13. Following its application for a licence renewal, the Appellant received no further correspondence from the DAFM until June 2018, when a public notice was published in the *Wexford People* listing all the relevant licence applications (including the Appellant's) and requesting submissions on those Applications within one month. The Marine Institute, the Inland Fisheries Institute, Wexford County Council and the Department of Heritage and the Gaeltacht (now the Department of Culture, Heritage and the Gaeltacht) each made submissions, of which the Appellant received copies from the DAFM on or about 15 October 2018. The Appellant submitted a response to those submissions to the DAFM on or about 29 October 2018.
14. During the consultation process, the Minister/DAFM gave no indication that he intended or was considering huge cuts to the areas under licence. Likewise, during and after consultation, there was no engagement with the Appellant regarding boundaries.
15. In 2018, the DAFM requested the Appellant to provide access routes to its sites. However, no changes to the licences were implied. The Appellant received no further communication from the DAFM until September 2019, when the Decision and the Associated Decisions were published. In fact, the Appellant learned of the Decision in the 17 September 2019 edition of the *Wexford People* before it received any official correspondence from the DAFM. (See Annex 3).
16. It is disappointing and of serious concern that the Minister failed to respond to the Appellant's licence application, or even raise any queries or requests for further information, for a period of over six years. When the DAFM/Minister did finally engage (albeit to a limited extent), the Appellant responded promptly. However, the DAFM/Minister again failed to communicate with the Appellant until the Decision was taken some eleven months later.

Substantive Grounds of Appeal

17. The Appellant's substantive grounds of appeal are, first, by reference to criteria (a) to (g) as set out in Section 61 of the Act and, second, by reference to fundamental principles of public/administrative law.
18. The Appellant submitted requests for information under the Freedom of Information Act 2014 ("FOI"), and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("AIE"), in each case requesting information/environmental information relevant to the Decision, to various relevant public bodies on 8 October 2019. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decision, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, the Appellant has had to bring the present appeal before receipt of any responses to those requests. The Appellant therefore reserves the

right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions based on the responses received to those FOI/AIE requests.

Section 61 of the Act

19. Under Sections 61 (a) to (g) of the Act, the Minister, in considering a licence application, and ALAB, in considering an appeal against a decision of the Minister, must have regard to seven criteria. That section reads as follows:

"The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of—

- (a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- (b) other beneficial uses, existing or potential, of the place or waters concerned,*
- (c) the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- (d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- (e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- (f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—*
 - (i) on the foreshore, or*
 - (ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- (g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters."*

20. It is difficult for the Appellant to make meaningful observations on the Minister's evaluation of these criteria, in the absence of a full statement of reasons for the Decision. While the Decision states that *"it is in public interest (sic) to grant a variation of the licences sought i.e. reducing the footprint of the site"*, the Minister completely fails to justify this statement. The Decision, as it relates to the reduced area, is stated in almost entirely positive

terms, and does not cite any adverse effects of the relevant activity. However, the Minister's apparent belief that granting a licence over the Total Area would be contrary to the public interest is unexplained. This defect is addressed more fully below under the heading "failure to give adequate reasons" (see paragraphs 81 to 89).

21. The Appellant considers that in taking the Decision the Minister erred in law and therefore requests ALAB to take account of the following submissions in relation to each of the statutory criteria.

(a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question

22. The Total Area, and the wider Wexford Harbour waters, are undoubtedly suitable for aquaculture and have been found as such by the Minister. The Wexford County Development Plan 2013 – 2019 (the "**County Development Plan**") states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]¹, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).²*

23. The Appellant and its predecessors have farmed mussels in the Total Area/Wexford Harbour since 'time immemorial'. During that time, the relevant waters have provided an exceptionally fertile ground for the cultivation of mussels while also supporting many other species of wildlife/sealife. Indeed, the DAFM's own *National Strategic Plan for Sustainable Aquaculture Development 2015* refers to Wexford Harbour as one of Ireland's "*5 major production areas for bottom mussel*".³

24. In mainland Europe, Wexford mussels enjoy a stellar reputation and attract a premium price. Geographic factors help to make the area especially well-suited to mussel farming. In particular, the shape of the seabed in the Harbour protects mussels from high seas, thereby minimising mortality. Wexford Harbour is sheltered from almost all sides against storms. It is only open to easterly winds – however, the sandbanks in the mouth of the Harbour provide protection against these. Mussels generally thrive in areas where salt and fresh water meet. The tides ensure that nutrients from both the Irish Sea and the River Slaney mix well.

25. The Aquafact Report concludes that Wexford Harbour is entirely suitable for mussel cultivation.

26. The suitability of the waters for aquaculture is also affirmed by the Minister in the Decision, where he states, at paragraph (a), that "*scientific advice is to the effect that the waters are suitable*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (a).

(b) other beneficial uses, existing or potential, of the place or waters concerned

¹ As implemented into national law by the European Communities (Quality of Shellfish Waters) Regulations 2006 (SI No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

² See page 115, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexCoPlan13-19/Volume8.pdf>.

³ See <https://www.agriculture.gov.ie/media/migration/seafood/marineagenciesandprogrammes/nspa/NationalStrategicPlanSusAquaDevel181215.pdf> at page 30.

27. The Aquafact Report finds that the only other actual use of Wexford Harbour is for boating and that activity may be pursued notwithstanding the presence of mussel farms. For the purposes of mussel cultivation, other than mussels living on the seabed, there is little or no infrastructure in place on the seabed or emerging therefrom creating any visual or other impediments for other activities by the practice of bottom mussel cultivation.
28. The Minister was therefore correct to state, at paragraph (b), that "*public access to recreational and other activities is already accommodated by this project*", and at paragraph (g) that "*there are no issues regarding visual impact as the site to be utilised is for bottom culture*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (b).
- (c) **the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters**
29. The Appellant acknowledges and indeed relies upon the fact that the relevant waters are in a special area of conservation ("**SAC**") (or 'Natura 2000' site).⁴ The importance of mussel cultivation to the Site and the support of the listed habitats and species therein, is not in dispute. Indeed, this has been specifically recognised in the Decision (see paragraph (j)). In addition, the symbiotic importance of the relevant waters to mussel farming is recognised in the relevant local development plans.
30. The Aquafact Report concludes that the dynamic nature of the water flows in Wexford Harbour would mask any negative impact of mussel dredging.
31. As noted above, the County Development Plan states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]⁵, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).*
32. The Wexford Town & Environs Development Plan 2009-2015 (which was extended until 2019)⁶ refers to the Wexford Wildfowl Reserve (the "**Reserve**") which is situated to the north-east of Wexford Harbour. This document states that "*the overall aim of the Council will be to promote a reasonable balance between conservation measures and development measures in the interests of promoting the orderly and sustainable development of Wexford Town*" (emphasis added).⁷

⁴ Regulation 3 of the European Communities (Conservation of Wild Birds (Wexford Harbour and Sloba Special Protection Area 004076)) Regulations 2012 (as amended) (SI No. 194/2012). Natura 2000 is a network of nature protection areas in the EU. This consists of SACs and special protection areas or SPAs under the EU's Habitats and Birds Directives.

⁵ As implemented in Ireland by the European Communities (Quality of Shellfish Waters) Regulations 2006 (S.I No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

⁶ <https://www.wexfordcoco.ie/planning/development-plans-and-local-area-plans/current-plans/wexford-town-and-environs-development>

⁷ See page 78, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexfordTownPlan09-14/WexTown%26EnvDevPlan2009Ch7-9.pdf>

33. The maintenance of the status quo, i.e., granting the Appellant a licence over the Total Area, poses no threat to the maintenance of a reasonable balance between the conservation of the Reserve located to the north-east of the Site and the long-standing mussel cultivation activities in Wexford Harbour, which contribute positively to Wexford's economy and reputation.

34. At paragraph (i) of the Decision, the Minister states that "*the Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's [sic], including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC , the Raven Point Nature Reserve SAC , Wexford Harbour and Slob's SPA and the Raven SPA*". This statement demonstrates an error of judgement on the part of the Minister. As will be described in further detail in the submissions under sub-section (e), it is not necessary for the Site to be "reconfigured" in order for the Appellant's aquaculture activities not to affect significantly and adversely the integrity of the relevant SAC. On the contrary, reducing the Appellant's licensed area may, in fact, lead to significant and adverse effects.

(d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on

35. At paragraph (c) of the Decision, the Minister states that "*the proposed development should have a positive effect on the economy of the local area*". The only way in which the Decision could be of benefit to the local economy is if it were a choice between the reduced licence, per the Decision, and no licence at all. However, this is not the case. In reality, the "proposed development", in the words of the Decision, will reduce economic activity. Put simply, the Minister has addressed the wrong question.

36. The Decision, which proposes to cut the Appellant's hectareage significantly, would have an adverse effect on the local economy. The Decision will inevitably result in much lower quantities of mussels being farmed and exported, with devastating effect on the Appellant's turnover, posing a very real threat to the viability of the Appellant's business. (This will also affect any corporation tax revenues generated by the State from the Appellant.)

37. The cessation of the Appellant's mussel farming activities would entail the disposal of fishing fleet in addition to cuts to employment. These effects will not only impact the Appellant and its employees directly but will also permeate throughout the wider Wexford economy.

38. Other than the Appellant and its employees, the economic effects of the Decision will be felt by persons in, at least, the following categories of activity:

38.1 electrical maintenance, repair and replacement of marine and shore-based plant and equipment;

38.2 mechanical maintenance, repair and replacement of marine and shore-based plant and equipment;

38.3 the fabrication and maintenance of dredges, dredging equipment and other custom-made equipment used in the industry;

38.4 mussel dredgers, which ply a route into and out of Wexford Harbour and have helped maintain access to the Harbour, Wexford Boat Club and the Wexford Quays for visiting boats and increase confidence in the navigability of the harbour, despite its sand bars; and

38.5 the haulage sector: at the very least, 50 – 100 lorries per annum come into Wexford to collect mussels for export. These hauliers must spend money in the Wexford economy which would be lost if the Appellant reduce its business activities at the Site.

39. Furthermore, the presence of the mussel fishing industry in Wexford town contributes to the enjoyment of tourists, who perceive Wexford as still a 'working' fishing location and not yet dominated by commercial development and idle leisure craft tied up in marinas (the Aquafact Report also notes that the cultivation of mussels has a positive economic impact.)

40. The Decision, if upheld, will have severe economic consequences which will exacerbate the problems exporters in the agri-food sector, such as the Appellant, would already have faced given the looming threat associated with the UK's planned withdrawal from the EU. Therefore, the Appellant fails to understand why the Minister, at paragraph (c) of the Decision, concluded that the development, as contemplated in the Decision, "*should have a positive effect on the economy of the local area*".

(e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna

41. The Aquafact Report underlines the ecological benefit of mussel cultivation in Wexford Harbour. It notes the long-standing positive contribution of such cultivation to the relevant ecosystem while also emphasising the control mechanism mussels exert on eutrophication. Finally, mussel beds in Wexford Harbour give rise to greater biodiversity – this benefit would be lost/greatly reduced by the Decision.

Estuarine area

42. In reaching the Decision, the Minister appears to have determined that, in estuarine areas, only 15% of the relevant area should be licensed for mussel farming activities. The effect is to reduce significantly the Appellant's licensed area. The figure of 15% is referenced in the DAFM's (undated) Appropriate Assessment Conclusion Statement (the "AACS") for the Wexford Harbour and neighbouring SACs,⁸ which is referenced in paragraph (j) of the Decision. The figure of 15% appears to be based on a recommendation by the National Parks & Wildlife Service (the "NPWS") in its 2011 report, "*Slaney River Valley SAC (site code: 0781) Conservation objectives supporting document -marine habitats and species*".⁹

43. The NPWS's report states as follows: "*Significant anthropogenic disturbance may occur with such intensity and/or frequency as to effectively represent a continuous or ongoing source of disturbance over time and space (e.g., effluent discharge within a given area). Drawing from the principle outlined in the European Commission's*

⁸

<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/wexford/ConclusionStatementWexfordHbr110619.pdf>

⁹ https://www.npws.ie/sites/default/files/publications/pdf/000781_Slaney%20River%20Valley%20SAC%20Marine%20Supporting%20Doc_V1.pdf

Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status, this Department takes the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%. Thereafter, an increasingly cautious approach is advocated" (emphasis added).¹⁰

44. The nature of mussel farming activity is crucial, in this context. The Appellant's mussels, as with all other bottom cultivators of mussels, are located on the seabed. While the amount of time spent physically farming the area is variable, there is no basis for concluding, as is implicit in the Decision, that the Appellant's activity is continuous or ongoing and that, consequently, any geographic threshold should apply. (The Aquafact Report contains a detailed description of the mussel cultivation process).
45. While the mussels are maturing, the Appellant carries out monthly sampling activities to check for growth or predation. Sampling involves one passage of the Appellant's vessel over the area where the mussels are lying. A dredge is towed to take a sample of mussels which, after inspection, is returned to the seabed.
46. Prior to harvesting, mussels may be shifted from one area to another, more productive, area. This may be done either to increase meat content or because of predation in the first area. Moving a bed of mussels normally means the Appellant's vessel is active on a site for seven or eight days over a two-week period. A normal fishing day during this time involves, at most, three to four hours' fishing.
47. When the Appellant harvests the mussels for sale, it 'fishes to order'. The orders normally require that fishing takes place on a Monday, Tuesday, Wednesday or Saturday. If market conditions are very good, the Appellant may fish on all four days; conversely, when things are slow, the Appellant may not fish any of the days. The Appellant normally fishes for one or two lorry-loads of mussels when harvesting. This activity takes approximately one hour to catch, so the dredger is out in the Wexford Harbour for under two hours.
48. Sales of mussels may take place from July right through to the following April. The Appellant only has a certain amount to harvest in a season, the activity is therefore 'market-driven'. It may fish over a long time, or the harvest may be concentrated and carried out in a short space of time. If the Appellant were to fish, say, 40 lorry-loads in a season, that would mean a maximum of 40 'harvesting trips' over nine months. On busy days, it may fish for two lorry-loads, which would reduce the total number of days 'on site' per year.
49. The mussels are in Wexford harbour for approximately two years from the time they are re-laid as seed mussels to when they are harvested for export. For the vast majority of this time, the mussels are simply growing in nature, and the Appellant's vessel is idle at the quayside.
50. Therefore, there is no basis for concluding that the Appellant's mussel farming activity is "continuous or ongoing" or causes "continuous disturbance". Furthermore, there is no effluent discharge other than what the mussels themselves produce.¹¹

¹⁰ Page 7.

¹¹ In fact, the Appellant notes that mussels, even without farming, naturally occur in Wexford Harbour.

51. On the contrary, mussel farming is of significant benefit to the marine environment, particularly where other activities are undertaken nearby. The Appellant is fully aware of environmental issues; its products are certified by the Marine Stewardship Council¹². Lindahl and Kollberg demonstrate that mussel farming is a very effective method of combatting eutrophication, an environmental hazard caused by nutrient leakage into marine waters from agriculture, rural living, sewage discharges and other human activities.¹³
52. The Appellant refers to Chapter 11 of the Marine Institute's *Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)*,¹⁴ which comprises Annex I to the Marine Institute's *Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710) Wexford Harbour and Slobbs SPA (site code 004076) and Raven SPA (site code 004019)*¹⁵ (the "MIAA").
53. In that chapter, the authors note that mussels are historically part of Wexford Harbour's ecosystem and are considered a component of the mixed sediment community complex. It is also noted that mussels play an important role against eutrophication of the water in the harbour. The report also highlights the enhancement to habitat heterogeneity caused by the mussel population.¹⁶ Chapter II concludes as follows:
- "In summary, it is our view, based upon the information presented above, that bottom mussel culture, at current levels, does have a positive role in ecosystem function in terms of nutrient and phytoplankton mediation as well as provision of habitat. The addition of more mussels to the system (with new applications) may have additional benefit in terms of reducing effects of eutrophication, and may further improve status in the outer parts of Wexford Harbour relative to the Lower Slaney waterbody; however, this remains to be determined/confirmed and is subject to availability of additional seed" (emphasis added).*¹⁷
54. The clear and uncontroverted evidence is thus that mussel cultivation supports and contributes positively to the relevant SAC and its conservation objectives. Given the length of time that this activity has been carried on in a manner that has led to the designation of Wexford Harbour as part of an SAC/SPA and the positive impacts on its integrity since then, it makes no sense whatsoever to reduce the area in which mussel cultivation occurs. *A fortiori*, it makes absolutely no sense to carry out such a drastic reduction which will severely impact on the economic viability of the activity in question which is such a positive contributor to the harbour as well as to the local economy.

¹² <https://www.msc.org/>

¹³ Odd Lindahl and Sven Kollberg, "How mussels can improve coastal water quality", BioScience Explained, Vol 5 No 1, dated 2008. See here: https://bioenv.qu.se/digitalAssets/1575/1575640_musseleng.pdf

¹⁴ <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIWexfordHarbourSACsAA270318.pdf>

¹⁵ <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/WexfordHarbourNaturaSitesAASummary270318.pdf>

¹⁶ See pages 63 to 67.

¹⁷ Page 67.

55. With regard to the assertion (quoted above) that adding more mussels is subject to availability of additional seed, the Appellant notes that the relevant seed does not need to be fished in the Irish Sea. Several operators re-lay seed from elsewhere or take seed from half-grown mussels (the Appellant also notes that such movements of shellfish must be approved by the Marine Institute). Therefore, the additional benefits highlighted in Annex I to the MIAA are not, in fact, "*subject to the availability of additional seed*" from Irish waters.
56. Furthermore, the European Commission's Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018 (the "**EC Guidelines**")¹⁸ indicate that devoting as much as 25% of an SAC to aquaculture is unlikely to affect that SAC's conservation status. In fact, the EC Guidelines do not necessarily apply a 25% 'limit' to aquaculture activities taking place within an SAC, as the Minister/NPWS seems to have inferred. The general evaluation matrix at Annex E of the EC Guidelines denotes an SAC's conservation status as 'Unfavourable – bad' if, *inter alia*, "*more than 25% of the area is unfavourable as regards its specific structures and functions*" (emphasis added). This means that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status.
57. Contrary to the apparent inference of the Minister/NPWS, this does not in any way imply that if more than 25% of an SAC is licensed to aquaculture, the entire habitat is unfavourable. The NPWS has therefore misinterpreted the EC Guidelines.
58. As far as the Appellant is aware, no other EU Member State has interpreted the EC Guidelines in this manner. It is also worth recalling that mussel farming activities have subsisted for several generations in Wexford Harbour, with positive environmental effects. Mussel and other shellfish beds are known for providing a habitat for a large number of species. For example, the Wageningen University & Research, a Dutch third-level institution, has conducted several studies in the western Wadden Sea, off the northern coast of the Netherlands, concluding that mussel farming creates a 'hot spot' for biodiversity¹⁹. (See also the Aquafact Report).
59. However, even assuming that the NPWS's reading of the EC Guidelines is correct (which the Appellant does not believe to be the case), the Appellant does not understand why (a) the NPWS felt the need to cut this 25% figure by almost half, to 15% or (b) more pertinently, why the Minister decided to adopt the NPWS's reasoning.
60. Regarding any disturbance to the population of birds at the Wexford Wildfowl sanctuary, throughout its time engaged in mussel farming activities in Co. Wexford, the Appellant has been aware of the Reserve, located to the north-east of the Site. The Appellant understands that, in 2008 or 2009, the NPWS had concerns about the potential effects of mussel farming on the local population of Greenland white-fronted geese living on the Reserve.
61. In/around 2009, the NPWS undertook a three-day study, whereby it monitored the behaviour of the geese before, during and after a day on which the Appellant fished for mussels. The Appellant understood at the

¹⁸ European Commission, "*Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018, Final version – May 2017*", available here: <https://circabc.europa.eu/sd/a/3ed9f375-227e-46cd-b3dd-1fc59cefcdbd/Doc%20NADEG%2017-05-02%20Reporting%20guidelines%20Article%2017%20final%20April%2017.pdf>

¹⁹ <https://www.wur.nl/en/Research-Results/Research-Institutes/marine-research/Research/Projects/PRODUS-Sustainable-shellfish-culture/Effects-on-nature.htm>

relevant time that the NPWS was due to carry out further relevant studies and produce a report demonstrating its conclusion. However, this report never materialised.

62. Around the same time, Bord Iascaigh Mhara ("**BIM**") hired its own photographer to conduct a similar exercise. The Appellant understands that BIM's report uncovered minimal effect, if any, on the relevant geese. The Appellant further understands that BIM has footage, and can produce this at a later stage if requested by ALAB (e.g., at an oral hearing). In fact, to the Appellant's knowledge, BIM's report showed that the geese in fact moved closer to the fishing activity when it was being conducted. To the best of the Appellant's knowledge, despite the findings of BIM's report, the NPWS report made no mention of it.

Coastal area

63. Separately, the Decision cites the AACS, which estimates the extent of intertidal habitat at approximately 1,400 hectares. The Appellant believes that this is a major over-estimate. The Appellant's coastal (i.e., non-estuarine) mussel beds are not intertidal. The Minister appears to have used erroneous maps to conclude that the relevant waters are intertidal.
64. The Appellant refers to paragraph 2.16 of Annex II to the MIAA, where it is stated that "*because of the rapidly changing nature of the mobile sandbanks at the mouth of the harbour, precise definition of tidal zones is problematic*" (emphasis added). At paragraph 2.18, the authors note that "*the configuration of sandbanks at the mouth of the harbour has, however, changed substantially since 2011 [when the satellite images were taken]*" and that "*upon ground-truthing undertaken by the GSI, the quality of the data in the inner part of the harbour was classified as unreliable or of limited reliability, due to high levels of turbidity at the time the image was captured. Despite these limitations, the GSI bathymetry data has been used for calculating levels of exposure of intertidal habitat at specified tidal levels*" (emphasis added).
65. The MIAA, which the Decision reflects, has clearly acknowledged the deficiencies in the relevant bathymetry data. Furthermore, paragraph 2.17 refers to Wexford Harbour Chartlets prepared by Brian Coulter. When viewed, these chartlets clearly show that the Appellant has lost up to one metre of depth on the majority of the water in Wexford Harbour (where the vast majority of the Appellant's sites (and other sites) are based) due to the incorrect classification of the sites as intertidal.²⁰
66. Furthermore, the AACS itself notes the discrepancies between mapping methods. See page 6, where it is stated that "*the extent of intertidal habitat mapped by the GSI method is estimated at approximately 1,400 ha, as opposed to 1,027 ha, calculated from the OSI maps*". The Geological Survey Ireland ("**GSI**") maps, which produce satellite-derived bathymetry data and used at page 46 of Annex II to the MIAA,²¹ show the relevant intertidal area. These maps purport to show that the River Slaney is intertidal on spring tides between Wexford Quay and Ferrybank Quay. This is patently inaccurate. The Appellant knows, from its extensive local knowledge, that there are two to three metres of water in that area at a low spring tide.

²⁰ <https://wexfordharbour.info/iChart/index.html>

²¹ <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIIWexfordSPAsAA270318.pdf>

67. Moreover, the Appellant understands that the GSI is itself concerned that its own data has been used. Please see enclosed an e-mail dated 15 October 2019 from the GSI to this effect at **Annex 4**, where the author states that the GSI "*deemed the results as not satisfactory for any application related to coastal mapping*". The Appellant fails to understand how the Minister could possibly have relied upon the GSI data, when the very organisation which produced the data has expressly acknowledged their unreliability.

68. As a mussel-farming enterprise working in the Wexford Harbour on a regular basis over several years, the Appellant knows that huge areas of its sites which are deemed intertidal are simply not intertidal. Given that the data are inaccurate in Wexford Quays, an area which should be very easy to assess, the Appellant does not understand why they were relied upon for the rest of the harbour. Given the potentially enormous consequences of the Decision its business, the Appellant finds it extremely concerning that the bathymetry analysis, upon which the Decision is largely based, is inaccurate and incorrect.

69. The Aquafact Report concludes the relevant environmental effects of mussel cultivation in Wexford Harbour are generally seen as positive.

70. In summary, the assessment of criterion (e) in the Decision and in the underlying documentation is based on flawed science and a flawed interpretation of science. To compound this error, the reasoning in the Decision cites only positive factors (see paragraphs (f), (h) and (k)). For example, paragraph (f) notes that "*shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation*". However, again, this conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence.

71. There is, therefore, no reason to reduce the Total Area based on criterion (e).

(f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—

(i) on the foreshore, or

(ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977

72. The Appellant's activities have no material adverse effects on the environment. No infrastructure is used in mussel farming. Mussels are not fed and nothing is introduced into the water. Simply put, mussels do not create pollution.

73. The Aquafact Report concludes that the ecological effects of mussel cultivation in Wexford Harbour are generally seen as positive.

74. At paragraph (j), the Decision cites the recommendations of the AACS and the MIAA as a basis for reducing the Total Area. However, neither of these documents points to significant effects on the local environment as a

result of the Appellant's activities. Therefore, there is no reason for the Minister to reduce the Total Area on the basis of criterion (f).

(g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

75. The Appellant's activities have no material adverse effects on the man-made environment. Given the historical activity at the Appellant's sites, both before and after the first licences were issued, the Appellant is virtually certain that there are no archaeological elements on its sites.
76. The Appellant understands that an archaeological survey was or is being prepared for Wexford Harbour. As far as the Appellant is aware, BIM has put this work out to tender and surveys and studies have taken place. However, the Appellant is not aware of a final report, and understands that this report has not yet been completed.
77. That said, archaeological studies were carried out prior to grant of the original licence in 2003. In any event, the renewal applications should not require new archaeological surveys and, as far as the Appellant is aware, the applications for new sites are the only ones of relevance to the BIM-commissioned survey.
78. The Aquafact Report finds no predicted impacts on the man-made environment or its heritage value.
79. The Minister was therefore correct to state, at paragraph (e), that "*there are no effects anticipated on the man-made environment heritage of value in the area*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason to reduce the total licensed area based on criterion (g).

Fundamental Principles of Public/Administrative Law

80. In addition to his failure to apply/interpret the criteria contained in Section 61 of the Act, the Minister has also breached fundamental principles of public/administrative²² law in several respects. As a Member of the Government, the Minister is obliged to follow fundamental public law principles.

(i) Failure to Give Adequate Reasons

81. The duty to provide reasons is a key principle of administrative law. In *Mallak v Minister for Justice, Equality and Law Reform*, the Supreme Court upheld this principle. Fennelly J, for the Court, found that this duty subsists, even where a public body has absolute discretion in its decision-making, and that "*the rule of law requires all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons*".²³

82. More particularly, public bodies such as the Minister are under a duty to give adequate reasons for their decisions. In the context of a planning decision, in the High Court case of *Mulholland v An Bord Pleanála*,²⁴ Kelly J outlined the requirement to give adequate reasons as follows:

"The statement of considerations must therefore be sufficient to:-

(1) give the applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision.

(2) arm himself for such hearing or review.

(3) know if the decision maker has directed his mind adequately to the issues which it has considered or is obliged to consider.

(4) enable the courts to review the decision."²⁵

83. In a particularly pertinent case, *Deerland Construction v Aquaculture Licensing Appeals Board*,²⁶ Kelly J quoted the English case of *South Bucks County Council v Porter* where Brown LJ stated that the reasons for a decision "*must enable the reader to understand why the matter was decided as it was and what conclusions were reached on 'the principal important controversial issues', disclosing how any issue of law or fact was resolved*".²⁷ Kelly J went on to state that "*I do not accept that a pro forma recitation of the matters which are contained in ALAB's decision amounts to a compliance with its statutory obligation to state its reasons for such decision*". He concluded that an applicant should "*know from reading the decision the reasons for it*" (emphases added).²⁸

²² In this appeal, we use the terms "public law" and "administrative law" interchangeably.

²³ *Mallak v Minister for Justice Equality and Law Reform*, [2012] IESC 59, paragraph 43.

²⁴ *Mulholland v An Bord Pleanála*, [2006] 1 IR 453, paragraphs 464 – 465.

²⁵ It is clear from the judgment of Hedigan J in *West Wood Club Limited v An Bord Pleanála and Dublin City Council* that, although that case related to a specific duty to give reasons under the Planning and Development Act 2000, "*Kelly J found that the existing jurisprudence regarding what is required for reasons to be considered as adequate at law continued to apply*". See *West Wood Club Limited v An Bord Pleanála and Dublin City Council*, [2010] IEHC 16, paragraph 54.

²⁶ *Deerland Construction v Aquaculture Licensing Appeals Board*, [2009] 1 IR 673.

²⁷ *South Bucks County Council v Porter*, [2004] WLR 1953 at paragraph 36.

²⁸ At page 44.

84. The Minister has several statutory powers under the Act and acts a "licensing authority" for the purposes of Section 7 of this legislation. Under Section 61 of the Act, the Minister is required, as stated above, to have regard to seven criteria in deciding a licence application. Each criterion entails the study and consideration of several factors, encompassing economic, ecological and other issues. Therefore, as far as the Appellant is aware, the Decision is, or at least should be, based on a consideration of a large body of scientific evidence. Therefore, the Appellant would have expected the Decision to shed at least some light on that consideration, to show why the Minister reached the Decision.
85. Instead, the Decision is no more than one page long. The operative part of the Decision, i.e., the portion purporting to show the reasons for the Decision, contains 12 terse statements. This is no more than a pro forma recitation of the factors considered in arriving at the Decision. The similarity between the wording of the Decision and the Associated Decisions (and indeed the wording of decisions addressed to other mussel farmers in the Wexford Harbour area) is striking. It is not possible for the Appellant to know, from reading the Decision, the reasons why it was reached, much less to understand the reasons for the Decision on the principal controversial issues (as required under the principle contained in *Deerland Construction*). In the language of the third limb of the extract from Kelly J's *Mulholland v An Bord Pleanála* judgment (see above), the Decision gives the Appellant no indication of whether the Minister has directed his mind adequately to the issues which he was obliged to consider.
86. Critically, the Minister's rationale, such as it is, simply answers the wrong question. The Decision sets out (albeit inadequate) reasons for granting a licence for a reduced area. However, it utterly fails to address the true question, which is why the Minister has not granted the licence for the Total Area, i.e., the area the subject of the original application. The Appellant expected to see an explanation of the rationale for reducing the area. However, any such explanation is missing from the Decision, save for an oblique reference to the "reconfigured site".
87. For example, reason (c) states that "[t]he proposed development should have a positive effect on the economy of the local area". As noted above, the Appellant considers that the "proposed development", as envisaged in the Decision (i.e., with a huge cut to its licensed area) will in fact have an adverse effect on the local economy. To compound the fact that the Minister has made a fundamental error of judgement of fact, there is no evidence in the Decision to support the conclusion that the "proposed development" as envisaged in the Decision will benefit the local economy.
88. Furthermore, the letter from the DAFM accompanying the licence fails to provide any information as to why the Minister reached the Decision.
89. In summary, the Minister has provided a wholly inadequate set of reasons for the Appellant to be able to understand why the Decision was reached.

(ii) Breach of the Right to be Heard

90. There is a broad duty on Irish public bodies, including the Minister, to give full information to parties such as the Appellant on a decision adverse to its (i.e., the Appellant's) interests which is in contemplation, and to give such party the opportunity to make the best possible case. Public bodies are required to inform persons such as the Appellant of defects in their cases, and to offer them the opportunity to address that difficulty. In *Mishra v Minister for Justice*, Kelly J held that fundamental fairness required that an applicant be given the opportunity to rebut a presumption of the Minister which was material to his decision to deny a citizenship application. More generally, *The State (McGeough) v Louth County Council* held that where a public authority adopts a principle or policy for deciding on an application, the applicant should be afforded "the opportunity of conforming with or contesting such a principle or policy".²⁹ Similarly, in a Privy Council case, *Mahon v Air New Zealand*, it was held that persons affected by decisions of public authorities (in that case, a tribunal) must have the opportunity to rebut evidence against them.³⁰
91. The Minister was thus required to provide the Appellant, in circumstances such as its application for a licence, with the opportunity to rebut evidence on which the Minister intended to rely in a decision. Such procedures are common in other areas of administrative law. To take one example, when the Competition and Consumer Protection Commission (formerly the Competition Authority) (the "CCPC") is minded to determine that a merger or acquisition³¹ will result in a substantial lessening of competition (i.e., to block that merger or acquisition), its practice (although it is not legally required to do so) is to furnish the parties to the transaction with an assessment. The purpose of the assessment is to demonstrate the reasons why, in the CCPC's preliminary view, the merger or acquisition will have an anti-competitive effect and therefore not be in the public interest. Typically, the CCPC's assessment is based on econometric or other evidence which supports the preliminary conclusion. Furthermore, parties are given the opportunity to request an oral hearing, at which they are given the full opportunity to rebut the evidence on which the CCPC proposes to rely.³²
92. At no stage prior to the Decision being published in the *Wexford People*, either during the public consultation process, or after stating its observations, was the Appellant provided with any indication of the Minister's preliminary or ultimate conclusion.
93. The Appellant's submission during the consultation process was by way of response to submissions made by various bodies in October 2018, as described above. The Appellant had no consultation with the Minister or the DAFM at any stage. In particular, the Appellant was not consulted on the proposed cuts or on where new licensed areas should be located. No reason was given as to why the Minister/DAFM decided the area (i.e., the shape) and location of the new sites.
94. The first time the Appellant was made aware of the Decision was on 17 September 2019, when the relevant notice appeared in the *Wexford People*.

²⁹ *State (McGeough) v Louth County Council* [1973] 107 LITR 13 at 28.

³⁰ *Mahon v Air New Zealand*, [1984] A.C. 808.

³¹ As defined in Section 16 of the Competition Act 2002 (as amended).

³² See the CCPC's *Mergers and Acquisitions Procedures*, available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/04/CCPC-Mergers-Procedures-for-the-review-of-mergers-and-acquisitions.pdf>

95. The Appellant was very surprised to learn of the Minister's findings, and by the manner in which it did so. As noted above, the Decision is based on flawed reasons. However, to add insult to injury, the manner by which the Minister informed the Appellant and the procedures followed during the process, are in clear breach of the Minister's obligations under public law to provide the Appellant with the opportunity to respond to the Minister's preliminary conclusions.

(iii) Failure to Exercise Proportionality/Abuse of Discretionary Powers

96. In exercising its discretionary powers, a public body must abide by the principle of proportionality.³³ It is also clear that a public body must not abuse those powers. It is clear from the *Wednesbury* judgment³⁴ that one of the ways in which a public authority may abuse its discretionary power is by taking irrelevant factors into account and/or not taking relevant factors into account.

97. The NPWS appears to interpret the EC Guidelines as recommending that, at most, 25% of an SAC should be allocated to activities which may be damaging to the relevant habitat. As stated above, this mis-interprets the EC Guidelines. All the EC Guidelines say is that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status (see above regarding Section 61(e) of the Act). However, even if the NPWS's interpretation was correct (which the Appellant strongly disputes), in order for the EC Guidelines to apply in the first place, it must be demonstrated that the activities are, in fact, damaging. As noted above, Lindahl and Kollberg, amongst others, have demonstrated that mussel farming activities are in fact beneficial to the marine environment. These benefits include the combatting of eutrophication. (See section 4 of the Aquafact Report).

98. Going one step further, again assuming that the NPWS's interpretation of the EC Guidelines is correct, even if mussel farming could be said to be damaging to the local habitat/marine environment (which the Appellant strongly disputes), reducing the licensed area to 15% of the SAC is draconian and wholly disproportionate. It is not clear to the Appellant why such a large reduction is merited. Indeed, this 'cut' appears somewhat arbitrary. The Appellant acknowledges that the NPWS's view is not binding on the Minister. Nonetheless, the Minister should have given due consideration to the merits of (a) the NPWS's interpretation of the EC Guidelines and (b) the NPWS's view that it is appropriate to reduce the licensed area from 25% to 15%. This is particularly true in circumstances where the evidence for the purported net environmental damage (i.e., damage from the mussel farming to the local habitat) is, at best, suspect and where mussel farming has been conducted at Wexford Harbour for several generations while producing environmental and other benefits. Instead, the Minister appears to have (a) blindly accepted the NPWS's interpretation of the EC Guidelines and (b) given a disproportionate weight to the NPWS's view, taking an upper limit for aquaculture of 15% of an SAC 'as read', notwithstanding the substantial evidence that a figure of 25% should be more than acceptable (and that the activity is not environmentally damaging in the first place).

99. The NPWS's view that the figure of 25% should be reduced to 15% is without scientific basis and appears to ignore the positive influence that mussel cultivation has had in the Site and in the wider Wexford Harbour over

³³ *Barry v Sentencing Review Group and the Minister for Justice, Equality and Law Reform*, [2001] 4 IR 67.

³⁴ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 230.

decades. This reduction will likely bring about a drastic change, the impacts of which are entirely unknown. There is no suggestion that the proposed reduction could be said beyond reasonable scientific doubt to avoid adverse significant impacts. On the contrary, reducing the Site could not be said beyond reasonable scientific doubt not to adversely affect the integrity of the Site/SAC. Mussel cultivation in the area is long-established, and has been shown to have positive environmental impacts, in contrast with other forms of aquaculture such as fish farming. The European Commission's comments in this regard apply to aquaculture in general and the positive impacts of mussel cultivation necessitate a far more positive appreciation of its role in the biological functioning and maintaining and enhancement of the conservation objectives and interests in an SAC.

100. The Minister, based on the NPWS's view, proposes to remove large areas of mussel cultivation. The effects of this proposed removal have not been scientifically assessed. In circumstances where the mussel cultivation which subsisted at the Site for centuries led to the designation of the Wexford Harbour area, including the Site, as an SAC/Natura 2000 site and has continued to support this status since, the removal of mussel cultivation without scientific assessment should not be permitted.

101. By analogy, at the Burren SAC, the grazing activity carried out by domestic animals has contributed to and continues to contribute to that area's conservation objectives by limiting the spread and cover of species that would otherwise be likely to deprive the listed habitats and species of light and space as well as nutrients. The drastic reduction of mussel cultivation and the periodic removal of excess nitrogen by the harvesting of same should not be enforced or compelled as to do so would be to risk a fundamental alteration of the balance within the SAC.

(iv) Breach of Appellant's Legitimate Expectations

102. The doctrine of legitimate expectations is a fundamental feature of Irish public/administrative law. In essence, the doctrine requires a public body such as the Minister honour a commitment as to the procedure(s) it will follow. The aim of the doctrine is partly to ensure legal certainty with regard to a public body's performance of its functions, and to ensure good administration³⁵. In *Glencar Exploration plc v Mayo County Council*,³⁶ Fennelly J in the Supreme Court stated the three principles of legitimate expectation. Firstly, a public authority must have made a promise or representation, express or implied. Secondly, that representation must be addressed to identifiable group of persons, such that it forms part of the relationship between the authority and those persons. Thirdly, that representation must create a reasonable (or legitimate) expectation, to the extent that it would be unjust for the authority to resile from it.

103. The same approach was adopted by the High Court in *Lett & Co v Wexford Borough Council*, a case which, coincidentally, related to a compensation scheme for mussel fishermen in Wexford Harbour who suffered

³⁵ See, for example, *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 which endorsed by the High Court in *Fakih v Minister for Justice* [1993] 2 IR 406.

³⁶ *Glencar Explorations plc v Mayo County Council*, [1992] 1 IR 84 at 162 – 163.

financial losses caused by the operation of a waste water facility. In that case, it was decided that the representation by the public body must relate to its exercise of a statutory power.³⁷

104. As documented above, the Appellant applied for its licence to be renewed in 2011. For six years, the Appellant had received no communication from the Minister or his officials regarding the licence application suggesting that any adverse finding was being considered. Relations with the Minister were, at all times, positive. There was thus an implied representation by the Minister that the Appellant would, at the very least, be consulted upon, and given the right to make submissions on, any proposed decision by the Minister. The Minister failed to process the Appellant's licence application expeditiously. The Appellant thus continued to farm the relevant sites for years, with no indication that an adverse decision was being contemplated.
105. The Appellant, together with some of its competitors who are also affected by similar decisions of the Minister (and have lodged separate appeals), comprise a clearly identifiable group of persons.
106. Finally, the Minister's implied representation gave no indication that there would be any reduction in the licensed area. At the very least, the Minister never gave any indication that a significant reduction, which poses a serious threat to the viability of the Appellant's business (and indeed of the other appellants) and their employees, was contemplated. Therefore, the Appellant (and the other appellants) had formed a legitimate expectation that their licences would be renewed in full.
107. It is also clear that the Minister's implied representation relates to a statutory function, namely the Minister's power to grant licences under Section 7 of the Act, in contrast with the facts of *Lett & Co* cited above.

Non-Exhaustive Nature of Claims

108. In addition to the factors outlined above regarding the Act and fundamental principles of public/administrative law, the Appellant reserves the right to make further submissions at an oral hearing and/or otherwise based on constitutional law, under the EU Charter of Fundamental Rights and/or under the European Convention on Human Rights.

Conclusion

109. In conclusion, the Decision is vitiated by errors of law both in the interpretation of the various criteria established by Section 61 of the Act and in the failure to follow key principles of administrative law.
110. Therefore, the Appellant requests ALAB to set aside the Decision and grant it the right to continue cultivating mussels at the Site.

WF-25223850-1

³⁷ In that case, the purported payment of compensation was not under a statutory power. Therefore, it was held that no legitimate expectation had been formed.

"Determination of Aquaculture/ Foreshore Licensing application – T03/047A

Loch Gorman Mussels Ltd., 84 Northumberland Road, Ballsbridge, Dublin 4, applied for authorisation for the bottom cultivation of mussels on the foreshore on an 12.2 ha site (T03/047A) in Wexford Harbour, Co. Wexford.

The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant **a variation** of the licences sought i.e. reducing the footprint of the site from 12.2 ha to 4.0667 ha. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to grant a variation of the licence sought: -

- a. *Scientific advice is to the effect that the waters are suitable. The site is located in Wexford Harbour Shellfish Designated Waters. Mussels in these waters currently have a "B" classification;*
- b. *This is a renewal application for existing aquaculture activity in Wexford Harbour and public access to recreational and other activities is already accommodated by this project;*
- c. *The proposed development should have a positive effect on the economy of the local area;*
- d. *All issues raised during Public and Statutory consultation phase;*
- e. *There are no effects anticipated on the man-made environment heritage of value in the area;*
- f. *Shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation;*
- g. *There are no issues regarding visual impact as the site to be utilised is for bottom culture;*
- h. *No significant effects arise regarding wild fisheries;*
- i. *The site is located within the Slaney River Valley SAC (Site Code: 00781), The Raven Point Nature Reserve SAC (Sited Code: 00710), Wexford Harbour and Slobs SPA (Site Code: 4076) and the Raven SPA (Site Code: 4019). An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC's/SPA's. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's, including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC , The Raven Point Nature Reserve SAC , Wexford Harbour and Slobs SPA and the Raven SPA.*
- j. *Taking account of the recommendations of the Appropriate Assessment the aquaculture activity proposed at this (reconfigured) site is consistent with the Conservation Objectives for the SAC's/SPA's;*
- k. *A licence condition requiring full implementation of the measures set out in the draft Marine Aquaculture Code of Practice prepared by Invasive Species Ireland;*
- l. *The updated and enhanced Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection required under EU and National law."*



AQUAFAC

ENVIRONMENTAL SURVEY SPECIALISTS

**A report on Mussel Cultivation activities
in Wexford Harbour,
Co. Wexford.**



October 16th 2019

AQUAFAC International Services Ltd.
12, Kilkerrin Park, Galway, Ireland
Tel: 091 756812
E-Mail: info@aquafact.ie Web: www.aquafact.ie

Table of Contents

1.	Introduction	1
2.	AQUAFAC T's Relevant Experience	2
2.1.	Experience in Wexford Harbour	2
2.2.	Experience with mussel farms.....	2
2.3.	Experience with Marine Subtidal Surveys.....	2
3.	Description of the mussel cultivation process.....	3
4.	Ecological services provided by mussel farming in Wexford	5
5.	Assessment of criteria listed in the Fisheries (Amendment) Act 1997.....	7
6.	Conclusion.....	9

1. Introduction

AQUAFAC has been retained and instructed to prepare this report by River Bank Mussels Ltd., TL Mussels Ltd., Loch Garman Harbour Mussels Ltd., Crescent Seafood Ltd., WD Shellfish Ltd. and Fjord Fresh Mussels Ltd. each of which holds mussel cultivation licences in Wexford Harbour. The Department of Agriculture, Food and the Marine (DAFM) has recently sought to vary these licences by reducing the foot print of the relevant sites by *ca* 66%.

Wexford Harbour lies with the Slaney River Valley Special Area of Conservation (SAC) (site code 00781) and within the Wexford Harbour and Slobs Special Protection Area (SPA) (site code 004076) and is close to another SPA, the Raven SPA (site code 004019). These designations make the area a sensitive site in terms of its conservation status (see National Parks and Wildlife Service (NPWS) 2011a, b). Known as Natura 2000 sites, they form a network of nature protection areas in the EU. The network consists of both SACs and SPAs under the Habitats and Bird EU Directives.

AQUAFAC is an environmental consultancy specialising in monitoring and managing resources in marine, freshwater and terrestrial environments. AQUAFAC ensures a widely based service thanks to its contacts in the scientific community, its close association with the National University of Ireland, Galway (NUIG), Galway Mayo Institute of Technology (GMIT), University College Dublin, Trinity College and the expertise of its scientific staff. Since it was established in 1986, AQUAFAC has provided marine ecological consultancy to a wide range of clients including the State, semi-State and private sector. It has also carried out several studies in the Wexford Harbour area.

This report:

1. Outlines AQUAFAC's experience in Wexford Harbour;
2. Outlines AQUAFAC's experience with regard to mussel farms;
3. Outlines AQUAFAC's experience with regard to subtidal benthic surveys;
4. Describes the positive impacts of mussel cultivation on both the sea bed and the water column and
5. Provides an assessment of a suite of criteria listed in the Fisheries (Amendment) Act, 1997.

2. AQUAFAC T's Relevant Experience.

2.1. Experience in Wexford Harbour

In 2005, AQUAFAC T carried out subtidal benthic surveys in Wexford Harbour as part of the EU Water Framework Directive (WFD) monitoring programme on behalf of both the Marine Institute and the Environmental Protection Agency (EPA). AQUAFAC T was retained by Mott McDonald who were the consulting engineers for Glanbia in a project relating to the latter's food production facility in Wexford. AQUAFAC T was also part of the Bord Iascaigh Mhara-led UISCE project that studied Wexford Harbour in depth.

2.2. Experience with mussel farms

AQUAFAC T has carried out an extensive range of surveys at mussel farms, particularly in Killary Harbour, Co. Galway to assess the ecological impacts of mussel cultivation on the water column and the seabed. AQUAFAC T has also carried out similar studies on both oyster farms and salmon farms. During the period between 2000 – 2006, AQUAFAC T was appointed as experts to the International Council for the Exploration of the Seas (ICES) working group on aquaculture. In 2013, 2014, 2017 and 2018/19, AQUAFAC T has also carried out assessments on licence applications on behalf of the Aquaculture Licence Appeals Board (ALAB).

2.3. Experience with Marine Subtidal Surveys

AQUAFAC T has extensive experience in the planning, management, execution, analysis and reporting of biological seabed (benthic) survey work. Some examples of the more recent surveys that have been carried out for the Marine Institute and NPWS include the following:

- Benthic sampling and analysis of WFD benthic samples from Galway Bay, Kinvara Bay, Camus Bay and Kilkerrin Bay in 2013/2014 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Killiney Bay, Waterford Estuary, Roaringwater Bay, Cork Harbour and Kenmare Bay in 2013 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Baltimore, Boyne Estuary, Castletownbere, Clew Bay, Cromane, Dublin Bay, Gweebarra Bay, Inner Kenmare Bay, Killala Bay, Killybegs Harbour, Kilmakilloge, Northwest Irish Sea, Sligo Bay, Tralee Bay and Youghal in 2012 for the Marine Institute;
- Benthic sampling and analysis of the Codling Bank for the NPWS in July 2012;

-
- Benthic sampling and analysis of the Kish/Bray and Blackwater Banks in February 2012 for NPWS;
 - Benthic sampling and analysis at two proposed aquaculture sites in 2012 for the Marine Institute;
 - Benthic sampling analysis for the Galway Bay Cable Project in Inner Galway Bay August 2012 on behalf of the Marine Institute;
 - Benthic sampling and analysis of Kenmare Bay, Tralee Bay and the Magharees in 2011 for the Marine Institute and NPWS;
 - Benthic sampling of Killybegs Harbour, Dundalk Bay, Clew Bay, Newport Bay, Westport Bay, Killary Harbour, Broadhaven Bay and Lough Swilly for the Marine Institute and the EPA in 2011;
 - Benthic sampling and analysis of Mulroy Bay, Rutland Bay and Islands, Drumcliff Bay, Sligo Harbour, Killala/Moy Estuary, Kilkerrin Bay, Mannin Bay, Slyne Head, Kingstown Bay, Shannon Estuary, Hook Head, Saltee Islands and Carnsore Point in 2010 for the Marine Institute and NPWS and
 - Benthic sampling and analysis of Galway Bay, Clew Bay, Donegal Bay, Broadhaven Bay, Blacksod Bay, Lough Swilly, Wexford Harbour, Bannow Bay and the Blackwater Estuary in 2009 for the Marine Institute and NPWS.

3. Description of the mussel cultivation process.

The vast majority of seed mussels is sourced off the east coast of Ireland. This is regulated by DAFM. The range of seed size sourced is 15-40mm but the ideal range is 25-35mm. In general, the seed sourced on the east coast beds is brought back into the harbour on the same day for re-laying. The opening times of the seed beds vary and are dependent on when DAFM authorise same. Late summer is normally the seed fishing period.

Two sites within Wexford Harbour are proposed to be used for seed collection which involves identifying natural intertidal mussel settlement within the sites and relocating the seed mussels to subtidal areas. The stocking density of seed within the harbour varies across each producer and is site dependent. At present the seed stocking density ranges from 10-60 tonnes/hectare with the average around 30 tonnes /ha. Re-laying of seed mussels from the hold is carried out by water jet through holes in the side of vessel. Once re-layed, the mussels can take from 12-24 months to reach market size but the average growth period is around 18 months. However, the timing on the re-lay plot can depend on the stock level from the previous year, the progression of sales from the previous year's stock, the progression of sales of the current year's stock, the market price, demand and the fluctuations of meat yield levels.

Mussels sold have to be purified and de-gritted as Wexford Harbour outer is classified as B (mussels require to be depurated in sea water prior to sale), whereas Wexford Inner is classified as C (if for consumption, mussels must be cooked prior to sale) and mussels from here would have to be moved out into the outer harbour for finishing to have them classified as B mussels.

During the ongrowing period after re-laying of seed, stock can be fished for starfish and green crab although not all mussel producers do this. There are two boats fishing for green crab across the harbour on a variety of sites where they have permission or licence. Starfish are generally confined to the outer sections of the harbour closer to Raven Point.

Some producers move stock between sites *e.g.* they may have ground that is good for finishing (maximising meat yield) and will seek to finish their stock on such grounds. Cleaning of the sites is normally done through the action of harvesting. Most mussel harvesting is carried out from September to April with many operators finished by the end of December. Some harvesting can be carried out during the summer months but this depends on the market. The slack time is normally February to June. During this time monthly sampling occurs to track stock quality. However, during the harvesting period, sites would be checked more frequently and this varies considerably among the producers and is probably dependent on the quantity of stock the producer normally exports.

During the harvesting season, access varies from 1 to 6 times per week. Access to sites usually happens between half flood to half ebb where the tidal restriction is 3 hrs either side of high tide and for some sites, the restriction is greater (1.5 hours before and after high tide).

During harvesting and re-laying, the dredgers move slowly over the site with the dredges trailing about 30 meters behind the vessel which when full, are winched in and the contents emptied into the hold. Once in the hold, mussels are moved up a conveyor belt through a washer and crabs/starfish are picked off along with stones/waste. The mussels are then directed by conveyor to one tonne bags hanging in the other part of the hold. Normally about 20 tonnes are harvested for each transport to the market. Unloading from the boat is either carried out at the quayside by an onboard crane or using a crane on a lorry onto wooden pallets which are then loaded into a transport lorry.

It should be noted also that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and upturned sea bed will be quickly re-colonised by the same suite of the species that occur in this habitat.

4. Ecological services provided by mussel farming in Wexford Harbour.

There are several important ecological aspects of mussel cultivation that should be noted and these are:

1. The historical use of Wexford Harbour for the cultivation of mussels;
2. The eutrophication mitigation benefits arising from mussel cultivation in an area that is known to be suffering from mild eutrophication and
3. The ecological benefits associated with mussel cultivation.

1. *Mussel cultivation in Wexford Harbour.*

Mussels have been recorded in the harbour for at least 2 centuries and most likely for a much longer time period. The former time scale is confirmed by fisheries reports from the 19th century and the longer time scale, although a presumption, is entirely likely. It is clear, from early records, that mussels would have been present in the harbour presumably contributing positively to its ecosystem's functioning.

Within the conservation objectives of the Slaney River Valley SAC (site code 00781, NPWS 2011a, b), no community type is listed as mussel reefs; however, mussels are considered a component of the Mixed Sediment Community Complex found in the habitat feature Estuaries (1130) and it is ecologically correct to include this species within that community type. It is not possible however, to determine the numbers or extent of mussels currently in the harbour that can be considered as 'natural' or that derive aquaculture practices. AQUAFAC's historical records of this community type *i.e.* Mixed Sediment Community in Wexford Harbour show that it has been stable since the first survey was carried out in 2005.

2. *The trophic status of the Slaney Estuary.*

The Slaney River catchment supports extensive areas of agricultural lands from which non-point source run off feeds into the river. For this reason (and also arising from towns and small villages upstream in the catchment), the system has been classed as polluted or potentially eutrophic in the last number of cycles (EPA, 2015) (Table 1 below).

Year	Lower Slaney	Wexford Harbour
2012-2014	Eutrophic	Intermediate
2010-2012	Potentially Eutrophic	Potentially Eutrophic

2007-2009	Eutrophic	Unpolluted
2001-2005	Eutrophic	Intermediate

Bivalves, such as mussels, are suspension feeders and feed at the lowest trophic level, influencing the nutrient and organic interaction between the water column and the sea bed. They harvest phytoplankton and organically enriched particles. In linking these two systems, bivalves play an important role in the consumption and movement of energy within marine systems. The ability to control/mediate excess phytoplankton is an important ability of bivalves. Many papers have concluded that bivalves have the ability to control *i.e.* reduce, phytoplankton abundance in shallow water systems (Dame, 2013; Gallardi 2014; Filgueira *et al.* 2015; Petersen *et al.*, 2015).

○ For these reasons, grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is an important control mechanism for eutrophication in the system and by reducing numbers of mussels/production areas, this system will become even more eutrophic.

3. *Habitats provided by shellfish communities.*

Shellfish communities are known to provide important structure and enhance habitat heterogeneity in marine systems (Walles *et al.*, 2015). The shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. (Another role the shells play is in the sequestration of carbon).

○ For these reasons, the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

Based upon the information presented in Sections 1, 2 and 3, bottom mussel culture at current levels in Wexford Harbour has a positive role in ecosystem functioning in terms of:

1. Nutrient, phytoplankton and organic carbon sequestration
2. Provision of habitat for other marine flora and fauna and
3. Food resources for "Qualifying Interest" species of the SAC and "Species of Qualifying Interest" for the SPA.

5. Assessment of criteria listed in the Fisheries (Amendment) Act 1997.

AQUAFACT was also asked to consider and comment on the 7 following criteria as listed in Section 61 of the Fisheries (Amendment) Act 1997:

61. The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of

- a. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- b. Other beneficial uses, existing or potential, of the place or waters concerned,*
- c. The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- d. The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- e. The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- f. The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- g. The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.*

1. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question.

The inner sections of Wexford Harbour is an entirely suitable place to carry out mussel cultivation as it is relatively sheltered and shallow.

2. Other beneficial uses, existing or potential, of the place or waters concerned.

The only other use of Wexford Harbour is for boating but the two activities are not mutually exclusive.



-
3. **The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters.**

As noted in the Introduction, two Natura 2000 sites (an SAC and an SPA) are present within Wexford Harbour and the NPWS has drawn up a suite of conservation objectives for both these sites that need to be complied with. The conservation objectives of the SAC are the more relevant to mussel farming in the harbour as sea floor communities are listed as a Qualifying Interest (QI) for the area and the action of dredging for harvesting the stock could be seen as having a negative impact on the conservation status of the SAC. However, as has been described above, Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

4. **The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on.**

The economic impact on the general area is seen as positive as the cultivation process provides employment for local people.

5. **The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna.**

As noted above, the ecological effects of mussel cultivation generally are seen as positive in Wexford Harbour.

6. **The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977.**

As noted above, the ecological effects of mussel cultivation are seen as positive in Wexford Harbour.

7. **The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.**

No impacts are predicted on the man-made environment or its heritage value.

6. Conclusion

Mussel cultivation has been on-going in Wexford Harbour certainly for many decades and probably longer. As for all estuaries, the location is highly dynamic with short term and seasonal changes in flow rates, salinities, suspended solids and nutrient loadings and wave climate conditions. In addition, the catchment area of the River Slaney is highly agriculturally developed and also has a number of medium sized towns *e.g.* Bunclody and Enniscorthy all of which add nutrient loads to the river. This give rise to eutrophic conditions in the estuary. As mussels are suspension feeders and feed at the lowest trophic level they play an important role in regulating nutrient levels in the water column as they harvest phytoplankton and organically enriched particles. For these reasons, it is highly likely that grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is likely to be an important control mechanism of eutrophication in the system and by reducing numbers of mussels/production areas, the system will become even more eutrophic.

Shellfish communities provide important structure and enhance habitat heterogeneity in marine systems and the shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. For these reasons, it is highly likely that the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

The main impact of bottom cultivation of mussels relates to the harvesting operation where dredges are used to collect the adult shellfish for sale to market. It should be noted that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and that upturned sediments turned up by the dredging activity will be quickly re-colonised by the same suite of the species that occur in this habitat. Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

References

Dame, R.F. (2013). Ecology of marine bivalves: an ecosystem approach. 2nd Edition. CRC press. 271pp.

EPA. (2015). Trophic Status of Ireland's waters.

Filgueira, R., Byron, C.J., Comeau, L.A., Costa-Pierce, B., Cranford, P.J., Ferreira, J.G., Grant, J., Guyondet, T., Jansen, H.M., Landry, T., McKindsey, C.W., Petersen, J.K., Reid, G.K., Robinson, S., Smaal, A., Sonier, R., Strand, O., and Strohmeier, T. (2015). An integrated ecosystem approach for assessing the potential role of cultivated bivalve shells as part of the carbon trading system. *Mar Ecol Prog Ser* 518: 281–287.

Gallardi, D. (2014). Effects of Bivalve Aquaculture on the Environment and Their Possible Mitigation: A Review. *Fish Aquac J* 5: 105. doi: 10.4172/2150-3508.1000105.

National Parks and Wildlife Service, (2011 a and b). Slaney Estuary SAC site synopsis and conservation objectives. NPWS website.

Petersen, J.K., Hasler, B., Timmermann, K., Nielsen, P., Tørring, D.B., Larsen, M.M., Holmer, M., (2014). Mussels as a tool for mitigation of nutrients in the marine environment. *Mar. Pollut. Bull.* 82, 137–143.
Petersen, J.K., Saurel, C., Nielsen, P. and Timmermann, K. (2015). The use of shellfish for eutrophication control. *Aquaculture International* DOI: 10.1007/s10499-015-9953-0

Walles, B., Mann, R., Ysebaert, T., Troost, K., Herman, P. and Smaal, A. (2015). Demography of the ecosystem engineer *Crassostrea gigas*, related to vertical reef accretion and reef persistence. *Estuar. Coast and Shelf Sci.*, 154 (2015) 224e233

APPOINTMENTS

**BOOK KEEPER
WANTED**

Book Keeper required for a haulage company near Enniscorthy. Must have minimum 2 years experience in a similar role with strong Microsoft Office skills. Prior use of accounting systems preferred. Should have good organization, problem solving skills & the ability to work unsupervised.

If you are interested, please email office.adh1@gmail.com for further information, or call 085 8637633 between 9am - 1pm Monday to Friday.

SPECIAL NOTICES

**FISHERIES (AMENDMENT) ACT, 1997 (NO. 23)
FORESHORE ACT, 1933 (NO. 12) NOTICE OF
DECISION TO GRANT AQUACULTURE AND
FORESHORE LICENCES.**

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to T.L. Mussele's Ltd., Clonard Business Park, Whittemill Industrial Estate, Wexford, Co. Wexford. SITE REFS: T03/030A2, T03/030B, T03/030E, T03/030F, T03/030/1 (site D) and T03/039A for the bottom cultivation of mussels on sites on the foreshore in Wexford Harbour, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie

[@agriculture_ie](https://twitter.com/agriculture_ie)



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

**FISHERIES (AMENDMENT) ACT, 1997 (NO. 23)
FORESHORE ACT, 1933 (NO. 12) NOTICE OF
DECISION TO GRANT AQUACULTURE AND
FORESHORE LICENCES.**

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to FJORD FRESH MUSSELS LTD, C/O O'CALLAGHAN, O'MAHONY CODY & CO., CLONARD BUSINESS PARK, WHITEMILL IND. ESTATE, WEXFORD, CO. WEXFORD, REFS: T03/046A, T03/046B AND T03/046C for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie

[@agriculture_ie](https://twitter.com/agriculture_ie)



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



Co. Wexford
Education Centre
Local Children's Care Centre

Temporary (Full-Time) Administrator position available at Co. Wexford Education Centre

Typical responsibilities of this role include:

- maintaining diaries and arranging appointments
- preparing and collating reports
- filing
- preparing accounts
- organising meetings
- managing databases
- liaising with relevant organisations and clients

Please forward your CV to Lorraine O'Gorman, Director, Co. Wexford Education Centre, Milehouse Road, Enniscorthy, Co. Wexford or alternatively email director@ecwexford.ie on or before Friday September 20th 2019.

Co. Wexford Education Centre is an equal opportunities employer.

**WEXFORD
COMPUTER
SERVICES**

Providing affordable,
reliable computer support.

All aspects of computer services covered including consultation, repair, upgrade, installation, health check, virus removal, laptop screen and power jack replacement.

FREE PICKUP & RETURN
Call Dermot Lucking on 087-3229896
email: info@wexfordcomputerservices.ie
www.wexfordcomputerservices.ie

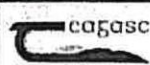


SPECIAL NOTICES

Drains
Unblocked
Chimney Cleaning
www.robertrochedrains.com
Tel. 087-2130669

**What's
on
where
and when.**

Find out in our
Entertainment
guide

**Transferring the Family
Farm Clinic 2019**

Teagasc invite you to their popular series of 'Transferring the Family Farm' clinics designed to enlighten & educate you on the many details involved in creating an effective plan for succession.

Woodford Dolmen Hotel, Carlow

Thursday, 26 September | 10:30am

Attendance free | Pre-booking is essential

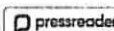
Register your place online at
www.teagasc.ie/farmtransfer

**CONRADH NA
GAELGE**

Irish Language classes have re started from 11th September, continuing every Wednesday from 8 00-9 30pm at the C.B.S. Secondary School Thomas St. Wexford

Tá fáilte roimh chách All are welcome

For enquires ring Pádraig 086-8306530
Bigí Linn



PRINTED AND DISTRIBUTED BY PRESSREADER
Pressreader Print is 100% FSC
certified and meets the highest standards

SPECIAL NOTICES

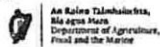
FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to WEXFORD MUSSELS LTD, ROCKFIELD, COOLCOTS, WEXFORD, CO. WEXFORD, REFS: T03/035A, T03/035B1, T03/35B2, T03/035C, T03/035F&G1, T03/035F&G2, T03/035F&G3, T03/072B, T03/090A for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquaculture/foreshoremanagement/aquaculturelicences/aquaculturelicencedecisions/>. 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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



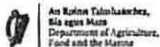
FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to T.L. Mussels Ltd., Clonard Business Park, Whitmill Industrial Estate, Wexford, SITE REF: T03/030C for the bottom cultivation of mussels on a site on the foreshore in Wexford Harbour, Co. Wexford. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicencing/

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



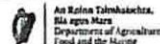
FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to WEXFORD MUSSELS LTD, ROCKFIELD, COOLCOTS, CO. WEXFORD, SITE REF: T03/072A for the bottom cultivation of mussels on a site on the foreshore in WEXFORD HARBOUR, CO. WEXFORD. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicencing/

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



Loreto Secondary School,
Pembroke Hill, Ballynagee,
Wexford.

Telephone: 053-9146162
Website: www.loreto-wexford.com

Admission into
1st year, September 2020

- The school will accept fully completed application forms in respect of girls in 6th class primary/national school (or its equivalent) for admission into our 1st year group (150 students) in September 2020 from 8.15 am on Thursday, 26 September 2019 until 1.00 pm on Friday, 18 October 2019. Forms received outside of these dates will be returned to sender.
- Application forms, as well as copies of the school's admission policy, are available from the School Secretary and Receptionist during normal school hours (8.15 am to 4.15 pm, Monday to Friday) and may also be downloaded from the school's website - www.loreto-wexford.com

Billy O'Shea,
Principal and Secretary to Board of Management.

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT/ REFUSE AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant (with variations) or refuse to grant Aquaculture and Foreshore Licence applications to the following in the table below in Wexford Harbour, Co. Wexford:

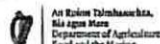
Reference Number	Name	Species	Decision
T03/047 (3 sites A, B & C) T03/083A T03/085A	Loch Garman Harbour Mussels Ltd., 24 Northumberland Road, Ballsbridge, Dublin 4	Mussels (Bottom culture)	Grant Licences (with variations)
T03/048A T03/091A	Noel Scallan, 29 William Street, Wexford Town and Sheila Scallan, Crosswinds, Avondale Drive, Wexford Town	Mussels (Bottom culture)	Grant Licences (with variations)
T03/049 (5 sites A, B, C, D & C1) T03/077A	Riverbank Mussels Ltd, c/o Pricewaterhouse Coopers, Commarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/052 (2 sites A & B)	W. D. Shellfish Ltd, c/o Pricewaterhouse Coopers, Commarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/055 (2 sites E, F&C)	Crescent Seafoods Ltd, Mytilus, Ballaghblake, Curragoe, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/074 (2 sites A & B)	Patrick Swords, Crory Lane, Crossabeg, Co. Wexford and Florence Sweeney, Ballyhoe, Lower Screen, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/080A	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/078A	Crescent Seafoods Ltd, Mytilus, Ballaghblake, Curragoe, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/060B	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/093 (2 sites A & B)	Mr Eugene Duggan, 141 Belvedere Grove, Cookcots, Wexford Town and Mr Jason Duggan, 10 Antelope Road, Maudlinstown, Wexford Town	Mussels (Bottom culture)	Refuse Licence

The reasons for these decisions are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquaculture/foreshoremanagement/aquaculturelicencing/aquaculturelicencedecisions/wexford/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



St. Peter's College Secondary School

St Peters College Past Pupils AGM
Date: Wednesday 25th September 2019
Venue: St Peters College
Mass celebrated in College Chapel at 7.30 pm, followed by AGM in school at 8 pm
All Past Pupils welcome and encouraged to attend
Refreshments served
For further information please contact Declan Cloney, President St Peters College PPU, Tel: 086 8088878 or David Power PRO STC PPU, Tel: 087 7971077

CABINET MAKER AVAILABLE
For all the small jobs around the house
Shelving, Hot Press, Units, Doors, Skirting Boards, Wardrobes etc.
All interior paint work
Walls, Ceilings and Woodwork
087-2436228

BOGGAN SAND & GRAVEL
SUPPLIERS OF SAND, GRAVEL, ALL TYPES OF STONE & DECORATIVE STONE.
ENQUIRIES 087-9684393

ROTHWELL CONTRACTING LTD.
Specialists in Emptying Septic Tanks
• Fully Licensed
• Long Hours
• Seal Tanks
• Spraying all of Co. Wexford
• Specialist in Domestic, Business, Public and Court House
Contact us on our Web Site www.rothwellcontracting.ie or Phone Irwin on 087 2588325

JOHNNY FLOOD WATER PUMPS
www.johnnyfloodwaterpumps.com
All makes of submersibles, deep well, shallow well, water filter & treatment systems
75% grant now available
RATHINURE, ENNISCORTHY, CO. WEXFORD
TEL: 053 9255381 or 087 2532405

From: Xavier Montoya
Sent: Tuesday, 15 October 2019 10:56
To: Chopin, Nicolas
Cc: Sean Cullen <scullen@gsi.ie>

Subject: W re: Satellite derived bathymetry Wexford 2012- Proteus

Dear Nicholas,

Thank you for your email

A few points to clarify the status of the Satellite Derived Bathymetry from Wexford (2012- Proteus)

1. Satellite bathymetry data from Wexford estuary was a pilot study delivered in 2012 by Proteus to explore the potential of applying such techniques in Irish coastal areas
2. After running a comparison with existing terrestrial Lidar (CPW) and multibeam bathymetry (GSI) we deemed the results as not satisfactory for any application related to coastal mapping
3. As a result GSI has not released that bathymetry data to the public
4. We are unaware that companies are accessing these datasets and using them in their applications

please contact GSI if you require any further information

Best regards,

[GSI]

Xavier Montoya Senior Geologist Marine and Coastal Unit Geological Survey Ireland, Eggers Bush, Haddington Road, Dublin D04 K7X4, Ireland
T +353 (1) 6782007 M +353 (0) 872513667 E xavier.montoya@gsi.ie koen.verbruggen@gsi.ie [https://www01.safelinks.protection.outlook.com/?url=http://www.gsi.ie/2F&data=02%7C01%7C%F0in_0Cuifjeanin%40williamfy.com%7C637067317516677077&data=B31WArR8IGyoSu5A5qmN8I BT19-0YMF8NKm01YCH11U%3D&reserved=0](https://www01.safelinks.protection.outlook.com/?url=http://www.gsi.ie/&data=02%7C01%7C%F0in_0Cuifjeanin%40williamfy.com%7C5516ff0d4f9446afeab09d751599538%7C6e02b1ed84a7d46-98e037244d442194e35710%7C0%7C637067317516677077&data=B31WArR8IGyoSu5A5qmN8I BT19-0YMF8NKm01YCH11U%3D&reserved=0) https://www01.safelinks.protection.outlook.com/?url=http://www.gsi.ie/2F&data=02%7C01%7C%F0in_0Cuifjeanin%40williamfy.com%7C637067317516677077&data=B31WArR8IGyoSu5A5qmN8I BT19-0YMF8NKm01YCH11U%3D&reserved=0
A division of the Department of Communications, Climate Action & Environment

**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 or handed in to the ALAB offices**

Name of Appellant (block letters)	LOCH GARMAN HARBOUR MUSSELS LIMITED		
Address of Appellant	84 NORTHUMBERLAND ROAD, BALLSBRIDGE, DUBLIN 4		
Phone:	See Cover Letter	Email:	See Cover Letter
Mobile:	See Cover Letter	Fax:	See Cover Letter

Fees

Fees must be received by the closing date for receipt of appeals	Amount	Tick
Appeal by licence applicant	€380.92	✓
Appeal by any other individual or organisation	€152.37	
Request for an Oral Hearing * (fee payable in addition to appeal fee)	€76.18	✓
<small>* In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.</small>		
(Cheques Payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D

Subject Matter of the Appeal

Decision of the Minister for Agriculture, Food and the Marine in the matter of an Application under Section 10 of the Fisheries (Amendment) Act 1997 (the "Act") and Foreshore Act 1933 for authorisation for the bottom cultivation of mussels on the foreshore on a 17.2 ha site (T03/047B) (the "Site") in Wexford Harbour, Co. Wexford.

Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T03/047B
---	----------

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

Loch Garman Harbour Mussels Limited (the "Appellant") has, both by itself and its predecessors in title, been active in the bottom cultivation of mussels at the Site for several years. It would be severely adversely affected by the Minister for Agriculture, Food and the Marine's (the "Minister") decision to vary the licence sought (the "Decision") by reducing the footprint of the Site from 17.2 ha to 5.27 ha.

**AQUACULTURE LICENCES
APPEALS BOARD**

16 OCT 2019

RECEIVED

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):

The Appellant considers that the Decision is legally flawed for two over-riding reasons:

- (1) The Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Act.
- (2) The Minister has breached fundamental principles of public/administrative law in the Decision, both in terms of its substance and the procedure whereby it was reached.

Further details are included in the Submission.

Signed by appellant:



Date: 16 October 2019

Julien Barbé, Director

Please note that this form will only be accepted by REGISTERED POST or 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

Extracts from Act

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) **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.

WILLIAM FRY

Our Ref 026536.0001.CKL

16 October 2019

By Hand

The Aquaculture Licences Appeals Board (ALAB)
Kilminchy Court
Dublin Road
Portlaoise
Co Laois
R32 DTW5

Our Client: Loch Garman Harbour Mussels Limited

Dear Sirs

We enclose five notices of appeal (the "**Appeals**") on behalf of our client, under Section 40(1) of the Fisheries (Amendment) Act 1997 (the "**Act**"). Please also find attached to this letter proof of payment of the relevant fees to ALAB.

The Appeals are against five separate determinations of aquaculture/foreshore licensing applications (the "**Decisions**") by the Minister for Food, Agriculture and the Marine (the "**Minister**") in September 2019. The Decisions relate to the following sites in Wexford Harbour: T03/047A; T03/047B; T03/047C; T03/083A; and T03/085A.

On behalf of our client, we submitted requests for information under the Freedom of Information Act 2014 ("**FOI**") and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("**AIE**") to a number of relevant public bodies on 8 October 2019 in connection with the Decisions. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decisions, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, our client has had to bring the Appeals before receipt of any responses to those requests.

Our client expressly reserves the right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions relating to information obtained from responses received to those FOI/AIE requests.

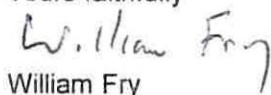
The enclosed Appeals (and the annexes thereto) contain commercially sensitive information. For the purposes of Section 36 of the Freedom of Information Act 2014 and Section 30 of the Act, this information should not be disclosed to any persons except for the relevant officials of ALAB on a strictly "need to know" basis.

Please direct any correspondence in relation to the Appeals to:

Cormac Little

Eoin O'Cuilleainain

Yours faithfully


William Fry

WF-25218269-1

DUBLIN CORK LONDON NEW YORK SAN FRANCISCO SILICON VALLEY

APPEAL UNDER SECTION 40(1) OF THE FISHERIES (AMENDMENT) ACT 1997

SUBMISSION BY LOCH GARMAN HARBOUR MUSSELS LIMITED (T03/047B)

16 OCTOBER 2019

To:

The Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5

Appellant:

Loch Garman Harbour Mussels Limited
84 Northumberland Road
Ballsbridge
Dublin 4

Agent for Appellant:

William Fry
2 Grand Canal Square
Dublin 2
D02 A342

Appeal Against: Decision of the Minister for Agriculture, Food and the Marine
Determination Reference: T03/047B
Applicant: Appellant

Date and Place of Publication of Notice of Decision: 17 September 2019 in the *Wexford People*

Summary

1. This is an appeal against a decision by the Minister for Agriculture, Food and the Marine (the "**Minister**") to grant a variation of the aquaculture licence for the bottom cultivation of mussels on the foreshore at site (T03/047B) (the "**Site**") in Wexford Harbour, Co. Wexford (the "**Decision**") to the Appellant. In the Decision, the Minister cites several positive impacts of the aquaculture activities carried out at the Site. Notwithstanding this, the Minister has decided to reduce the Appellant's licensed area from 17.2 ha to 5.27 ha, with potentially devastating impacts on the Appellant's business. Please see the Decision at **Annex 1**.
2. As outlined in further detail below, the Decision is vitiated by a number of serious flaws. Firstly, the Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Fisheries (Amendment) Act 1997 (the "**Act**"). Secondly, the Minister has breached fundamental principles of public/administrative law in reaching the Decision, both in terms of its substance and the procedure whereby it

was reached. This appeal is supported by a report on mussel cultivation activities in Wexford Harbour dated 16 October 2019 by Aquafact, an environmental consultancy specialising in marine environments (the "**Aquafact Report**"). Please see the Aquafact Report at **Annex 2**.

3. The Aquaculture Licences Appeals Board ("**ALAB**") will also have received the Appellant's appeals against the Minister's decisions to vary the Appellant's licences in adjacent sites (the "**Associated Decisions**" and the "**Associated Appeals**", respectively).
4. By the present appeal, the Appellant respectfully requests ALAB to exercise its power under Section 40(4)(c) of the Act to substitute its decision on the Appellant's licence application by granting the Appellant a licence over the entire portion of the Site of which it has hitherto carried on aquaculture activities, and in respect of which it has applied for a licence (the "**Total Area**"). In the alternative, the Appellant respectfully requests ALAB, under Section 40(4)(b) of the Act, to determine the Appellant's licence application as if it had been made to ALAB in the first instance, by similarly granting a licence over the Total Area.
5. Separately, for ease of administration and given the commonality of facts and issues arising, the Appellant requests ALAB, exercising its discretion under Section 42 of the Act, to join the present appeal with the Associated Appeals, including for the purpose of an oral hearing.

The Appellant

6. The Appellant was incorporated in 2006, for the purpose of acquiring mussel-growing sites in Wexford Harbour, previously operated by a local business man, Mr Billy Gaynor.
7. The sites had been farmed for many years prior to the introduction of the statutory licensing regime. The Appellant is a wholly-owned subsidiary of Hibernian Mussel Holdings Limited, which in turn is 100% owned by Barbé Holding BV, a Dutch company. Barbé Holding BV is owned by the Barbé family who have over 100 years' experience of mussel farming in Yerseke, Netherlands. The Barbé family controls the Barbé Group, an international mussel producer trading under the AquamosseL brand. All of the Appellant's produce is exported to the Netherlands, where it is processed in the Barbé Group's factory.
8. At its Wexford Harbour operations, the Appellant employs three people full-time to work on its boats, and also employs Billy Gaynor in an administrative function. The company's average annual turnover is approximately EUR 700,000.
9. The Appellant has three sites under licence at Wexford Harbour. The reference numbers of these sites are: T03/47B; T03/47B; and T03/47C. It has also made new licence applications in respect of sites T03/83A and T03/85A.
10. The Appellant is appealing the recent Ministerial decision in respect of each of these licences.
11. For further information see <http://www.aquamosseL.nl/EN/home-en.html>

Licence Application Process

12. The Appellant's previous licences, which were granted in 2002, were due to expire in 2012. On 28 August 2011, the Appellant applied to the Department of Agriculture, Food and the Marine (the "DAFM") for renewal of its licences. (Whereas, previously, the Appellant had one licence covering all its sites, the Minister decided during the 2000s to separate each licence into several sites, with one licence per site.)
13. Following its application for a licence renewal, the Appellant received no further correspondence from the DAFM until June 2018, when a public notice was published in the *Wexford People* listing all the relevant licence applications (including the Appellant's) and requesting submissions on those Applications within one month. The Marine Institute, the Inland Fisheries Institute, Wexford County Council and the Department of Heritage and the Gaeltacht (now the Department of Culture, Heritage and the Gaeltacht) each made submissions, of which the Appellant received copies from the DAFM on or about 15 October 2018. The Appellant submitted a response to those submissions to the DAFM on or about 29 October 2018.
14. During the consultation process, the Minister/DAFM gave no indication that he intended or was considering huge cuts to the areas under licence. Likewise, during and after consultation, there was no engagement with the Appellant regarding boundaries.
15. In 2018, the DAFM requested the Appellant to provide access routes to its sites. However, no changes to the licences were implied. The Appellant received no further communication from the DAFM until September 2019, when the Decision and the Associated Decisions were published. In fact, the Appellant learned of the Decision in the 17 September 2019 edition of the *Wexford People* before it received any official correspondence from the DAFM. (See **Annex 3**).
16. It is disappointing and of serious concern that the Minister failed to respond to the Appellant's licence application, or even raise any queries or requests for further information, for a period of over six years. When the DAFM/Minister did finally engage (albeit to a limited extent), the Appellant responded promptly. However, the DAFM/Minister again failed to communicate with the Appellant until the Decision was taken some eleven months later.

Substantive Grounds of Appeal

17. The Appellant's substantive grounds of appeal are, first, by reference to criteria (a) to (g) as set out in Section 61 of the Act and, second, by reference to fundamental principles of public/administrative law.
18. The Appellant submitted requests for information under the Freedom of Information Act 2014 ("FOI"), and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("AIE"), in each case requesting information/environmental information relevant to the Decision, to various relevant public bodies on 8 October 2019. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decision, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, the Appellant has had to bring the present appeal before receipt of any responses to those requests. The Appellant therefore reserves the

right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions based on the responses received to those FOI/AIE requests.

Section 61 of the Act

19. Under Sections 61 (a) to (g) of the Act, the Minister, in considering a licence application, and ALAB, in considering an appeal against a decision of the Minister, must have regard to seven criteria. That section reads as follows:

"The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of—

- (a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- (b) other beneficial uses, existing or potential, of the place or waters concerned,*
- (c) the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- (d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- (e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- (f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—*
 - (i) on the foreshore, or*
 - (ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- (g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters."*

20. It is difficult for the Appellant to make meaningful observations on the Minister's evaluation of these criteria, in the absence of a full statement of reasons for the Decision. While the Decision states that *"it is in public interest (sic) to grant a variation of the licences sought i.e. reducing the footprint of the site"*, the Minister completely fails to justify this statement. The Decision, as it relates to the reduced area, is stated in almost entirely positive

terms, and does not cite any adverse effects of the relevant activity. However, the Minister's apparent belief that granting a licence over the Total Area would be contrary to the public interest is unexplained. This defect is addressed more fully below under the heading "failure to give adequate reasons" (see paragraphs 81 to 89).

21. The Appellant considers that in taking the Decision the Minister erred in law and therefore requests ALAB to take account of the following submissions in relation to each of the statutory criteria.

(a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question

22. The Total Area, and the wider Wexford Harbour waters, are undoubtedly suitable for aquaculture and have been found as such by the Minister. The Wexford County Development Plan 2013 – 2019 (the "**County Development Plan**") states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]¹, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).²*

23. The Appellant and its predecessors have farmed mussels in the Total Area/Wexford Harbour since 'time immemorial'. During that time, the relevant waters have provided an exceptionally fertile ground for the cultivation of mussels while also supporting many other species of wildlife/sealife. Indeed, the DAFM's own *National Strategic Plan for Sustainable Aquaculture Development 2015* refers to Wexford Harbour as one of Ireland's "*5 major production areas for bottom mussel*".³

24. In mainland Europe, Wexford mussels enjoy a stellar reputation and attract a premium price. Geographic factors help to make the area especially well-suited to mussel farming. In particular, the shape of the seabed in the Harbour protects mussels from high seas, thereby minimising mortality. Wexford Harbour is sheltered from almost all sides against storms. It is only open to easterly winds – however, the sandbanks in the mouth of the Harbour provide protection against these. Mussels generally thrive in areas where salt and fresh water meet. The tides ensure that nutrients from both the Irish Sea and the River Slaney mix well.

25. The Aquafact Report concludes that Wexford Harbour is entirely suitable for mussel cultivation.

26. The suitability of the waters for aquaculture is also affirmed by the Minister in the Decision, where he states, at paragraph (a), that "*scientific advice is to the effect that the waters are suitable*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (a).

¹ As implemented into national law by the European Communities (Quality of Shellfish Waters) Regulations 2006 (SI No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

² See page 115, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexCoPlan13-19/Volume8.pdf>.

³ See <https://www.agriculture.gov.ie/media/migration/seafood/marineagenciesandprogrammes/nspa/NationalStrategicPlanSusAquaDevel181215.pdf> at page 30.

(b) other beneficial uses, existing or potential, of the place or waters concerned

27. The Aquafact Report finds that the only other actual use of Wexford Harbour is for boating and that activity may be pursued notwithstanding the presence of mussel farms. For the purposes of mussel cultivation, other than mussels living on the seabed, there is little or no infrastructure in place on the seabed or emerging therefrom creating any visual or other impediments for other activities by the practice of bottom mussel cultivation.
28. The Minister was therefore correct to state, at paragraph (b), that "*public access to recreational and other activities is already accommodated by this project*", and at paragraph (g) that "*there are no issues regarding visual impact as the site to be utilised is for bottom culture*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (b).

(c) the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters

29. The Appellant acknowledges and indeed relies upon the fact that the relevant waters are in a special area of conservation ("**SAC**") (or 'Natura 2000' site).⁴ The importance of mussel cultivation to the Site and the support of the listed habitats and species therein, is not in dispute. Indeed, this has been specifically recognised in the Decision (see paragraph (j)). In addition, the symbiotic importance of the relevant waters to mussel farming is recognised in the relevant local development plans.
30. The Aquafact Report concludes that the dynamic nature of the water flows in Wexford Harbour would mask any negative impact of mussel dredging.
31. As noted above, the County Development Plan states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]⁵, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).*
32. The Wexford Town & Environs Development Plan 2009-2015 (which was extended until 2019)⁶ refers to the Wexford Wildfowl Reserve (the "**Reserve**") which is situated to the north-east of Wexford Harbour. This document states that "*the overall aim of the Council will be to promote a reasonable balance between*

⁴ Regulation 3 of the European Communities (Conservation of Wild Birds (Wexford Harbour and Sloba Special Protection Area 004076)) Regulations 2012 (as amended) (SI No. 194/2012). Natura 2000 is a network of nature protection areas in the EU. This consists of SACs and special protection areas or SPAs under the EU's Habitats and Birds Directives.

⁵ As implemented in Ireland by the European Communities (Quality of Shellfish Waters) Regulations 2006 (S.I No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

⁶ <https://www.wexfordcoco.ie/planning/development-plans-and-local-area-plans/current-plans/wexford-town-and-environs-development>

conservation measures and development measures in the interests of promoting the orderly and sustainable development of Wexford Town" (emphasis added).⁷

33. The maintenance of the status quo, i.e., granting the Appellant a licence over the Total Area, poses no threat to the maintenance of a reasonable balance between the conservation of the Reserve located to the north-east of the Site and the long-standing mussel cultivation activities in Wexford Harbour, which contribute positively to Wexford's economy and reputation.
34. At paragraph (i) of the Decision, the Minister states that "*the Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's [sic], including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC , the Raven Point Nature Reserve SAC , Wexford Harbour and Slob's SPA and the Raven SPA*". This statement demonstrates an error of judgement on the part of the Minister. As will be described in further detail in the submissions under sub-section (e), it is not necessary for the Site to be "reconfigured" in order for the Appellant's aquaculture activities not to affect significantly and adversely the integrity of the relevant SAC. On the contrary, reducing the Appellant's licensed area may, in fact, lead to significant and adverse effects.

(d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on

35. At paragraph (c) of the Decision, the Minister states that "*the proposed development should have a positive effect on the economy of the local area*". The only way in which the Decision could be of benefit to the local economy is if it were a choice between the reduced licence, per the Decision, and no licence at all. However, this is not the case. In reality, the "proposed development", in the words of the Decision, will reduce economic activity. Put simply, the Minister has addressed the wrong question.
36. The Decision, which proposes to cut the Appellant's hectareage significantly, would have an adverse effect on the local economy. The Decision will inevitably result in much lower quantities of mussels being farmed and exported, with devastating effect on the Appellant's turnover, posing a very real threat to the viability of the Appellant's business. (This will also affect any corporation tax revenues generated by the State from the Appellant.)
37. The cessation of the Appellant's mussel farming activities would entail the disposal of fishing fleet in addition to cuts to employment. These effects will not only impact the Appellant and its employees directly but will also permeate throughout the wider Wexford economy.
38. Other than the Appellant and its employees, the economic effects of the Decision will be felt by persons in, at least, the following categories of activity:

38.1 electrical maintenance, repair and replacement of marine and shore-based plant and equipment;

⁷ See page 78, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexfordTownPlan09-14/WexTown%26EnvDevPlan2009Ch7-9.pdf>

- 38.2 mechanical maintenance, repair and replacement of marine and shore-based plant and equipment;
- 38.3 the fabrication and maintenance of dredges, dredging equipment and other custom-made equipment used in the industry;
- 38.4 mussel dredgers, which ply a route into and out of Wexford Harbour and have helped maintain access to the Harbour, Wexford Boat Club and the Wexford Quays for visiting boats and increase confidence in the navigability of the harbour, despite its sand bars; and
- 38.5 the haulage sector: at the very least, 50 – 100 lorries per annum come into Wexford to collect mussels for export. These hauliers must spend money in the Wexford economy which would be lost if the Appellant reduce its business activities at the Site.

39. Furthermore, the presence of the mussel fishing industry in Wexford town contributes to the enjoyment of tourists, who perceive Wexford as still a 'working' fishing location and not yet dominated by commercial development and idle leisure craft tied up in marinas (the Aquafact Report also notes that the cultivation of mussels has a positive economic impact.)

40. The Decision, if upheld, will have severe economic consequences which will exacerbate the problems exporters in the agri-food sector, such as the Appellant, would already have faced given the looming threat associated with the UK's planned withdrawal from the EU. Therefore, the Appellant fails to understand why the Minister, at paragraph (c) of the Decision, concluded that the development, as contemplated in the Decision, "*should have a positive effect on the economy of the local area*".

(e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna

41. The Aquafact Report underlines the ecological benefit of mussel cultivation in Wexford Harbour. It notes the long-standing positive contribution of such cultivation to the relevant ecosystem while also emphasising the control mechanism mussels exert on eutrophication. Finally, mussel beds in Wexford Harbour give rise to greater biodiversity – this benefit would be lost/greatly reduced by the Decision.

Estuarine area

42. In reaching the Decision, the Minister appears to have determined that, in estuarine areas, only 15% of the relevant area should be licensed for mussel farming activities. The effect is to reduce significantly the Appellant's licensed area. The figure of 15% is referenced in the DAFM's (undated) Appropriate Assessment Conclusion Statement (the "AACS") for the Wexford Harbour and neighbouring SACs,⁸ which is referenced in paragraph (j) of the Decision. The figure of 15% appears to be based on a recommendation by the National

⁸
<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/wexford/ConclusionStatementWexfordHbr110619.pdf>

Parks & Wildlife Service (the "NPWS") in its 2011 report, "Slaney River Valley SAC (site code: 0781) Conservation objectives supporting document -marine habitats and species".⁹

43. The NPWS's report states as follows: "Significant anthropogenic disturbance may occur with such intensity and/or frequency as to effectively represent a continuous or ongoing source of disturbance over time and space (e.g., effluent discharge within a given area). Drawing from the principle outlined in the European Commission's Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status, this Department takes the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%. Thereafter, an increasingly cautious approach is advocated" (emphasis added).¹⁰
44. The nature of mussel farming activity is crucial, in this context. The Appellant's mussels, as with all other bottom cultivators of mussels, are located on the seabed. While the amount of time spent physically farming the area is variable, there is no basis for concluding, as is implicit in the Decision, that the Appellant's activity is continuous or ongoing and that, consequently, any geographic threshold should apply. (The Aquafact Report contains a detailed description of the mussel cultivation process).
45. While the mussels are maturing, the Appellant carries out monthly sampling activities to check for growth or predation. Sampling involves one passage of the Appellant's vessel over the area where the mussels are lying. A dredge is towed to take a sample of mussels which, after inspection, is returned to the seabed.
46. Prior to harvesting, mussels may be shifted from one area to another, more productive, area. This may be done either to increase meat content or because of predation in the first area. Moving a bed of mussels normally means the Appellant's vessel is active on a site for seven or eight days over a two-week period. A normal fishing day during this time involves, at most, three to four hours' fishing.
47. When the Appellant harvests the mussels for sale, it 'fishes to order'. The orders normally require that fishing takes place on a Monday, Tuesday, Wednesday or Saturday. If market conditions are very good, the Appellant may fish on all four days; conversely, when things are slow, the Appellant may not fish any of the days. The Appellant normally fishes for one or two lorry-loads of mussels when harvesting. This activity takes approximately one hour to catch, so the dredger is out in the Wexford Harbour for under two hours.
48. Sales of mussels may take place from July right through to the following April. The Appellant only has a certain amount to harvest in a season, the activity is therefore 'market-driven'. It may fish over a long time, or the harvest may be concentrated and carried out in a short space of time. If the Appellant were to fish, say, 40 lorry-loads in a season, that would mean a maximum of 40 'harvesting trips' over nine months. On busy days, it may fish for two lorry-loads, which would reduce the total number of days 'on site' per year.

⁹ https://www.npws.ie/sites/default/files/publications/pdf/000781_Slaney%20River%20Valley%20SAC%20Marine%20Supporting%20Doc_V1.pdf

¹⁰ Page 7.

49. The mussels are in Wexford harbour for approximately two years from the time they are re-laid as seed mussels to when they are harvested for export. For the vast majority of this time, the mussels are simply growing in nature, and the Appellant's vessel is idle at the quayside.
50. Therefore, there is no basis for concluding that the Appellant's mussel farming activity is "continuous or ongoing" or causes "continuous disturbance". Furthermore, there is no effluent discharge other than what the mussels themselves produce.¹¹
51. On the contrary, mussel farming is of significant benefit to the marine environment, particularly where other activities are undertaken nearby. The Appellant is fully aware of environmental issues; its products are certified by the Marine Stewardship Council¹². Lindahl and Kollberg demonstrate that mussel farming is a very effective method of combatting eutrophication, an environmental hazard caused by nutrient leakage into marine waters from agriculture, rural living, sewage discharges and other human activities.¹³
52. The Appellant refers to Chapter 11 of the Marine Institute's *Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)*,¹⁴ which comprises Annex I to the Marine Institute's *Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710) Wexford Harbour and Slobbs SPA (site code 004076) and Raven SPA (site code 004019)*¹⁵ (the "MIAA").
53. In that chapter, the authors note that mussels are historically part of Wexford Harbour's ecosystem and are considered a component of the mixed sediment community complex. It is also noted that mussels play an important role against eutrophication of the water in the harbour. The report also highlights the enhancement to habitat heterogeneity caused by the mussel population.¹⁶ Chapter II concludes as follows:

"In summary, it is our view, based upon the information presented above, that bottom mussel culture, at current levels, does have a positive role in ecosystem function in terms of nutrient and phytoplankton mediation as well as provision of habitat. The addition of more mussels to the system (with new applications) may have additional benefit in terms of reducing effects of eutrophication, and may further improve status in the outer parts of Wexford Harbour relative to the Lower Slaney waterbody; however, this remains to be determined/confirmed and is subject to availability of additional seed" (emphasis added).¹⁷

¹¹ In fact, the Appellant notes that mussels, even without farming, naturally occur in Wexford Harbour.

¹² <https://www.msc.org/>

¹³ Odd Lindahl and Sven Kollberg, "How mussels can improve coastal water quality", BioScience Explained, Vol 5 No 1, dated 2008. See here: https://bioenv.gu.se/digitalAssets/1575/1575640_musselengq.pdf

¹⁴ <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIWexfordHarbourSACsAA270318.pdf>

¹⁵ <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/WexfordHarbourNaturaSitesAASummary270318.pdf>

¹⁶ See pages 63 to 67.

¹⁷ Page 67.

54. The clear and uncontroverted evidence is thus that mussel cultivation supports and contributes positively to the relevant SAC and its conservation objectives. Given the length of time that this activity has been carried on in a manner that has led to the designation of Wexford Harbour as part of an SAC/SPA and the positive impacts on its integrity since then, it makes no sense whatsoever to reduce the area in which mussel cultivation occurs. *A fortiori*, it makes absolutely no sense to carry out such a drastic reduction which will severely impact on the economic viability of the activity in question which is such a positive contributor to the harbour as well as to the local economy.
55. With regard to the assertion (quoted above) that adding more mussels is subject to availability of additional seed, the Appellant notes that the relevant seed does not need to be fished in the Irish Sea. Several operators re-lay seed from elsewhere or take seed from half-grown mussels (the Appellant also notes that such movements of shellfish must be approved by the Marine Institute). Therefore, the additional benefits highlighted in Annex I to the MIAA are not, in fact, "*subject to the availability of additional seed*" from Irish waters.
56. Furthermore, the European Commission's Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018 (the "**EC Guidelines**")¹⁸ indicate that devoting as much as 25% of an SAC to aquaculture is unlikely to affect that SAC's conservation status. In fact, the EC Guidelines do not necessarily apply a 25% 'limit' to aquaculture activities taking place within an SAC, as the Minister/NPWS seems to have inferred. The general evaluation matrix at Annex E of the EC Guidelines denotes an SAC's conservation status as 'Unfavourable – bad' if, *inter alia*, "*more than 25% of the area is unfavourable as regards its specific structures and functions*" (emphasis added). This means that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status.
57. Contrary to the apparent inference of the Minister/NPWS, this does not in any way imply that if more than 25% of an SAC is licensed to aquaculture, the entire habitat is unfavourable. The NPWS has therefore misinterpreted the EC Guidelines.
58. As far as the Appellant is aware, no other EU Member State has interpreted the EC Guidelines in this manner. It is also worth recalling that mussel farming activities have subsisted for several generations in Wexford Harbour, with positive environmental effects. Mussel and other shellfish beds are known for providing a habitat for a large number of species. For example, the Wageningen University & Research, a Dutch third-level institution, has conducted several studies in the western Wadden Sea, off the northern coast of the Netherlands, concluding that mussel farming creates a 'hot spot' for biodiversity¹⁹. (See also the Aquafact Report).
59. However, even assuming that the NPWS's reading of the EC Guidelines is correct (which the Appellant does not believe to be the case), the Appellant does not understand why (a) the NPWS felt the need to cut this 25% figure by almost half, to 15% or (b) more pertinently, why the Minister decided to adopt the NPWS's reasoning.

¹⁸ European Commission, "*Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018, Final version – May 2017*", available here: <https://circabc.europa.eu/sd/a/3ed9f375-227e-46cd-b3dd-1fc59cefcdbd/Doc%20NADEG%2017-05-02%20Reporting%20guidelines%20Article%2017%20final%20April%2017.pdf>

¹⁹ <https://www.wur.nl/en/Research-Results/Research-Institutes/marine-research/Research/Projects/PRODUS-Sustainable-shellfish-culture/Effects-on-nature.htm>

60. Regarding any disturbance to the population of birds at the Wexford Wildfowl sanctuary, throughout its time engaged in mussel farming activities in Co. Wexford, the Appellant has been aware of the Reserve, located to the north-east of the Site. The Appellant understands that, in 2008 or 2009, the NPWS had concerns about the potential effects of mussel farming on the local population of Greenland white-fronted geese living on the Reserve.
61. In/around 2009, the NPWS undertook a three-day study, whereby it monitored the behaviour of the geese before, during and after a day on which the Appellant fished for mussels. The Appellant understood at the relevant time that the NPWS was due to carry out further relevant studies and produce a report demonstrating its conclusion. However, this report never materialised.
62. Around the same time, Bord Iascaigh Mhara ("**BIM**") hired its own photographer to conduct a similar exercise. The Appellant understands that BIM's report uncovered minimal effect, if any, on the relevant geese. The Appellant further understands that BIM has footage, and can produce this at a later stage if requested by ALAB (e.g., at an oral hearing). In fact, to the Appellant's knowledge, BIM's report showed that the geese in fact moved closer to the fishing activity when it was being conducted. To the best of the Appellant's knowledge, despite the findings of BIM's report, the NPWS report made no mention of it.

Coastal area

63. Separately, the Decision cites the AACS, which estimates the extent of intertidal habitat at approximately 1,400 hectares. The Appellant believes that this is a major over-estimate. The Appellant's coastal (i.e., non-estuarine) mussel beds are not intertidal. The Minister appears to have used erroneous maps to conclude that the relevant waters are intertidal.
64. The Appellant refers to paragraph 2.16 of Annex II to the MIAA, where it is stated that "*because of the rapidly changing nature of the mobile sandbanks at the mouth of the harbour, precise definition of tidal zones is problematic*" (emphasis added). At paragraph 2.18, the authors note that "*the configuration of sandbanks at the mouth of the harbour has, however, changed substantially since 2011 [when the satellite images were taken]*" and that "*upon ground-truthing undertaken by the GSI, the quality of the data in the inner part of the harbour was classified as unreliable or of limited reliability, due to high levels of turbidity at the time the image was captured. Despite these limitations, the GSI bathymetry data has been used for calculating levels of exposure of intertidal habitat at specified tidal levels*" (emphasis added).
65. The MIAA, which the Decision reflects, has clearly acknowledged the deficiencies in the relevant bathymetry data. Furthermore, paragraph 2.17 refers to Wexford Harbour Chartlets prepared by Brian Coulter. When viewed, these chartlets clearly show that the Appellant has lost up to one metre of depth on the majority of the water in Wexford Harbour (where the vast majority of the Appellant's sites (and other sites) are based) due to the incorrect classification of the sites as intertidal.²⁰

²⁰ <https://wexfordharbour.info/Chart/index.html>

66. Furthermore, the AACCS itself notes the discrepancies between mapping methods. See page 6, where it is stated that "*the extent of intertidal habitat mapped by the GSI method is estimated at approximately 1,400 ha, as opposed to 1,027 ha, calculated from the OSI maps*". The Geological Survey Ireland ("**GSI**") maps, which produce satellite-derived bathymetry data and used at page 46 of Annex II to the MIAA,²¹ show the relevant intertidal area. These maps purport to show that the River Slaney is intertidal on spring tides between Wexford Quay and Ferrybank Quay. This is patently inaccurate. The Appellant knows, from its extensive local knowledge, that there are two to three metres of water in that area at a low spring tide.
67. Moreover, the Appellant understands that the GSI is itself concerned that its own data has been used. Please see enclosed an e-mail dated 15 October 2019 from the GSI to this effect at **Annex 4**, where the author states that the GSI "*deemed the results as not satisfactory for any application related to coastal mapping*". The Appellant fails to understand how the Minister could possibly have relied upon the GSI data, when the very organisation which produced the data has expressly acknowledged their unreliability.
68. As a mussel-farming enterprise working in the Wexford Harbour on a regular basis over several years, the Appellant knows that huge areas of its sites which are deemed intertidal are simply not intertidal. Given that the data are inaccurate in Wexford Quays, an area which should be very easy to assess, the Appellant does not understand why they were relied upon for the rest of the harbour. Given the potentially enormous consequences of the Decision its business, the Appellant finds it extremely concerning that the bathymetry analysis, upon which the Decision is largely based, is inaccurate and incorrect.
69. The Aquafact Report concludes the relevant environmental effects of mussel cultivation in Wexford Harbour are generally seen as positive.
70. In summary, the assessment of criterion (e) in the Decision and in the underlying documentation is based on flawed science and a flawed interpretation of science. To compound this error, the reasoning in the Decision cites only positive factors (see paragraphs (f), (h) and (k)). For example, paragraph (f) notes that "*shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation*". However, again, this conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence.
71. There is, therefore, no reason to reduce the Total Area based on criterion (e).

²¹ Marine Institute Birds Study for Wexford Harbour, the Raven and Rosslare Bay
<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIIWexfordSPAsAA270318.pdf>

(f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—

(i) on the foreshore, or

(ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977

72. The Appellant's activities have no material adverse effects on the environment. No infrastructure is used in mussel farming. Mussels are not fed and nothing is introduced into the water. Simply put, mussels do not create pollution.

73. The Aquafact Report concludes that the ecological effects of mussel cultivation in Wexford Harbour are generally seen as positive.

74. At paragraph (j), the Decision cites the recommendations of the AACS and the MIAA as a basis for reducing the Total Area. However, neither of these documents points to significant effects on the local environment as a result of the Appellant's activities. Therefore, there is no reason for the Minister to reduce the Total Area on the basis of criterion (f).

(g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

75. The Appellant's activities have no material adverse effects on the man-made environment. Given the historical activity at the Appellant's sites, both before and after the first licences were issued, the Appellant is virtually certain that there are no archaeological elements on its sites.

76. The Appellant understands that an archaeological survey was or is being prepared for Wexford Harbour. As far as the Appellant is aware, BIM has put this work out to tender and surveys and studies have taken place. However, the Appellant is not aware of a final report, and understands that this report has not yet been completed.

77. That said, archaeological studies were carried out prior to grant of the original licence in 2003. In any event, the renewal applications should not require new archaeological surveys and, as far as the Appellant is aware, the applications for new sites are the only ones of relevance to the BIM-commissioned survey.

78. The Aquafact Report finds no predicted impacts on the man-made environment or its heritage value.

79. The Minister was therefore correct to state, at paragraph (e), that "*there are no effects anticipated on the man-made environment heritage of value in the area*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason to reduce the total licensed area based on criterion (g).

Fundamental Principles of Public/Administrative Law

80. In addition to his failure to apply/interpret the criteria contained in Section 61 of the Act, the Minister has also breached fundamental principles of public/administrative²² law in several respects. As a Member of the Government, the Minister is obliged to follow fundamental public law principles.

(i) Failure to Give Adequate Reasons

81. The duty to provide reasons is a key principle of administrative law. In *Mallak v Minister for Justice, Equality and Law Reform*, the Supreme Court upheld this principle. Fennelly J, for the Court, found that this duty subsists, even where a public body has absolute discretion in its decision-making, and that "*the rule of law requires all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons*".²³

82. More particularly, public bodies such as the Minister are under a duty to give adequate reasons for their decisions. In the context of a planning decision, in the High Court case of *Mulholland v An Bord Pleanála*,²⁴ Kelly J outlined the requirement to give adequate reasons as follows:

"The statement of considerations must therefore be sufficient to:-

(1) give the applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision.

(2) arm himself for such hearing or review.

(3) know if the decision maker has directed his mind adequately to the issues which it has considered or is obliged to consider.

(4) enable the courts to review the decision."²⁵

83. In a particularly pertinent case, *Deerland Construction v Aquaculture Licensing Appeals Board*,²⁶ Kelly J quoted the English case of *South Bucks County Council v Porter* where Brown LJ stated that the reasons for a decision "*must enable the reader to understand why the matter was decided as it was and what conclusions were reached on 'the principal important controversial issues', disclosing how any issue of law or fact was resolved*".²⁷ Kelly J went on to state that "*I do not accept that a pro forma recitation of the matters which are contained in ALAB's decision amounts to a compliance with its statutory obligation to state its reasons for such decision*". He concluded that an applicant should "*know from reading the decision the reasons for it*" (emphases added).²⁸

²² In this appeal, we use the terms "public law" and "administrative law" interchangeably.

²³ *Mallak v Minister for Justice Equality and Law Reform*, [2012] IESC 59, paragraph 43.

²⁴ *Mulholland v An Bord Pleanála*, [2006] 1 IR 453, paragraphs 464 – 465.

²⁵ It is clear from the judgment of Hedigan J in *West Wood Club Limited v An Bord Pleanála and Dublin City Council* that, although that case related to a specific duty to give reasons under the Planning and Development Act 2000, "*Kelly J found that the existing jurisprudence regarding what is required for reasons to be considered as adequate at law continued to apply*". See *West Wood Club Limited v An Bord Pleanála and Dublin City Council*, [2010] IEHC 16, paragraph 54.

²⁶ *Deerland Construction v Aquaculture Licensing Appeals Board*, [2009] 1 IR 673.

²⁷ *South Bucks County Council v Porter*, [2004] WLR 1953 at paragraph 36.

²⁸ At page 44.

84. The Minister has several statutory powers under the Act and acts a "licensing authority" for the purposes of Section 7 of this legislation. Under Section 61 of the Act, the Minister is required, as stated above, to have regard to seven criteria in deciding a licence application. Each criterion entails the study and consideration of several factors, encompassing economic, ecological and other issues. Therefore, as far as the Appellant is aware, the Decision is, or at least should be, based on a consideration of a large body of scientific evidence. Therefore, the Appellant would have expected the Decision to shed at least some light on that consideration, to show why the Minister reached the Decision.
85. Instead, the Decision is no more than one page long. The operative part of the Decision, i.e., the portion purporting to show the reasons for the Decision, contains 12 terse statements. This is no more than a pro forma recitation of the factors considered in arriving at the Decision. The similarity between the wording of the Decision and the Associated Decisions (and indeed the wording of decisions addressed to other mussel farmers in the Wexford Harbour area) is striking. It is not possible for the Appellant to know, from reading the Decision, the reasons why it was reached, much less to understand the reasons for the Decision on the principal controversial issues (as required under the principle contained in *Deerland Construction*). In the language of the third limb of the extract from Kelly J's *Mulholland v An Bord Pleanála* judgment (see above), the Decision gives the Appellant no indication of whether the Minister has directed his mind adequately to the issues which he was obliged to consider.
86. Critically, the Minister's rationale, such as it is, simply answers the wrong question. The Decision sets out (albeit inadequate) reasons for granting a licence for a reduced area. However, it utterly fails to address the true question, which is why the Minister has not granted the licence for the Total Area, i.e., the area the subject of the original application. The Appellant expected to see an explanation of the rationale for reducing the area. However, any such explanation is missing from the Decision, save for an oblique reference to the "reconfigured site".
87. For example, reason (c) states that "[t]he proposed development should have a positive effect on the economy of the local area". As noted above, the Appellant considers that the "proposed development", as envisaged in the Decision (i.e., with a huge cut to its licensed area) will in fact have an adverse effect on the local economy. To compound the fact that the Minister has made a fundamental error of judgement of fact, there is no evidence in the Decision to support the conclusion that the "proposed development" as envisaged in the Decision will benefit the local economy.
88. Furthermore, the letter from the DAFM accompanying the licence fails to provide any information as to why the Minister reached the Decision.
89. In summary, the Minister has provided a wholly inadequate set of reasons for the Appellant to be able to understand why the Decision was reached.

(ii) Breach of the Right to be Heard

90. There is a broad duty on Irish public bodies, including the Minister, to give full information to parties such as the Appellant on a decision adverse to its (i.e., the Appellant's) interests which is in contemplation, and to give such party the opportunity to make the best possible case. Public bodies are required to inform persons such as the Appellant of defects in their cases, and to offer them the opportunity to address that difficulty. In *Mishra v Minister for Justice*, Kelly J held that fundamental fairness required that an applicant be given the opportunity to rebut a presumption of the Minister which was material to his decision to deny a citizenship application. More generally, *The State (McGeough) v Louth County Council* held that where a public authority adopts a principle or policy for deciding on an application, the applicant should be afforded "the opportunity of conforming with or contesting such a principle or policy".²⁹ Similarly, in a Privy Council case, *Mahon v Air New Zealand*, it was held that persons affected by decisions of public authorities (in that case, a tribunal) must have the opportunity to rebut evidence against them.³⁰
91. The Minister was thus required to provide the Appellant, in circumstances such as its application for a licence, with the opportunity to rebut evidence on which the Minister intended to rely in a decision. Such procedures are common in other areas of administrative law. To take one example, when the Competition and Consumer Protection Commission (formerly the Competition Authority) (the "CCPC") is minded to determine that a merger or acquisition³¹ will result in a substantial lessening of competition (i.e., to block that merger or acquisition), its practice (although it is not legally required to do so) is to furnish the parties to the transaction with an assessment. The purpose of the assessment is to demonstrate the reasons why, in the CCPC's preliminary view, the merger or acquisition will have an anti-competitive effect and therefore not be in the public interest. Typically, the CCPC's assessment is based on econometric or other evidence which supports the preliminary conclusion. Furthermore, parties are given the opportunity to request an oral hearing, at which they are given the full opportunity to rebut the evidence on which the CCPC proposes to rely.³²
92. At no stage prior to the Decision being published in the *Wexford People*, either during the public consultation process, or after stating its observations, was the Appellant provided with any indication of the Minister's preliminary or ultimate conclusion.
93. The Appellant's submission during the consultation process was by way of response to submissions made by various bodies in October 2018, as described above. The Appellant had no consultation with the Minister or the DAFM at any stage. In particular, the Appellant was not consulted on the proposed cuts or on where new licensed areas should be located. No reason was given as to why the Minister/DAFM decided the area (i.e., the shape) and location of the new sites.
94. The first time the Appellant was made aware of the Decision was on 17 September 2019, when the relevant notice appeared in the *Wexford People*.

²⁹ *State (McGeough) v Louth County Council* [1973] 107 LITR 13 at 28.

³⁰ *Mahon v Air New Zealand*, [1984] A.C. 808.

³¹ As defined in Section 16 of the Competition Act 2002 (as amended).

³² See the CCPC's *Mergers and Acquisitions Procedures*, available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/04/CCPC-Mergers-Procedures-for-the-review-of-mergers-and-acquisitions.pdf>

95. The Appellant was very surprised to learn of the Minister's findings, and by the manner in which it did so. As noted above, the Decision is based on flawed reasons. However, to add insult to injury, the manner by which the Minister informed the Appellant and the procedures followed during the process, are in clear breach of the Minister's obligations under public law to provide the Appellant with the opportunity to respond to the Minister's preliminary conclusions.

(iii) Failure to Exercise Proportionality/Abuse of Discretionary Powers

96. In exercising its discretionary powers, a public body must abide by the principle of proportionality.³³ It is also clear that a public body must not abuse those powers. It is clear from the *Wednesbury* judgment³⁴ that one of the ways in which a public authority may abuse its discretionary power is by taking irrelevant factors into account and/or not taking relevant factors into account.

97. The NPWS appears to interpret the EC Guidelines as recommending that, at most, 25% of an SAC should be allocated to activities which may be damaging to the relevant habitat. As stated above, this mis-interprets the EC Guidelines. All the EC Guidelines say is that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status (see above regarding Section 61(e) of the Act). However, even if the NPWS's interpretation was correct (which the Appellant strongly disputes), in order for the EC Guidelines to apply in the first place, it must be demonstrated that the activities are, in fact, damaging. As noted above, Lindahl and Kollberg, amongst others, have demonstrated that mussel farming activities are in fact beneficial to the marine environment. These benefits include the combatting of eutrophication. (See section 4 of the Aquafact Report).

98. Going one step further, again assuming that the NPWS's interpretation of the EC Guidelines is correct, even if mussel farming could be said to be damaging to the local habitat/marine environment (which the Appellant strongly disputes), reducing the licensed area to 15% of the SAC is draconian and wholly disproportionate. It is not clear to the Appellant why such a large reduction is merited. Indeed, this 'cut' appears somewhat arbitrary. The Appellant acknowledges that the NPWS's view is not binding on the Minister. Nonetheless, the Minister should have given due consideration to the merits of (a) the NPWS's interpretation of the EC Guidelines and (b) the NPWS's view that it is appropriate to reduce the licensed area from 25% to 15%. This is particularly true in circumstances where the evidence for the purported net environmental damage (i.e., damage from the mussel farming to the local habitat) is, at best, suspect and where mussel farming has been conducted at Wexford Harbour for several generations while producing environmental and other benefits. Instead, the Minister appears to have (a) blindly accepted the NPWS's interpretation of the EC Guidelines and (b) given a disproportionate weight to the NPWS's view, taking an upper limit for aquaculture of 15% of an SAC 'as read', notwithstanding the substantial evidence that a figure of 25% should be more than acceptable (and that the activity is not environmentally damaging in the first place).

99. The NPWS's view that the figure of 25% should be reduced to 15% is without scientific basis and appears to ignore the positive influence that mussel cultivation has had in the Site and in the wider Wexford Harbour over

³³ *Barry v Sentencing Review Group and the Minister for Justice, Equality and Law Reform*, [2001] 4 IR 67.

³⁴ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 230.

decades. This reduction will likely bring about a drastic change, the impacts of which are entirely unknown. There is no suggestion that the proposed reduction could be said beyond reasonable scientific doubt to avoid adverse significant impacts. On the contrary, reducing the Site could not be said beyond reasonable scientific doubt not to adversely affect the integrity of the Site/SAC. Mussel cultivation in the area is long-established, and has been shown to have positive environmental impacts, in contrast with other forms of aquaculture such as fish farming. The European Commission's comments in this regard apply to aquaculture in general and the positive impacts of mussel cultivation necessitate a far more positive appreciation of its role in the biological functioning and maintaining and enhancement of the conservation objectives and interests in an SAC.

100. The Minister, based on the NPWS's view, proposes to remove large areas of mussel cultivation. The effects of this proposed removal have not been scientifically assessed. In circumstances where the mussel cultivation which subsisted at the Site for centuries led to the designation of the Wexford Harbour area, including the Site, as an SAC/Natura 2000 site and has continued to support this status since, the removal of mussel cultivation without scientific assessment should not be permitted.

101. By analogy, at the Burren SAC, the grazing activity carried out by domestic animals has contributed to and continues to contribute to that area's conservation objectives by limiting the spread and cover of species that would otherwise be likely to deprive the listed habitats and species of light and space as well as nutrients. The drastic reduction of mussel cultivation and the periodic removal of excess nitrogen by the harvesting of same should not be enforced or compelled as to do so would be to risk a fundamental alteration of the balance within the SAC.

(iv) Breach of Appellant's Legitimate Expectations

102. The doctrine of legitimate expectations is a fundamental feature of Irish public/administrative law. In essence, the doctrine requires a public body such as the Minister honour a commitment as to the procedure(s) it will follow. The aim of the doctrine is partly to ensure legal certainty with regard to a public body's performance of its functions, and to ensure good administration³⁵. In *Glencar Exploration plc v Mayo County Council*,³⁶ Fennelly J in the Supreme Court stated the three principles of legitimate expectation. Firstly, a public authority must have made a promise or representation, express or implied. Secondly, that representation must be addressed to identifiable group of persons, such that it forms part of the relationship between the authority and those persons. Thirdly, that representation must create a reasonable (or legitimate) expectation, to the extent that it would be unjust for the authority to resile from it.

103. The same approach was adopted by the High Court in *Lett & Co v Wexford Borough Council*, a case which, coincidentally, related to a compensation scheme for mussel fishermen in Wexford Harbour who suffered

³⁵ See, for example, *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 which endorsed by the High Court in *Fakih v Minister for Justice* [1993] 2 IR 406.

³⁶ *Glencar Explorations plc v Mayo County Council*, [1992] 1 IR 84 at 162 – 163.

financial losses caused by the operation of a waste water facility. In that case, it was decided that the representation by the public body must relate to its exercise of a statutory power.³⁷

104. As documented above, the Appellant applied for its licence to be renewed in 2011. For six years, the Appellant had received no communication from the Minister or his officials regarding the licence application suggesting that any adverse finding was being considered. Relations with the Minister were, at all times, positive. There was thus an implied representation by the Minister that the Appellant would, at the very least, be consulted upon, and given the right to make submissions on, any proposed decision by the Minister. The Minister failed to process the Appellant's licence application expeditiously. The Appellant thus continued to farm the relevant sites for years, with no indication that an adverse decision was being contemplated.
105. The Appellant, together with some of its competitors who are also affected by similar decisions of the Minister (and have lodged separate appeals), comprise a clearly identifiable group of persons.
106. Finally, the Minister's implied representation gave no indication that there would be any reduction in the licensed area. At the very least, the Minister never gave any indication that a significant reduction, which poses a serious threat to the viability of the Appellant's business (and indeed of the other appellants) and their employees, was contemplated. Therefore, the Appellant (and the other appellants) had formed a legitimate expectation that their licences would be renewed in full.
107. It is also clear that the Minister's implied representation relates to a statutory function, namely the Minister's power to grant licences under Section 7 of the Act, in contrast with the facts of *Lett & Co* cited above.

Non-Exhaustive Nature of Claims

108. In addition to the factors outlined above regarding the Act and fundamental principles of public/administrative law, the Appellant reserves the right to make further submissions at an oral hearing and/or otherwise based on constitutional law, under the EU Charter of Fundamental Rights and/or under the European Convention on Human Rights.

Conclusion

109. In conclusion, the Decision is vitiated by errors of law both in the interpretation of the various criteria established by Section 61 of the Act and in the failure to follow key principles of administrative law.
110. Therefore, the Appellant requests ALAB to set aside the Decision and grant it the right to continue cultivating mussels at the Site.

WF-25223850-1

³⁷ In that case, the purported payment of compensation was not under a statutory power. Therefore, it was held that no legitimate expectation had been formed.

"Determination of Aquaculture/ Foreshore licensing application – T03/047B

Loch Garman Harbour Mussels Ltd., 84 Northumberland Road, Ballsbridge, Dublin 4, has applied for authorisation for the bottom cultivation of mussels on the foreshore on a 17.2 ha site (T03/047B) in Wexford Harbour, Co. Wexford.

The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant a **variation** of the licences sought i.e. **reducing** the footprint of the site from 17.2 ha to 11.9255 ha. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to grant a variation of the licence sought: -

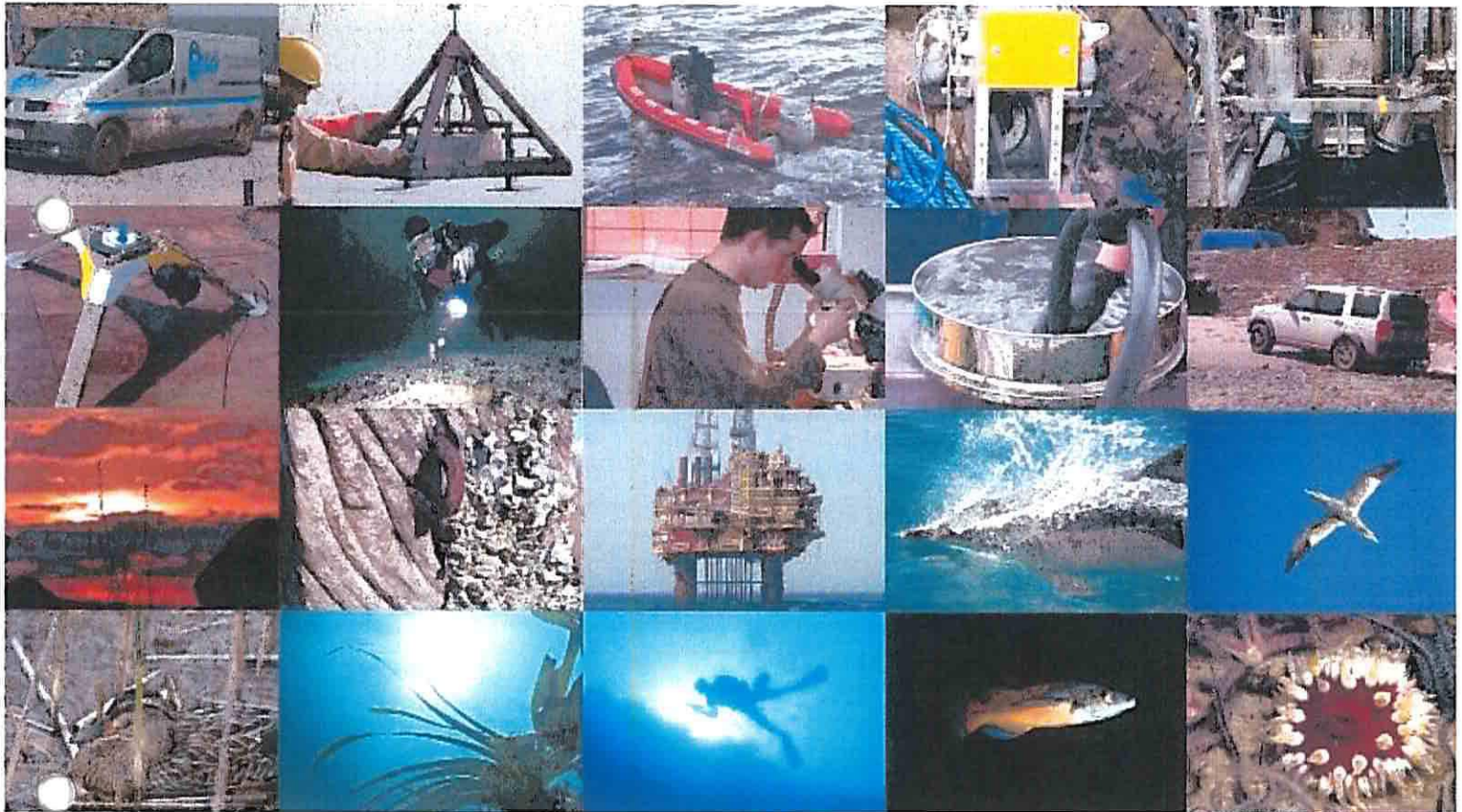
- a. *Scientific advice is to the effect that the waters are suitable. The site is located in the Wexford Harbour Outer Shellfish Designated Waters. Mussels in these waters currently have a "B" classification;*
- b. *This is a renewal application for existing aquaculture activity in Wexford Harbour and public access to recreational and other activities is already accommodated by this project;*
- c. *The proposed development should have a positive effect on the economy of the local area;*
- d. *All issues raised during Public and Statutory consultation phase;*
- e. *There are no effects anticipated on the man-made environment heritage of value in the area;*
- f. *Shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation;*
- g. *There are no issues regarding visual impact as the site to be utilised is for bottom culture;*
- h. *No significant effects arise regarding wild fisheries;*
- i. *The site is located within the Slaney River Valley SAC (Site Code: 00781), The Raven Point Nature Reserve SAC (Sited Code: 00710), Wexford Harbour and Slob SPA (Site Code: 4076) and the Raven SPA (Site Code: 4019). An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC's/SPA's. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's, including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC , The Raven Point Nature Reserve SAC , Wexford Harbour and Slob SPA and the Raven SPA.*
- j. *Taking account of the recommendations of the Appropriate Assessment the aquaculture activity proposed at this (reconfigured) site is consistent with the Conservation Objectives for the SAC's/SPA's;*
- k. *A licence condition requiring full implementation of the measures set out in the draft Marine Aquaculture Code of Practice prepared by Invasive Species Ireland;*
- l. *The updated and enhanced Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection required under EU and National law."*



AQUAFAC

ENVIRONMENTAL SURVEY SPECIALISTS

**A report on Mussel Cultivation activities
in Wexford Harbour,
Co. Wexford.**



October 16th 2019

AQUAFAC International Services Ltd.
12, Kilkerrin Park, Galway, Ireland
Tel: 091 756812
E-Mail: info@aquafact.ie Web: www.aquafact.ie

Table of Contents

1.	Introduction	1
2.	AQUAFACT's Relevant Experience	2
2.1.	Experience in Wexford Harbour	2
2.2.	Experience with mussel farms.....	2
2.3.	Experience with Marine Subtidal Surveys.....	2
3.	Description of the mussel cultivation process.....	3
4.	Ecological services provided by mussel farming in Wexford	5
5.	Assessment of criteria listed in the Fisheries (Amendment) Act 1997.....	7
6.	Conclusion.....	9

1. Introduction

AQUAFACT has been retained and instructed to prepare this report by River Bank Mussels Ltd., TL Mussels Ltd., Loch Garman Harbour Mussels Ltd., Crescent Seafood Ltd., WD Shellfish Ltd. and Fjord Fresh Mussels Ltd. each of which holds mussel cultivation licences in Wexford Harbour. The Department of Agriculture, Food and the Marine (DAFM) has recently sought to vary these licences by reducing the foot print of the relevant sites by *ca* 66%.

Wexford Harbour lies with the Slaney River Valley Special Area of Conservation (SAC) (site code 00781) and within the Wexford Harbour and Slobs Special Protection Area (SPA) (site code 004076) and is close to another SPA, the Raven SPA (site code 004019). These designations make the area a sensitive site in terms of its conservation status (see National Parks and Wildlife Service (NPWS) 2011a, b). Known as Natura 2000 sites, they form a network of nature protection areas in the EU. The network consists of both SACs and SPAs under the Habitats and Bird EU Directives.

AQUAFACT is an environmental consultancy specialising in monitoring and managing resources in marine, freshwater and terrestrial environments. AQUAFACT ensures a widely based service thanks to its contacts in the scientific community, its close association with the National University of Ireland, Galway (NUIG), Galway Mayo Institute of Technology (GMIT), University College Dublin, Trinity College and the expertise of its scientific staff. Since it was established in 1986, AQUAFACT has provided marine ecological consultancy to a wide range of clients including the State, semi-State and private sector. It has also carried out several studies in the Wexford Harbour area.

This report:

1. Outlines AQUAFACT's experience in Wexford Harbour;
2. Outlines AQUAFACT's experience with regard to mussel farms;
3. Outlines AQUAFACT's experience with regard to subtidal benthic surveys;
4. Describes the positive impacts of mussel cultivation on both the sea bed and the water column and
5. Provides an assessment of a suite of criteria listed in the Fisheries (Amendment) Act, 1997.

2. AQUAFACt's Relevant Experience.

2.1. Experience in Wexford Harbour

In 2005, AQUAFACt carried out subtidal benthic surveys in Wexford Harbour as part of the EU Water Framework Directive (WFD) monitoring programme on behalf of both the Marine Institute and the Environmental Protection Agency (EPA). AQUAFACt was retained by Mott McDonald who were the consulting engineers for Glanbia in a project relating to the latter's food production facility in Wexford. AQUAFACt was also part of the Bord Iascaigh Mhara-led UISCE project that studied Wexford Harbour in depth.

2.2. Experience with mussel farms

AQUAFACt has carried out an extensive range of surveys at mussel farms, particularly in Killary Harbour, Co. Galway to assess the ecological impacts of mussel cultivation on the water column and the seabed. AQUAFACt has also carried out similar studies on both oyster farms and salmon farms. During the period between 2000 – 2006, AQUAFACt was appointed as experts to the International Council for the Exploration of the Seas (ICES) working group on aquaculture. In 2013, 2014, 2017 and 2018/19, AQUAFACt has also carried out assessments on licence applications on behalf of the Aquaculture Licence Appeals Board (ALAB).

2.3. Experience with Marine Subtidal Surveys

AQUAFACt has extensive experience in the planning, management, execution, analysis and reporting of biological seabed (benthic) survey work. Some examples of the more recent surveys that have been carried out for the Marine Institute and NPWS include the following:

- Benthic sampling and analysis of WFD benthic samples from Galway Bay, Kinvara Bay, Camus Bay and Kilkerrin Bay in 2013/2014 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Killiney Bay, Waterford Estuary, Roaringwater Bay, Cork Harbour and Kenmare Bay in 2013 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Baltimore, Boyne Estuary, Castletownbere, Clew Bay, Cromane, Dublin Bay, Gweebarra Bay, Inner Kenmare Bay, Killala Bay, Killybegs Harbour, Kilmakilloge, Northwest Irish Sea, Sligo Bay, Tralee Bay and Youghal in 2012 for the Marine Institute;
- Benthic sampling and analysis of the Codling Bank for the NPWS in July 2012;

-
- Benthic sampling and analysis of the Kish/Bray and Blackwater Banks in February 2012 for NPWS;
 - Benthic sampling and analysis at two proposed aquaculture sites in 2012 for the Marine Institute;
 - Benthic sampling analysis for the Galway Bay Cable Project in Inner Galway Bay August 2012 on behalf of the Marine Institute;
 - Benthic sampling and analysis of Kenmare Bay, Tralee Bay and the Magharees in 2011 for the Marine Institute and NPWS;
 - Benthic sampling of Killybegs Harbour, Dundalk Bay, Clew Bay, Newport Bay, Westport Bay, Killary Harbour, Broadhaven Bay and Lough Swilly for the Marine Institute and the EPA in 2011;
 - Benthic sampling and analysis of Mulroy Bay, Rutland Bay and Islands, Drumcliff Bay, Sligo Harbour, Killala/Moy Estuary, Kilkerrin Bay, Mannin Bay, Slyne Head, Kingstown Bay, Shannon Estuary, Hook Head, Saltee Islands and Carnsore Point in 2010 for the Marine Institute and NPWS and
 - Benthic sampling and analysis of Galway Bay, Clew Bay, Donegal Bay, Broadhaven Bay, Blacksod Bay, Lough Swilly, Wexford Harbour, Bannow Bay and the Blackwater Estuary in 2009 for the Marine Institute and NPWS.

3. Description of the mussel cultivation process.

The vast majority of seed mussels is sourced off the east coast of Ireland. This is regulated by DAFM. The range of seed size sourced is 15-40mm but the ideal range is 25-35mm. In general, the seed sourced on the east coast beds is brought back into the harbour on the same day for re-laying. The opening times of the seed beds vary and are dependent on when DAFM authorise same. Late summer is normally the seed fishing period.

Two sites within Wexford Harbour are proposed to be used for seed collection which involves identifying natural intertidal mussel settlement within the sites and relocating the seed mussels to subtidal areas. The stocking density of seed within the harbour varies across each producer and is site dependent. At present the seed stocking density ranges from 10-60 tonnes/hectare with the average around 30 tonnes /ha. Re-laying of seed mussels from the hold is carried out by water jet through holes in the side of vessel. Once re-layed, the mussels can take from 12-24 months to reach market size but the average growth period is around 18 months. However, the timing on the re-lay plot can depend on the stock level from the previous year, the progression of sales from the previous year's stock, the progression of sales of the current year's stock, the market price, demand and the fluctuations of meat yield levels.

Mussels sold have to be purified and de-gritted as Wexford Harbour outer is classified as B (mussels require to be depurated in sea water prior to sale), whereas Wexford Inner is classified as C (if for consumption, mussels must be cooked prior to sale) and mussels from here would have to be moved out into the outer harbour for finishing to have them classified as B mussels.

During the ongrowing period after re-laying of seed, stock can be fished for starfish and green crab although not all mussel producers do this. There are two boats fishing for green crab across the harbour on a variety of sites where they have permission or licence. Starfish are generally confined to the outer sections of the harbour closer to Raven Point.

Some producers move stock between sites *e.g.* they may have ground that is good for finishing (maximising meat yield) and will seek to finish their stock on such grounds. Cleaning of the sites is normally done through the action of harvesting. Most mussel harvesting is carried out from September to April with many operators finished by the end of December. Some harvesting can be carried out during the summer months but this depends on the market. The slack time is normally February to June. During this time monthly sampling occurs to track stock quality. However, during the harvesting period, sites would be checked more frequently and this varies considerably among the producers and is probably dependent on the quantity of stock the producer normally exports.

During the harvesting season, access varies from 1 to 6 times per week. Access to sites usually happens between half flood to half ebb where the tidal restriction is 3 hrs either side of high tide and for some sites, the restriction is greater (1.5 hours before and after high tide).

During harvesting and re-laying, the dredgers move slowly over the site with the dredges trailing about 30 meters behind the vessel which when full, are winched in and the contents emptied into the hold. Once in the hold, mussels are moved up a conveyor belt through a washer and crabs/starfish are picked off along with stones/waste. The mussels are then directed by conveyor to one tonne bags hanging in the other part of the hold. Normally about 20 tonnes are harvested for each transport to the market. Unloading from the boat is either carried out at the quayside by an onboard crane or using a crane on a lorry onto wooden pallets which are then loaded into a transport lorry.

It should be noted also that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and upturned sea bed will be quickly re-colonised by the same suite of the species that occur in this habitat.

4. Ecological services provided by mussel farming in Wexford Harbour.

There are several important ecological aspects of mussel cultivation that should be noted and these are:

1. The historical use of Wexford Harbour for the cultivation of mussels;
2. The eutrophication mitigation benefits arising from mussel cultivation in an area that is known to be suffering from mild eutrophication and
3. The ecological benefits associated with mussel cultivation.

1. *Mussel cultivation in Wexford Harbour.*

Mussels have been recorded in the harbour for at least 2 centuries and most likely for a much longer time period. The former time scale is confirmed by fisheries reports from the 19th century and the longer time scale, although a presumption, is entirely likely. It is clear, from early records, that mussels would have been present in the harbour presumably contributing positively to its ecosystem's functioning.

Within the conservation objectives of the Slaney River Valley SAC (site code 00781, NPWS 2011a, b), no community type is listed as mussel reefs; however, mussels are considered a component of the Mixed Sediment Community Complex found in the habitat feature Estuaries (1130) and it is ecologically correct to include this species within that community type. It is not possible however, to determine the numbers or extent of mussels currently in the harbour that can be considered as 'natural' or that derive aquaculture practices. AQUAFAC's historical records of this community type *i.e.* Mixed Sediment Community in Wexford Harbour show that it has been stable since the first survey was carried out in 2005.

2. *The trophic status of the Slaney Estuary.*

The Slaney River catchment supports extensive areas of agricultural lands from which non-point source runoff feeds into the river. For this reason (and also arising from towns and small villages upstream in the catchment), the system has been classed as polluted or potentially eutrophic in the last number of cycles (EPA, 2015) (Table 1 below).

Year	Lower Slaney	Wexford Harbour
2012-2014	Eutrophic	Intermediate
2010-2012	Potentially Eutrophic	Potentially Eutrophic

2007-2009	Eutrophic	Unpolluted
2001-2005	Eutrophic	Intermediate

Bivalves, such as mussels, are suspension feeders and feed at the lowest trophic level, influencing the nutrient and organic interaction between the water column and the sea bed. They harvest phytoplankton and organically enriched particles. In linking these two systems, bivalves play an important role in the consumption and movement of energy within marine systems. The ability to control/mediate excess phytoplankton is an important ability of bivalves. Many papers have concluded that bivalves have the ability to control *i.e.* reduce, phytoplankton abundance in shallow water systems (Dame, 2013; Gallardi 2014; Filgueira *et al.* 2015; Petersen *et al.*, 2015).

○ For these reasons, grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is an important control mechanism for eutrophication in the system and by reducing numbers of mussels/production areas, this system will become even more eutrophic.

3. *Habitats provided by shellfish communities.*

Shellfish communities are known to provide important structure and enhance habitat heterogeneity in marine systems (Walles *et al.*, 2015). The shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. (Another role the shells play is in the sequestration of carbon).

○ For these reasons, the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

Based upon the information presented in Sections 1, 2 and 3, bottom mussel culture at current levels in Wexford Harbour has a positive role in ecosystem functioning in terms of:

1. Nutrient, phytoplankton and organic carbon sequestration
2. Provision of habitat for other marine flora and fauna and
3. Food resources for “Qualifying Interest” species of the SAC and “Species of Qualifying Interest” for the SPA.

5. Assessment of criteria listed in the Fisheries (Amendment) Act 1997.

AQUAFACT was also asked to consider and comment on the 7 following criteria as listed in Section 61 of the Fisheries (Amendment) Act 1997:

61. The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of

- a. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- b. Other beneficial uses, existing or potential, of the place or waters concerned,*
- c. The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- d. The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- e. The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- f. The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- g. The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.*

1. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question.

The inner sections of Wexford Harbour is an entirely suitable place to carry out mussel cultivation as it is relatively sheltered and shallow.

2. Other beneficial uses, existing or potential, of the place or waters concerned.

The only other use of Wexford Harbour is for boating but the two activities are not mutually exclusive.

-
- 3. The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters.**

As noted in the Introduction, two Natura 2000 sites (an SAC and an SPA) are present within Wexford Harbour and the NPWS has drawn up a suite of conservation objectives for both these sites that need to be complied with. The conservation objectives of the SAC are the more relevant to mussel farming in the harbour as sea floor communities are listed as a Qualifying Interest (QI) for the area and the action of dredging for harvesting the stock could be seen as having a negative impact on the conservation status of the SAC. However, as has been described above, Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

- 4. The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on.**

The economic impact on the general area is seen as positive as the cultivation process provides employment for local people.

- 5. The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna.**

As noted above, the ecological effects of mussel cultivation generally are seen as positive in Wexford Harbour.

- 6. The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977.**

As noted above, the ecological effects of mussel cultivation are seen as positive in Wexford Harbour.

- 7. The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.**

No impacts are predicted on the man-made environment or its heritage value.

6. Conclusion

Mussel cultivation has been on-going in Wexford Harbour certainly for many decades and probably longer. As for all estuaries, the location is highly dynamic with short term and seasonal changes in flow rates, salinities, suspended solids and nutrient loadings and wave climate conditions. In addition, the catchment area of the River Slaney is highly agriculturally developed and also has a number of medium sized towns *e.g.* Bunclody and Enniscorthy all of which add nutrient loads to the river. This give rise to eutrophic conditions in the estuary. As mussels are suspension feeders and feed at the lowest trophic level they play an important role in regulating nutrient levels in the water column as they harvest phytoplankton and organically enriched particles. For these reasons, it is highly likely that grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is likely to be an important control mechanism of eutrophication in the system and by reducing numbers of mussels/production areas, the system will become even more eutrophic.

Shellfish communities provide important structure and enhance habitat heterogeneity in marine systems and the shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. For these reasons, it is highly likely that the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

The main impact of bottom cultivation of mussels relates to the harvesting operation where dredges are used to collect the adult shellfish for sale to market. It should be noted that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and that upturned sediments turned up by the dredging activity will be quickly re-colonised by the same suite of the species that occur in this habitat. Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

References

Dame, R.F. (2013). Ecology of marine bivalves: an ecosystem approach. 2nd Edition. CRC press. 271pp.

EPA. (2015). Trophic Status of Ireland's waters.

Filgueira, R., Byron, C.J., Comeau, L.A., Costa-Pierce, B., Cranford, P.J., Ferreira, J.G., Grant, J., Guyondet, T., Jansen, H.M., Landry, T., McKindsey, C.W., Petersen, J.K., Reid, G.K., Robinson, S., Smaal, A., Sonier, R., Strand, O., and Strohmeier, T. (2015). An integrated ecosystem approach for assessing the potential role of cultivated bivalve shells as part of the carbon trading system. *Mar Ecol Prog Ser* 518: 281–287.

Gallardi, D. (2014). Effects of Bivalve Aquaculture on the Environment and Their Possible Mitigation: A Review. *Fish Aquac J* 5: 105. doi: 10.4172/2150-3508.1000105.

National Parks and Wildlife Service, (2011 a and b). Slaney Estuary SAC site synopsis and conservation objectives. NPWS website.

Petersen, J.K., Hasler, B., Timmermann, K., Nielsen, P., Tørring, D.B., Larsen, M.M., Holmer, M., (2014). Mussels as a tool for mitigation of nutrients in the marine environment. *Mar. Pollut. Bull.* 82, 137–143.
Petersen, J.K., Saurel, C., Nielsen, P. and Timmermann, K. (2015). The use of shellfish for eutrophication control. *Aquaculture International* DOI: 10.1007/s10499-015-9953-0

Walles, B., Mann, R., Ysebaert, T., Troost, K., Herman, P. and Smaal, A. (2015). Demography of the ecosystem engineer *Crassostrea gigas*, related to vertical reef accretion and reef persistence. *Estuar. Coast and Shelf Sci.*, 154 (2015) 224e233

APPOINTMENTS

BOOK KEEPER WANTED

Book Keeper required for a haulage company near Enniscorthy. Must have minimum 2 years experience in a similar role with strong Microsoft Office skills. Prior use of accounting systems preferred. Should have good organization, problem solving skills & the ability to work unsupervised.

If you are interested, please email office.adh1@gmail.com for further information, or call 085 8637633 between 9am - 1pm Monday to Friday.

SPECIAL NOTICES

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to T.L. Mussels Ltd., Clonard Business Park, Whitmill Industrial Estate, Wexford, Co. Wexford, SITE REFS: T03/030A2, T03/030B, T03/030E, T03/030F, T03/030/1 (site D) and T03/039A for the bottom cultivation of mussels on sites on the foreshore in Wexford Harbour, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
[@agriculture_ie](https://twitter.com/agriculture_ie)

An Roinn Talmhaíochta,
Saighiú Móra
Department of Agriculture,
Food and the Marine

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to FJORD FRESH MUSSELS LTD, C/O O'CALLAGHAN, O'MAHONY CODY & CO., CLONARD BUSINESS PARK, WHITEMILL IND. ESTATE, WEXFORD, CO. WEXFORD, REFS: T03/046A, T03/046B AND T03/046C for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
[@agriculture_ie](https://twitter.com/agriculture_ie)

An Roinn Talmhaíochta,
Saighiú Móra
Department of Agriculture,
Food and the Marine



Co. Wexford
Education Centre
Ionad Oideacháin Lárúil

Temporary (Full-Time) Administrator position available at Co. Wexford Education Centre

Typical responsibilities of this role include:

- maintaining diaries and arranging appointments
- preparing and collating reports
- filing
- preparing accounts
- organising meetings
- managing databases
- liaising with relevant organisations and clients

Please forward your CV to Lorraine O'Gorman, Director, Co. Wexford Education Centre, Milehouse Road, Enniscorthy, Co. Wexford or alternatively email director@ecwexford.ie on or before Friday September 20th 2019.

Co. Wexford Education Centre is an equal opportunities employer.

WEXFORD COMPUTER SERVICES

Providing affordable,
reliable computer support.

All aspects of computer services covered including consultation, repair, upgrade, installation, health check, virus removal, laptop screen and power jack replacement

FREE PICKUP & RETURN
Call Dermot Lucking on 087-3229896
email: info@wexfordcomputerservices.ie
www.wexfordcomputerservices.ie

SPECIAL NOTICES

Drains
Unblocked
Chimney Cleaning
www.robertrochedrains.com
Tel. 087-2130669

What's
on
where
and when.

Find out in our
Entertainment
guide

Teagasc Transferring the Family Farm Clinic 2019

Teagasc invite you to their popular series of 'Transferring the Family Farm' clinics designed to enlighten & educate you on the many details involved in creating an effective plan for succession.

Woodford Dolmen Hotel, Carlow
Thursday, 26 September | 10:30am
Attendance free | Pre-booking is essential

Register your place online at
www.teagasc.ie/farmtransfer



BNI

BNI (Business Network International) Menapia Chapter Wexford are holding an Open Evening on Thursday the 26th of September, from 5pm in the Ferrycarrig Hotel, Wexford, providing Wexford Businesses to network with successful businesses with a view to generate more income and build more contacts in Wexford and surrounding areas. Business Network International (BNI) is a membership organisation for small businesses where members network and receive referrals. It is an international organisation around the world and has about 120,000 active members.

We have vacancies in professions such as:
Loss Assessor, Health & Safety Consultant, Trades, Beautician, Make Up Artist, Hair Salon, Interior Designer, Office Supplies, Engineer, Window Manufacturer, Landscape Gardener, Mechanic, Car Hire, Computer Services, Graphic Designer, Printer, Security Firm, HR Consultant, Cleaning Services.

To register, please contact
Aoife Caulfield, President On 087-0993918
or email her: aoife@caulfieldfinancial.ie

CONRADH NA GAELIGE

Irish Language classes have re started from 11th September, continuing every Wednesday from 8.00-9.30pm at the C.B.S. Secondary School Thomas St Wexford

Tá fáilte roimh chách All are welcome

For enquires ring Pádraig 086-8306530
Big Linn

SPECIAL NOTICES

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

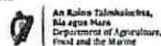
The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to WEXFORD MUSSELS LTD., ROCKFIELD, COOLCOTS, WEXFORD, CO. WEXFORD, REFS: T03/035A, T03/035B1, T03/35B2, T03/035C, T03/035F&G1, T03/035F&G2, T03/035F&G3, T03/072B, T03/090A for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicences/aquaculturelicencedecisions/>. 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 <http://www.alab.ie/>.

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>.

www.agriculture.gov.ie

@agriculture_ie



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

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

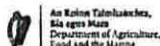
The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to, T.L. Mussels Ltd., Clonard Business Park, Whitemill Industrial Estate, Wexford, SITE REF: T03/030C for the bottom cultivation of mussels on a site on the foreshore in Wexford Harbour, Co. Wexford. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicensing.

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 <http://www.alab.ie/>.

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>.

www.agriculture.gov.ie

@agriculture_ie



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

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

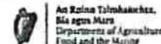
The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to, WEXFORD MUSSELS LTD., ROCKFIELD, COOLCOTS, CO. WEXFORD, SITE REF: T03/072A for the bottom cultivation of mussels on a site on the foreshore in WEXFORD HARBOUR, CO. WEXFORD. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicensing.

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 <http://www.alab.ie/>.

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>.

www.agriculture.gov.ie

@agriculture_ie



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



St. Peter's College Secondary School

St Peter's College Past Pupils AGM
Date: Wednesday 25th September 2019
Venue: St Peter's College

Mass celebrated in College Chapel at 7.30 pm, followed by AGM in school at 8 pm

All Past Pupils welcome and encouraged to attend Refreshments served

For further information please contact Declan Cloney, President St. Peter's College PPU, Tel: 086 8086678 or David Power PRO SPC PPU, Tel: 087 7911077

CABINET MAKER AVAILABLE

For all the small jobs around the house
Shelving, Hot Press, Units, Doors,
Skirting Boards, Wardrobes etc.
All interior paint work
Walls, Ceilings and Woodwork

087-2436228



Loreto Secondary School, Pembroke Hill, Ballynagee, Wexford.

Telephone: 053-9146162

Website: www.loreto-wexford.com

Admission into

1st year, September 2020

- The school will accept fully completed application forms in respect of girls in 6th class primary/national school (or its equivalent) for admission into our 1st year group (130 students) in September 2020 from 8.15 am on Thursday, 26 September 2019 until 1.00 pm on Friday, 18 October 2019. Forms received outside of these dates will be returned to sender.
- Application forms, as well as copies of the school's admission policy, are available from the School Secretary and Receptionist during normal school hours (8.15 am to 4.15 pm, Monday to Friday) and may also be downloaded from the school's website - www.loreto-wexford.com

Billy O'Shea,

Principal and Secretary to Board of Management.

ROTHWELL CONTRACTING LTD.

Specialists in
Emptying Septic Tanks

- Fully Licensed
- Long Mains
- Small Tanks
- Spraying all of Co. Wexford
- Specialists in Domestic, Business, Schools and Court Houses

Contact us on our Web Site
www.rothwellcontracting.ie
or
Phone Erwin on 057 2588325

JOHNNY FLOOD WATER PUMPS

www.johnnyfloodwaterpumps.com

All makes of submersibles,
deep well,
shallow well, water filter &
treatment systems
75% grant now available
RATHINURE, ENNISCORRY,
CO. WEXFORD
TEL: 053 9255381 or 087 2532495

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT/ REFUSE AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant (with variations) or refuse to grant Aquaculture and Foreshore Licence applications to the following in the table below in Wexford Harbour, Co. Wexford:

Reference Number	Name	Species	Decision
T03/047 (3 sites A, B & C) T03/083A T03/085A	Loch Garman Harbour Mussels Ltd. 24 Northumberland Road, Ballsbridge, Dublin 4	Mussels (Bottom culture)	Grant Licences (with variations)
T03/048A T03/091A	Noel Scallan, 29 William Street, Wexford Town and Sheila Scallan, Crosswinds, Avondale Drive, Wexford Town	Mussels (Bottom culture)	Grant Licences (with variations)
T03/049 (5 sites A, B, C, D & C1) T03/077A	Riverbank Mussels Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/052 (2 sites A & B)	W. D. Shellfish Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/055 (2 sites E, F&C)	Crescent Seafoods Ltd. Mytilus, Ballaghaklaba, Curradoo, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/074 (2 sites A & B)	Patrick Swords, Crory Lane, Crossabeg, Co. Wexford and Florence Sweeney, Ballyhoe, Lower Screen, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/080A	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/078A	Crescent Seafoods Ltd. Mytilus, Ballaghaklaba, Curradoo, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/080B	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/093 (2 sites A & B)	Mr Eugene Duggan, 141 Belvedere Grove, Cookcots, Wexford Town and Mr Jason Duggan, 10 Antelope Road, Maadintown, Wexford Town	Mussels (Bottom culture)	Refuse Licence

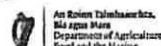
The reasons for these decisions are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/wexford/>

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 <http://www.alab.ie/>.

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>.

www.agriculture.gov.ie

@agriculture_ie



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

**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 or handed in to the ALAB offices**

Name of Appellant (block letters)		LOCH GARMAN HARBOUR MUSSELS LIMITED	
Address of Appellant		84 NORTHUMBERLAND ROAD, BALLSBRIDGE, DUBLIN 4	
Phone:		See Cover Letter	
Mobile:		See Cover Letter	
Email:		See Cover Letter	
Fax:		See Cover Letter	

Fees

Fees must be received by the closing date for receipt of appeals	Amount	Tick
Appeal by licence applicant	€380.92	✓
Appeal by any other individual or organisation	€152.37	
Request for an Oral Hearing * (fee payable in addition to appeal fee)	€76.18	✓
<small>* In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.</small>		
(Cheques Payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D

Subject Matter of the Appeal

Decision of the Minister for Agriculture, Food and the Marine in the matter of an Application under Section 10 of the Fisheries (Amendment) Act 1997 (the "Act") and Foreshore Act 1933 for authorisation for the bottom cultivation of mussels on the foreshore on a 42.11 ha site (T03/047C) (the "Site") in Wexford Harbour, Co. Wexford.

Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T03/047C
---	----------

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

Loch Garman Harbour Mussels Limited (the "Appellant") has, both by itself and its predecessors in title, been active in the bottom cultivation of mussels at the Site for several years. It would be severely adversely affected by the Minister for Agriculture, Food and the Marine's (the "Minister") decision to vary the licence sought (the "Decision") by reducing the footprint of the Site from 42.11 ha to 28.03 ha.

**AQUACULTURE LICENCES
APPEALS BOARD**

16 OCT 2019

RECEIVED

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):

The Appellant considers that the Decision is legally flawed for two over-riding reasons:

- (1) The Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Act.
- (2) The Minister has breached fundamental principles of public/administrative law in the Decision, both in terms of its substance and the procedure whereby it was reached.

Further details are included in the Submission.

Signed by appellant:



Date: 16 October 2019

Julien Barbé, Director

Please note that this form will only be accepted by REGISTERED POST or 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

Extracts from Act

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) **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.

WILLIAM FRY

Our Ref 026536.0001.CKL

16 October 2019

By Hand

The Aquaculture Licences Appeals Board (ALAB)
Kilminchy Court
Dublin Road
Portlaoise
Co Laois
R32 DTW5

Our Client: Loch Garman Harbour Mussels Limited

Dear Sirs

We enclose five notices of appeal (the "**Appeals**") on behalf of our client, under Section 40(1) of the Fisheries (Amendment) Act 1997 (the "**Act**"). Please also find attached to this letter proof of payment of the relevant fees to ALAB.

The Appeals are against five separate determinations of aquaculture/foreshore licensing applications (the "**Decisions**") by the Minister for Food, Agriculture and the Marine (the "**Minister**") in September 2019. The Decisions relate to the following sites in Wexford Harbour: T03/047A; T03/047B; T03/047C; T03/083A; and T03/085A.

On behalf of our client, we submitted requests for information under the Freedom of Information Act 2014 ("**FOI**") and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("**AIE**") to a number of relevant public bodies on 8 October 2019 in connection with the Decisions. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decisions, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, our client has had to bring the Appeals before receipt of any responses to those requests.

Our client expressly reserves the right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions relating to information obtained from responses received to those FOI/AIE requests.

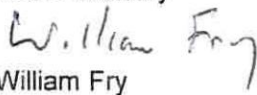
The enclosed Appeals (and the annexes thereto) contain commercially sensitive information. For the purposes of Section 36 of the Freedom of Information Act 2014 and Section 30 of the Act, this information should not be disclosed to any persons except for the relevant officials of ALAB on a strictly "need to know" basis.

Please direct any correspondence in relation to the Appeals to:

Cormac Little

Eoin O'Cuilleain

Yours faithfully


William Fry

WF-25218269-1

APPEAL UNDER SECTION 40(1) OF THE FISHERIES (AMENDMENT) ACT 1997

SUBMISSION BY LOCH GARMAN HARBOUR MUSSELS LIMITED (T03/047C)

16 OCTOBER 2019

To:

**The Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
Portlaoise
Co. Laois
R32 DTW5**

Appellant:

**Loch Garman Harbour Mussels Limited
84 Northumberland Road
Ballsbridge
Dublin 4**

Agent for Appellant:

**William Fry
2 Grand Canal Square
Dublin 2
D02 A342**

**Appeal Against: Decision of the Minister for Agriculture, Food and the Marine
Determination Reference: T03/047C
Applicant: Appellant**

Date and Place of Publication of Notice of Decision: 17 September 2019 in the *Wexford People*

Summary

1. This is an appeal against a decision by the Minister for Agriculture, Food and the Marine (the "**Minister**") to grant a variation of the aquaculture licence for the bottom cultivation of mussels on the foreshore at site (T03/047C) (the "**Site**") in Wexford Harbour, Co. Wexford (the "**Decision**") to the Appellant. In the Decision, the Minister cites several positive impacts of the aquaculture activities carried out at the Site. Notwithstanding this, the Minister has decided to reduce the Appellant's licensed area from 42.11 ha to 28.03 ha, with potentially devastating impacts on the Appellant's business. Please see the Decision at **Annex 1**.
2. As outlined in further detail below, the Decision is vitiated by a number of serious flaws. Firstly, the Minister has committed serious errors in his assessment of the relevant criteria under Section 61 of the Fisheries (Amendment) Act 1997 (the "**Act**"). Secondly, the Minister has breached fundamental principles of public/administrative law in reaching the Decision, both in terms of its substance and the procedure whereby it

was reached. This appeal is supported by a report on mussel cultivation activities in Wexford Harbour dated 16 October 2019 by Aquafact, an environmental consultancy specialising in marine environments (the "**Aquafact Report**"). Please see the Aquafact Report at **Annex 2**.

3. The Aquaculture Licences Appeals Board ("**ALAB**") will also have received the Appellant's appeals against the Minister's decisions to vary the Appellant's licences in adjacent sites (the "**Associated Decisions**" and the "**Associated Appeals**", respectively).
4. By the present appeal, the Appellant respectfully requests ALAB to exercise its power under Section 40(4)(c) of the Act to substitute its decision on the Appellant's licence application by granting the Appellant a licence over the entire portion of the Site of which it has hitherto carried on aquaculture activities, and in respect of which it has applied for a licence (the "**Total Area**"). In the alternative, the Appellant respectfully requests ALAB, under Section 40(4)(b) of the Act, to determine the Appellant's licence application as if it had been made to ALAB in the first instance, by similarly granting a licence over the Total Area.
5. Separately, for ease of administration and given the commonality of facts and issues arising, the Appellant requests ALAB, exercising its discretion under Section 42 of the Act, to join the present appeal with the Associated Appeals, including for the purpose of an oral hearing.

The Appellant

6. The Appellant was incorporated in 2006, for the purpose of acquiring mussel-growing sites in Wexford Harbour, previously operated by a local business man, Mr Billy Gaynor.
7. The sites had been farmed for many years prior to the introduction of the statutory licensing regime. The Appellant is a wholly-owned subsidiary of Hibernian Mussel Holdings Limited, which in turn is 100% owned by Barbé Holding BV, a Dutch company. Barbé Holding BV is owned by the Barbé family who have over 100 years' experience of mussel farming in Yerseke, Netherlands. The Barbé family controls the Barbé Group, an international mussel producer trading under the Aquamossel brand. All of the Appellant's produce is exported to the Netherlands, where it is processed in the Barbé Group's factory.
8. At its Wexford Harbour operations, the Appellant employs three people full-time to work on its boats, and also employs Billy Gaynor in an administrative function. The company's average annual turnover is approximately EUR 700,000.
9. The Appellant has three sites under licence at Wexford Harbour.
10. The Appellant is appealing the recent Ministerial decision in respect of each of these licences.
11. For further information see <http://www.aquamossel.nl/EN/home-en.html>

Licence Application Process

12. The Appellant's previous licences, which were granted in 2002, were due to expire in 2012. On 28 August 2011, the Appellant applied to the Department of Agriculture, Food and the Marine (the "DAFM") for renewal of its licences. (Whereas, previously, the Appellant had one licence covering all its sites, the Minister decided during the 2000s to separate each licence into several sites, with one licence per site.)
13. Following its application for a licence renewal, the Appellant received no further correspondence from the DAFM until June 2018, when a public notice was published in the *Wexford People* listing all the relevant licence applications (including the Appellant's) and requesting submissions on those Applications within one month. The Marine Institute, the Inland Fisheries Institute, Wexford County Council and the Department of Heritage and the Gaeltacht (now the Department of Culture, Heritage and the Gaeltacht) each made submissions, of which the Appellant received copies from the DAFM on or about 15 October 2018. The Appellant submitted a response to those submissions to the DAFM on or about 29 October 2018.
14. During the consultation process, the Minister/DAFM gave no indication that he intended or was considering huge cuts to the areas under licence. Likewise, during and after consultation, there was no engagement with the Appellant regarding boundaries.
15. In 2018, the DAFM requested the Appellant to provide access routes to its sites. However, no changes to the licences were implied. The Appellant received no further communication from the DAFM until September 2019, when the Decision and the Associated Decisions were published. In fact, the Appellant learned of the Decision in the 17 September 2019 edition of the *Wexford People* before it received any official correspondence from the DAFM. (See Annex 3).
16. It is disappointing and of serious concern that the Minister failed to respond to the Appellant's licence application, or even raise any queries or requests for further information, for a period of over six years. When the DAFM/Minister did finally engage (albeit to a limited extent), the Appellant responded promptly. However, the DAFM/Minister again failed to communicate with the Appellant until the Decision was taken some eleven months later.

Substantive Grounds of Appeal

17. The Appellant's substantive grounds of appeal are, first, by reference to criteria (a) to (g) as set out in Section 61 of the Act and, second, by reference to fundamental principles of public/administrative law.
18. The Appellant submitted requests for information under the Freedom of Information Act 2014 ("FOI"), and requests for environmental information under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 ("AIE"), in each case requesting information/environmental information relevant to the Decision, to various relevant public bodies on 8 October 2019. Notwithstanding that the FOI/AIE requests were made promptly following the notification of the Decision, given the statutory one-month deadline for appealing a decision of the Minister to ALAB under Section 40(1) of the Act, the Appellant has had to bring the present appeal before receipt of any responses to those requests. The Appellant therefore reserves the

right to make any and all further submissions to ALAB it deems necessary or appropriate, including any submissions based on the responses received to those FOI/AIE requests.

Section 61 of the Act

19. Under Sections 61 (a) to (g) of the Act, the Minister, in considering a licence application, and ALAB, in considering an appeal against a decision of the Minister, must have regard to seven criteria. That section reads as follows:

"The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of—

- (a) *the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- (b) *other beneficial uses, existing or potential, of the place or waters concerned,*
- (c) *the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- (d) *the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- (e) *the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- (f) *the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—*
 - (i) *on the foreshore, or*
 - (ii) *at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- (g) *the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters."*

20. It is difficult for the Appellant to make meaningful observations on the Minister's evaluation of these criteria, in the absence of a full statement of reasons for the Decision. While the Decision states that *"it is in public interest (sic) to grant a variation of the licences sought i.e. reducing the footprint of the site"*, the Minister completely fails to justify this statement. The Decision, as it relates to the reduced area, is stated in almost entirely positive

terms, and does not cite any adverse effects of the relevant activity. However, the Minister's apparent belief that granting a licence over the Total Area would be contrary to the public interest is unexplained. This defect is addressed more fully below under the heading "failure to give adequate reasons" (see paragraphs 81 to 89).

21. The Appellant considers that in taking the Decision the Minister erred in law and therefore requests ALAB to take account of the following submissions in relation to each of the statutory criteria.

(a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question

22. The Total Area, and the wider Wexford Harbour waters, are undoubtedly suitable for aquaculture and have been found as such by the Minister. The Wexford County Development Plan 2013 – 2019 (the "**County Development Plan**") states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]¹, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).²*

23. The Appellant and its predecessors have farmed mussels in the Total Area/Wexford Harbour since 'time immemorial'. During that time, the relevant waters have provided an exceptionally fertile ground for the cultivation of mussels while also supporting many other species of wildlife/sealife. Indeed, the DAFM's own *National Strategic Plan for Sustainable Aquaculture Development 2015* refers to Wexford Harbour as one of Ireland's "*5 major production areas for bottom mussel*".³

24. In mainland Europe, Wexford mussels enjoy a stellar reputation and attract a premium price. Geographic factors help to make the area especially well-suited to mussel farming. In particular, the shape of the seabed in the Harbour protects mussels from high seas, thereby minimising mortality. Wexford Harbour is sheltered from almost all sides against storms. It is only open to easterly winds – however, the sandbanks in the mouth of the Harbour provide protection against these. Mussels generally thrive in areas where salt and fresh water meet. The tides ensure that nutrients from both the Irish Sea and the River Slaney mix well.

25. The Aquafact Report concludes that Wexford Harbour is entirely suitable for mussel cultivation.

26. The suitability of the waters for aquaculture is also affirmed by the Minister in the Decision, where he states, at paragraph (a), that "*scientific advice is to the effect that the waters are suitable*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (a).

¹ As implemented into national law by the European Communities (Quality of Shellfish Waters) Regulations 2006 (SI No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

² See page 115, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexCoPlan13-19/Volume8.pdf>.

³ See <https://www.agriculture.gov.ie/media/migration/seafood/marineagenciesandprogrammes/nspa/NationalStrategicPlanSusAquaDevel181215.pdf> at page 30.

(b) other beneficial uses, existing or potential, of the place or waters concerned

27. The Aquafact Report finds that the only other actual use of Wexford Harbour is for boating and that activity may be pursued notwithstanding the presence of mussel farms. For the purposes of mussel cultivation, other than mussels living on the seabed, there is little or no infrastructure in place on the seabed or emerging therefrom creating any visual or other impediments for other activities by the practice of bottom mussel cultivation.
28. The Minister was therefore correct to state, at paragraph (b), that "*public access to recreational and other activities is already accommodated by this project*", and at paragraph (g) that "*there are no issues regarding visual impact as the site to be utilised is for bottom culture*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason for the Minister to reduce the total licensed area based on criterion (b).

(c) the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters

29. The Appellant acknowledges and indeed relies upon the fact that the relevant waters are in a special area of conservation ("**SAC**") (or 'Natura 2000' site).⁴ The importance of mussel cultivation to the Site and the support of the listed habitats and species therein, is not in dispute. Indeed, this has been specifically recognised in the Decision (see paragraph (j)). In addition, the symbiotic importance of the relevant waters to mussel farming is recognised in the relevant local development plans.
30. The Aquafact Report concludes that the dynamic nature of the water flows in Wexford Harbour would mask any negative impact of mussel dredging.
31. As noted above, the County Development Plan states as follows: "*The [EU Shellfish Waters Directive (2006/113/EC)]⁵, which aims to protect and improve shellfish waters in order to support shellfish life and growth] requires Member States to designate waters that need protection in order to support shellfish life and growth... There are four designated waters relevant to Wexford: Bannow Bay, Wexford Harbour Outer, Wexford Harbour Inner and Waterford Harbour" (emphasis added).*
32. The Wexford Town & Environs Development Plan 2009-2015 (which was extended until 2019)⁶ refers to the Wexford Wildfowl Reserve (the "**Reserve**") which is situated to the north-east of Wexford Harbour. This document states that "*the overall aim of the Council will be to promote a reasonable balance between*

⁴ Regulation 3 of the European Communities (Conservation of Wild Birds (Wexford Harbour and Sloba Special Protection Area 004076)) Regulations 2012 (as amended) (SI No. 194/2012). Natura 2000 is a network of nature protection areas in the EU. This consists of SACs and special protection areas or SPAs under the EU's Habitats and Birds Directives.

⁵ As implemented in Ireland by the European Communities (Quality of Shellfish Waters) Regulations 2006 (S.I No 268 of 2006) (as amended by SI No 55 of 2009 and SI No 464 of 2009).

⁶ <https://www.wexfordcoco.ie/planning/development-plans-and-local-area-plans/current-plans/wexford-town-and-environs-development>

conservation measures and development measures in the interests of promoting the orderly and sustainable development of Wexford Town" (emphasis added).⁷

33. The maintenance of the status quo, i.e., granting the Appellant a licence over the Total Area, poses no threat to the maintenance of a reasonable balance between the conservation of the Reserve located to the north-east of the Site and the long-standing mussel cultivation activities in Wexford Harbour, which contribute positively to Wexford's economy and reputation.

34. At paragraph (i) of the Decision, the Minister states that "*the Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's [sic], including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC, the Raven Point Nature Reserve SAC, Wexford Harbour and Slob's SPA and the Raven SPA*". This statement demonstrates an error of judgement on the part of the Minister. As will be described in further detail in the submissions under sub-section (e), it is not necessary for the Site to be "reconfigured" in order for the Appellant's aquaculture activities not to affect significantly and adversely the integrity of the relevant SAC. On the contrary, reducing the Appellant's licensed area may, in fact, lead to significant and adverse effects.

(d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on

35. At paragraph (c) of the Decision, the Minister states that "*the proposed development should have a positive effect on the economy of the local area*". The only way in which the Decision could be of benefit to the local economy is if it were a choice between the reduced licence, per the Decision, and no licence at all. However, this is not the case. In reality, the "proposed development", in the words of the Decision, will reduce economic activity. Put simply, the Minister has addressed the wrong question.

36. The Decision, which proposes to cut the Appellant's hectareage significantly, would have an adverse effect on the local economy. The Decision will inevitably result in much lower quantities of mussels being farmed and exported, with devastating effect on the Appellant's turnover, posing a very real threat to the viability of the Appellant's business. (This will also affect any corporation tax revenues generated by the State from the Appellant.)

37. The cessation of the Appellant's mussel farming activities would entail the disposal of fishing fleet in addition to cuts to employment. These effects will not only impact the Appellant and its employees directly but will also permeate throughout the wider Wexford economy.

38. Other than the Appellant and its employees, the economic effects of the Decision will be felt by persons in, at least, the following categories of activity:

38.1 electrical maintenance, repair and replacement of marine and shore-based plant and equipment;

⁷ See page 78, available at <https://www.wexfordcoco.ie/sites/default/files/content/Planning/WexfordTownPlan09-14/WexTown%26EnvDevPlan2009Ch7-9.pdf>

- 38.2 mechanical maintenance, repair and replacement of marine and shore-based plant and equipment;
- 38.3 the fabrication and maintenance of dredges, dredging equipment and other custom-made equipment used in the industry;
- 38.4 mussel dredgers, which ply a route into and out of Wexford Harbour and have helped maintain access to the Harbour, Wexford Boat Club and the Wexford Quays for visiting boats and increase confidence in the navigability of the harbour, despite its sand bars; and
- 38.5 the haulage sector: at the very least, 50 – 100 lorries per annum come into Wexford to collect mussels for export. These hauliers must spend money in the Wexford economy which would be lost if the Appellant reduce its business activities at the Site.

39. Furthermore, the presence of the mussel fishing industry in Wexford town contributes to the enjoyment of tourists, who perceive Wexford as still a 'working' fishing location and not yet dominated by commercial development and idle leisure craft tied up in marinas (the Aquafact Report also notes that the cultivation of mussels has a positive economic impact.)

40. The Decision, if upheld, will have severe economic consequences which will exacerbate the problems exporters in the agri-food sector, such as the Appellant, would already have faced given the looming threat associated with the UK's planned withdrawal from the EU. Therefore, the Appellant fails to understand why the Minister, at paragraph (c) of the Decision, concluded that the development, as contemplated in the Decision, "*should have a positive effect on the economy of the local area*".

(e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna

41. The Aquafact Report underlines the ecological benefit of mussel cultivation in Wexford Harbour. It notes the long-standing positive contribution of such cultivation to the relevant ecosystem while also emphasising the control mechanism mussels exert on eutrophication. Finally, mussel beds in Wexford Harbour give rise to greater biodiversity – this benefit would be lost/greatly reduced by the Decision.

Estuarine area

42. In reaching the Decision, the Minister appears to have determined that, in estuarine areas, only 15% of the relevant area should be licensed for mussel farming activities. The effect is to reduce significantly the Appellant's licensed area. The figure of 15% is referenced in the DAFM's (undated) Appropriate Assessment Conclusion Statement (the "AACS") for the Wexford Harbour and neighbouring SACs,⁸ which is referenced in paragraph (j) of the Decision. The figure of 15% appears to be based on a recommendation by the National

⁸
<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/wexford/ConclusionStatementWexfordHbr110619.pdf>

Parks & Wildlife Service (the "NPWS") in its 2011 report, "Slaney River Valley SAC (site code: 0781) Conservation objectives supporting document -marine habitats and species".⁹

43. The NPWS's report states as follows: "*Significant anthropogenic disturbance may occur with such intensity and/or frequency as to effectively represent a continuous or ongoing source of disturbance over time and space (e.g., effluent discharge within a given area). Drawing from the principle outlined in the European Commission's Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status, this Department takes the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%. Thereafter, an increasingly cautious approach is advocated"* (emphasis added).¹⁰
44. The nature of mussel farming activity is crucial, in this context. The Appellant's mussels, as with all other bottom cultivators of mussels, are located on the seabed. While the amount of time spent physically farming the area is variable, there is no basis for concluding, as is implicit in the Decision, that the Appellant's activity is continuous or ongoing and that, consequently, any geographic threshold should apply. (The Aquafact Report contains a detailed description of the mussel cultivation process).
45. While the mussels are maturing, the Appellant carries out monthly sampling activities to check for growth or predation. Sampling involves one passage of the Appellant's vessel over the area where the mussels are lying. A dredge is towed to take a sample of mussels which, after inspection, is returned to the seabed.
46. Prior to harvesting, mussels may be shifted from one area to another, more productive, area. This may be done either to increase meat content or because of predation in the first area. Moving a bed of mussels normally means the Appellant's vessel is active on a site for seven or eight days over a two-week period. A normal fishing day during this time involves, at most, three to four hours' fishing.
47. When the Appellant harvests the mussels for sale, it 'fishes to order'. The orders normally require that fishing takes place on a Monday, Tuesday, Wednesday or Saturday. If market conditions are very good, the Appellant may fish on all four days; conversely, when things are slow, the Appellant may not fish any of the days. The Appellant normally fishes for one or two lorry-loads of mussels when harvesting. This activity takes approximately one hour to catch, so the dredger is out in the Wexford Harbour for under two hours.
48. Sales of mussels may take place from July right through to the following April. The Appellant only has a certain amount to harvest in a season, the activity is therefore 'market-driven'. It may fish over a long time, or the harvest may be concentrated and carried out in a short space of time. If the Appellant were to fish, say, 40 lorry-loads in a season, that would mean a maximum of 40 'harvesting trips' over nine months. On busy days, it may fish for two lorry-loads, which would reduce the total number of days 'on site' per year.

⁹ https://www.npws.ie/sites/default/files/publications/pdf/000781_Slaney%20River%20Valley%20SAC%20Marine%20Supporting%20Doc_V1.pdf

¹⁰ Page 7.

49. The mussels are in Wexford harbour for approximately two years from the time they are re-laid as seed mussels to when they are harvested for export. For the vast majority of this time, the mussels are simply growing in nature, and the Appellant's vessel is idle at the quayside.
50. Therefore, there is no basis for concluding that the Appellant's mussel farming activity is "continuous or ongoing" or causes "continuous disturbance". Furthermore, there is no effluent discharge other than what the mussels themselves produce.¹¹
51. On the contrary, mussel farming is of significant benefit to the marine environment, particularly where other activities are undertaken nearby. The Appellant is fully aware of environmental issues; its products are certified by the Marine Stewardship Council¹². Lindahl and Kollberg demonstrate that mussel farming is a very effective method of combatting eutrophication, an environmental hazard caused by nutrient leakage into marine waters from agriculture, rural living, sewage discharges and other human activities.¹³
52. The Appellant refers to Chapter 11 of the Marine Institute's *Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)*,¹⁴ which comprises Annex I to the Marine Institute's *Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710) Wexford Harbour and Slobbs SPA (site code 004076) and Raven SPA (site code 004019)*¹⁵ (the "MIAA").
53. In that chapter, the authors note that mussels are historically part of Wexford Harbour's ecosystem and are considered a component of the mixed sediment community complex. It is also noted that mussels play an important role against eutrophication of the water in the harbour. The report also highlights the enhancement to habitat heterogeneity caused by the mussel population.¹⁶ Chapter II concludes as follows:

*"In summary, it is our view, based upon the information presented above, that bottom mussel culture, at current levels, does have a positive role in ecosystem function in terms of nutrient and phytoplankton mediation as well as provision of habitat. The addition of more mussels to the system (with new applications) may have additional benefit in terms of reducing effects of eutrophication, and may further improve status in the outer parts of Wexford Harbour relative to the Lower Slaney waterbody; however, this remains to be determined/confirmed and is subject to availability of additional seed" (emphasis added).*¹⁷

¹¹ In fact, the Appellant notes that mussels, even without farming, naturally occur in Wexford Harbour.

¹² <https://www.msc.org/>

¹³ Odd Lindahl and Sven Kollberg, "How mussels can improve coastal water quality", BioScience Explained, Vol 5 No 1, dated 2008. See here: https://bioenv.gu.se/digitalAssets/1575/1575640_musseleng.pdf

¹⁴

<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIWexfordHarbourSACsAA270318.pdf>

¹⁵

<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/WexfordHarbourNaturaSitesAASummary270318.pdf>

¹⁶ See pages 63 to 67.

¹⁷ Page 67.

54. The clear and uncontroverted evidence is thus that mussel cultivation supports and contributes positively to the relevant SAC and its conservation objectives. Given the length of time that this activity has been carried on in a manner that has led to the designation of Wexford Harbour as part of an SAC/SPA and the positive impacts on its integrity since then, it makes no sense whatsoever to reduce the area in which mussel cultivation occurs. *A fortiori*, it makes absolutely no sense to carry out such a drastic reduction which will severely impact on the economic viability of the activity in question which is such a positive contributor to the harbour as well as to the local economy.
55. With regard to the assertion (quoted above) that adding more mussels is subject to availability of additional seed, the Appellant notes that the relevant seed does not need to be fished in the Irish Sea. Several operators re-lay seed from elsewhere or take seed from half-grown mussels (the Appellant also notes that such movements of shellfish must be approved by the Marine Institute). Therefore, the additional benefits highlighted in Annex I to the MIAA are not, in fact, "*subject to the availability of additional seed*" from Irish waters.
56. Furthermore, the European Commission's Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018 (the "**EC Guidelines**")¹⁸ indicate that devoting as much as 25% of an SAC to aquaculture is unlikely to affect that SAC's conservation status. In fact, the EC Guidelines do not necessarily apply a 25% 'limit' to aquaculture activities taking place within an SAC, as the Minister/NPWS seems to have inferred. The general evaluation matrix at Annex E of the EC Guidelines denotes an SAC's conservation status as 'Unfavourable – bad' if, *inter alia*, "*more than 25% of the area is unfavourable as regards its specific structures and functions*" (emphasis added). This means that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status.
57. Contrary to the apparent inference of the Minister/NPWS, this does not in any way imply that if more than 25% of an SAC is licensed to aquaculture, the entire habitat is unfavourable. The NPWS has therefore misinterpreted the EC Guidelines.
58. As far as the Appellant is aware, no other EU Member State has interpreted the EC Guidelines in this manner. It is also worth recalling that mussel farming activities have subsisted for several generations in Wexford Harbour, with positive environmental effects. Mussel and other shellfish beds are known for providing a habitat for a large number of species. For example, the Wageningen University & Research, a Dutch third-level institution, has conducted several studies in the western Wadden Sea, off the northern coast of the Netherlands, concluding that mussel farming creates a 'hot spot' for biodiversity¹⁹. (See also the Aquafact Report).
59. However, even assuming that the NPWS's reading of the EC Guidelines is correct (which the Appellant does not believe to be the case), the Appellant does not understand why (a) the NPWS felt the need to cut this 25% figure by almost half, to 15% or (b) more pertinently, why the Minister decided to adopt the NPWS's reasoning.

¹⁸ European Commission, "*Reporting under Article 17 of the Habitats Directive, Explanatory Notes and Guidelines for the period 2013–2018, Final version – May 2017*", available here: <https://circabc.europa.eu/sd/a/3ed9f375-227e-46cd-b3dd-1fc59cefcdbd/Doc%20NADEG%2017-05-02%20Reporting%20guidelines%20Article%2017%20final%20April%2017.pdf>

¹⁹ <https://www.wur.nl/en/Research-Results/Research-Institutes/marine-research/Research/Projects/PRODUS-Sustainable-shellfish-culture/Effects-on-nature.htm>

60. Regarding any disturbance to the population of birds at the Wexford Wildfowl sanctuary, throughout its time engaged in mussel farming activities in Co. Wexford, the Appellant has been aware of the Reserve, located to the north-east of the Site. The Appellant understands that, in 2008 or 2009, the NPWS had concerns about the potential effects of mussel farming on the local population of Greenland white-fronted geese living on the Reserve.
61. In/around 2009, the NPWS undertook a three-day study, whereby it monitored the behaviour of the geese before, during and after a day on which the Appellant fished for mussels. The Appellant understood at the relevant time that the NPWS was due to carry out further relevant studies and produce a report demonstrating its conclusion. However, this report never materialised.
62. Around the same time, Bord Iascaigh Mhara ("**BIM**") hired its own photographer to conduct a similar exercise. The Appellant understands that BIM's report uncovered minimal effect, if any, on the relevant geese. The Appellant further understands that BIM has footage, and can produce this at a later stage if requested by ALAB (e.g., at an oral hearing). In fact, to the Appellant's knowledge, BIM's report showed that the geese in fact moved closer to the fishing activity when it was being conducted. To the best of the Appellant's knowledge, despite the findings of BIM's report, the NPWS report made no mention of it.

Coastal area

63. Separately, the Decision cites the AACS, which estimates the extent of intertidal habitat at approximately 1,400 hectares. The Appellant believes that this is a major over-estimate. The Appellant's coastal (i.e., non-estuarine) mussel beds are not intertidal. The Minister appears to have used erroneous maps to conclude that the relevant waters are intertidal.
64. The Appellant refers to paragraph 2.16 of Annex II to the MIAA, where it is stated that "*because of the rapidly changing nature of the mobile sandbanks at the mouth of the harbour, precise definition of tidal zones is problematic*" (emphasis added). At paragraph 2.18, the authors note that "*the configuration of sandbanks at the mouth of the harbour has, however, changed substantially since 2011 [when the satellite images were taken]" and that "upon ground-truthing undertaken by the GSI, the quality of the data in the inner part of the harbour was classified as unreliable or of limited reliability, due to high levels of turbidity at the time the image was captured. Despite these limitations, the GSI bathymetry data has been used for calculating levels of exposure of intertidal habitat at specified tidal levels" (emphasis added).*
65. The MIAA, which the Decision reflects, has clearly acknowledged the deficiencies in the relevant bathymetry data. Furthermore, paragraph 2.17 refers to Wexford Harbour Chartlets prepared by Brian Coulter. When viewed, these chartlets clearly show that the Appellant has lost up to one metre of depth on the majority of the water in Wexford Harbour (where the vast majority of the Appellant's sites (and other sites) are based) due to the incorrect classification of the sites as intertidal.²⁰

²⁰ <https://wexfordharbour.info/iChart/index.html>

66. Furthermore, the AACS itself notes the discrepancies between mapping methods. See page 6, where it is stated that "*the extent of intertidal habitat mapped by the GSI method is estimated at approximately 1,400 ha, as opposed to 1,027 ha, calculated from the OSI maps*". The Geological Survey Ireland ("GSI") maps, which produce satellite-derived bathymetry data and used at page 46 of Annex II to the MIAA,²¹ show the relevant intertidal area. These maps purport to show that the River Slaney is intertidal on spring tides between Wexford Quay and Ferrybank Quay. This is patently inaccurate. The Appellant knows, from its extensive local knowledge, that there are two to three metres of water in that area at a low spring tide.
67. Moreover, the Appellant understands that the GSI is itself concerned that its own data has been used. Please see enclosed an e-mail dated 15 October 2019 from the GSI to this effect at **Annex 4**, where the author states that the GSI "*deemed the results as not satisfactory for any application related to coastal mapping*". The Appellant fails to understand how the Minister could possibly have relied upon the GSI data, when the very organisation which produced the data has expressly acknowledged their unreliability.
68. As a mussel-farming enterprise working in the Wexford Harbour on a regular basis over several years, the Appellant knows that huge areas of its sites which are deemed intertidal are simply not intertidal. Given that the data are inaccurate in Wexford Quays, an area which should be very easy to assess, the Appellant does not understand why they were relied upon for the rest of the harbour. Given the potentially enormous consequences of the Decision its business, the Appellant finds it extremely concerning that the bathymetry analysis, upon which the Decision is largely based, is inaccurate and incorrect.
69. The Aquafact Report concludes the relevant environmental effects of mussel cultivation in Wexford Harbour are generally seen as positive.
70. In summary, the assessment of criterion (e) in the Decision and in the underlying documentation is based on flawed science and a flawed interpretation of science. To compound this error, the reasoning in the Decision cites only positive factors (see paragraphs (f), (h) and (k)). For example, paragraph (f) notes that "*shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation*". However, again, this conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence.
71. There is, therefore, no reason to reduce the Total Area based on criterion (e).

²¹ Marine Institute Birds Study for Wexford Harbour, the Raven and Rosslare Bay <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIIWexfordSPAsAA270318.pdf>

(f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on—

(i) on the foreshore, or

(ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977

72. The Appellant's activities have no material adverse effects on the environment. No infrastructure is used in mussel farming. Mussels are not fed and nothing is introduced into the water. Simply put, mussels do not create pollution.

73. The Aquafact Report concludes that the ecological effects of mussel cultivation in Wexford Harbour are generally seen as positive.

74. At paragraph (j), the Decision cites the recommendations of the AACS and the MIAA as a basis for reducing the Total Area. However, neither of these documents points to significant effects on the local environment as a result of the Appellant's activities. Therefore, there is no reason for the Minister to reduce the Total Area on the basis of criterion (f).

(g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.

75. The Appellant's activities have no material adverse effects on the man-made environment. Given the historical activity at the Appellant's sites, both before and after the first licences were issued, the Appellant is virtually certain that there are no archaeological elements on its sites.

76. The Appellant understands that an archaeological survey was or is being prepared for Wexford Harbour. As far as the Appellant is aware, BIM has put this work out to tender and surveys and studies have taken place. However, the Appellant is not aware of a final report, and understands that this report has not yet been completed.

77. That said, archaeological studies were carried out prior to grant of the original licence in 2003. In any event, the renewal applications should not require new archaeological surveys and, as far as the Appellant is aware, the applications for new sites are the only ones of relevance to the BIM-commissioned survey.

78. The Aquafact Report finds no predicted impacts on the man-made environment or its heritage value.

79. The Minister was therefore correct to state, at paragraph (e), that "*there are no effects anticipated on the man-made environment heritage of value in the area*". This conclusion applies equally to the Total Area as to the reduced area over which the Minister now proposes to grant a licence. There is, therefore, no reason to reduce the total licensed area based on criterion (g).

Fundamental Principles of Public/Administrative Law

80. In addition to his failure to apply/interpret the criteria contained in Section 61 of the Act, the Minister has also breached fundamental principles of public/administrative²² law in several respects. As a Member of the Government, the Minister is obliged to follow fundamental public law principles.

(i) Failure to Give Adequate Reasons

81. The duty to provide reasons is a key principle of administrative law. In *Mallak v Minister for Justice, Equality and Law Reform*, the Supreme Court upheld this principle. Fennelly J, for the Court, found that this duty subsists, even where a public body has absolute discretion in its decision-making, and that "*the rule of law requires all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons*".²³

82. More particularly, public bodies such as the Minister are under a duty to give adequate reasons for their decisions. In the context of a planning decision, in the High Court case of *Mulholland v An Bord Pleanála*,²⁴ Kelly J outlined the requirement to give adequate reasons as follows:

"The statement of considerations must therefore be sufficient to:-

(1) give the applicant such information as may be necessary and appropriate for him to consider whether he has a reasonable chance of succeeding in appealing or judicially reviewing the decision.

(2) arm himself for such hearing or review.

(3) know if the decision maker has directed his mind adequately to the issues which it has considered or is obliged to consider.

(4) enable the courts to review the decision."²⁵

83. In a particularly pertinent case, *Deerland Construction v Aquaculture Licensing Appeals Board*,²⁶ Kelly J quoted the English case of *South Bucks County Council v Porter* where Brown LJ stated that the reasons for a decision "*must enable the reader to understand why the matter was decided as it was and what conclusions were reached on 'the principal important controversial issues', disclosing how any issue of law or fact was resolved*".²⁷ Kelly J went on to state that "*I do not accept that a pro forma recitation of the matters which are contained in ALAB's decision amounts to a compliance with its statutory obligation to state its reasons for such decision*". He concluded that an applicant should "*know from reading the decision the reasons for it*" (emphases added).²⁸

²² In this appeal, we use the terms "public law" and "administrative law" interchangeably.

²³ *Mallak v Minister for Justice Equality and Law Reform*, [2012] IESC 59, paragraph 43.

²⁴ *Mulholland v An Bord Pleanála*, [2006] 1 IR 453, paragraphs 464 – 465.

²⁵ It is clear from the judgment of Hedigan J in *West Wood Club Limited v An Bord Pleanála and Dublin City Council* that, although that case related to a specific duty to give reasons under the Planning and Development Act 2000, "*Kelly J found that the existing jurisprudence regarding what is required for reasons to be considered as adequate at law continued to apply*". See *West Wood Club Limited v An Bord Pleanála and Dublin City Council*, [2010] IEHC 16, paragraph 54.

²⁶ *Deerland Construction v Aquaculture Licensing Appeals Board*, [2009] 1 IR 673.

²⁷ *South Bucks County Council v Porter*, [2004] WLR 1953 at paragraph 36.

²⁸ At page 44.

84. The Minister has several statutory powers under the Act and acts a "licensing authority" for the purposes of Section 7 of this legislation. Under Section 61 of the Act, the Minister is required, as stated above, to have regard to seven criteria in deciding a licence application. Each criterion entails the study and consideration of several factors, encompassing economic, ecological and other issues. Therefore, as far as the Appellant is aware, the Decision is, or at least should be, based on a consideration of a large body of scientific evidence. Therefore, the Appellant would have expected the Decision to shed at least some light on that consideration, to show why the Minister reached the Decision.
85. Instead, the Decision is no more than one page long. The operative part of the Decision, i.e., the portion purporting to show the reasons for the Decision, contains 12 terse statements. This is no more than a pro forma recitation of the factors considered in arriving at the Decision. The similarity between the wording of the Decision and the Associated Decisions (and indeed the wording of decisions addressed to other mussel farmers in the Wexford Harbour area) is striking. It is not possible for the Appellant to know, from reading the Decision, the reasons why it was reached, much less to understand the reasons for the Decision on the principal controversial issues (as required under the principle contained in *Deerland Construction*). In the language of the third limb of the extract from Kelly J's *Mulholland v An Bord Pleanála* judgment (see above), the Decision gives the Appellant no indication of whether the Minister has directed his mind adequately to the issues which he was obliged to consider.
86. Critically, the Minister's rationale, such as it is, simply answers the wrong question. The Decision sets out (albeit inadequate) reasons for granting a licence for a reduced area. However, it utterly fails to address the true question, which is why the Minister has not granted the licence for the Total Area, i.e., the area the subject of the original application. The Appellant expected to see an explanation of the rationale for reducing the area. However, any such explanation is missing from the Decision, save for an oblique reference to the "reconfigured site".
87. For example, reason (c) states that "[t]he proposed development should have a positive effect on the economy of the local area". As noted above, the Appellant considers that the "proposed development", as envisaged in the Decision (i.e., with a huge cut to its licensed area) will in fact have an adverse effect on the local economy. To compound the fact that the Minister has made a fundamental error of judgement of fact, there is no evidence in the Decision to support the conclusion that the "proposed development" as envisaged in the Decision will benefit the local economy.
88. Furthermore, the letter from the DAFM accompanying the licence fails to provide any information as to why the Minister reached the Decision.
89. In summary, the Minister has provided a wholly inadequate set of reasons for the Appellant to be able to understand why the Decision was reached.

(ii) Breach of the Right to be Heard

90. There is a broad duty on Irish public bodies, including the Minister, to give full information to parties such as the Appellant on a decision adverse to its (i.e., the Appellant's) interests which is in contemplation, and to give such party the opportunity to make the best possible case. Public bodies are required to inform persons such as the Appellant of defects in their cases, and to offer them the opportunity to address that difficulty. In *Mishra v Minister for Justice*, Kelly J held that fundamental fairness required that an applicant be given the opportunity to rebut a presumption of the Minister which was material to his decision to deny a citizenship application. More generally, *The State (McGeough) v Louth County Council* held that where a public authority adopts a principle or policy for deciding on an application, the applicant should be afforded "the opportunity of conforming with or contesting such a principle or policy".²⁹ Similarly, in a Privy Council case, *Mahon v Air New Zealand*, it was held that persons affected by decisions of public authorities (in that case, a tribunal) must have the opportunity to rebut evidence against them.³⁰
91. The Minister was thus required to provide the Appellant, in circumstances such as its application for a licence, with the opportunity to rebut evidence on which the Minister intended to rely in a decision. Such procedures are common in other areas of administrative law. To take one example, when the Competition and Consumer Protection Commission (formerly the Competition Authority) (the "CCPC") is minded to determine that a merger or acquisition³¹ will result in a substantial lessening of competition (i.e., to block that merger or acquisition), its practice (although it is not legally required to do so) is to furnish the parties to the transaction with an assessment. The purpose of the assessment is to demonstrate the reasons why, in the CCPC's preliminary view, the merger or acquisition will have an anti-competitive effect and therefore not be in the public interest. Typically, the CCPC's assessment is based on econometric or other evidence which supports the preliminary conclusion. Furthermore, parties are given the opportunity to request an oral hearing, at which they are given the full opportunity to rebut the evidence on which the CCPC proposes to rely.³²
92. At no stage prior to the Decision being published in the *Wexford People*, either during the public consultation process, or after stating its observations, was the Appellant provided with any indication of the Minister's preliminary or ultimate conclusion.
93. The Appellant's submission during the consultation process was by way of response to submissions made by various bodies in October 2018, as described above. The Appellant had no consultation with the Minister or the DAFM at any stage. In particular, the Appellant was not consulted on the proposed cuts or on where new licensed areas should be located. No reason was given as to why the Minister/DAFM decided the area (i.e., the shape) and location of the new sites.
94. The first time the Appellant was made aware of the Decision was on 17 September 2019, when the relevant notice appeared in the *Wexford People*.

²⁹ *State (McGeough) v Louth County Council* [1973] 107 LITR 13 at 28.

³⁰ *Mahon v Air New Zealand*, [1984] A.C. 808.

³¹ As defined in Section 16 of the Competition Act 2002 (as amended).

³² See the CCPC's *Mergers and Acquisitions Procedures*, available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/04/CCPC-Mergers-Procedures-for-the-review-of-mergers-and-acquisitions.pdf>

95. The Appellant was very surprised to learn of the Minister's findings, and by the manner in which it did so. As noted above, the Decision is based on flawed reasons. However, to add insult to injury, the manner by which the Minister informed the Appellant and the procedures followed during the process, are in clear breach of the Minister's obligations under public law to provide the Appellant with the opportunity to respond to the Minister's preliminary conclusions.

(iii) Failure to Exercise Proportionality/Abuse of Discretionary Powers

96. In exercising its discretionary powers, a public body must abide by the principle of proportionality.³³ It is also clear that a public body must not abuse those powers. It is clear from the *Wednesbury* judgment³⁴ that one of the ways in which a public authority may abuse its discretionary power is by taking irrelevant factors into account and/or not taking relevant factors into account.

97. The NPWS appears to interpret the EC Guidelines as recommending that, at most, 25% of an SAC should be allocated to activities which may be damaging to the relevant habitat. As stated above, this mis-interprets the EC Guidelines. All the EC Guidelines say is that if more than 25% of an SAC is considered unfavourable, then the entire area has an 'unfavourable' status (see above regarding Section 61(e) of the Act). However, even if the NPWS's interpretation was correct (which the Appellant strongly disputes), in order for the EC Guidelines to apply in the first place, it must be demonstrated that the activities are, in fact, damaging. As noted above, Lindahl and Kollberg, amongst others, have demonstrated that mussel farming activities are in fact beneficial to the marine environment. These benefits include the combatting of eutrophication. (See section 4 of the *Aquafact Report*).

98. Going one step further, again assuming that the NPWS's interpretation of the EC Guidelines is correct, even if mussel farming could be said to be damaging to the local habitat/marine environment (which the Appellant strongly disputes), reducing the licensed area to 15% of the SAC is draconian and wholly disproportionate. It is not clear to the Appellant why such a large reduction is merited. Indeed, this 'cut' appears somewhat arbitrary. The Appellant acknowledges that the NPWS's view is not binding on the Minister. Nonetheless, the Minister should have given due consideration to the merits of (a) the NPWS's interpretation of the EC Guidelines and (b) the NPWS's view that it is appropriate to reduce the licensed area from 25% to 15%. This is particularly true in circumstances where the evidence for the purported net environmental damage (i.e., damage from the mussel farming to the local habitat) is, at best, suspect and where mussel farming has been conducted at Wexford Harbour for several generations while producing environmental and other benefits. Instead, the Minister appears to have (a) blindly accepted the NPWS's interpretation of the EC Guidelines and (b) given a disproportionate weight to the NPWS's view, taking an upper limit for aquaculture of 15% of an SAC 'as read', notwithstanding the substantial evidence that a figure of 25% should be more than acceptable (and that the activity is not environmentally damaging in the first place).

99. The NPWS's view that the figure of 25% should be reduced to 15% is without scientific basis and appears to ignore the positive influence that mussel cultivation has had in the Site and in the wider Wexford Harbour over

³³ *Barry v Sentencing Review Group and the Minister for Justice, Equality and Law Reform*, [2001] 4 IR 67.

³⁴ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 230.

decades. This reduction will likely bring about a drastic change, the impacts of which are entirely unknown. There is no suggestion that the proposed reduction could be said beyond reasonable scientific doubt to avoid adverse significant impacts. On the contrary, reducing the Site could not be said beyond reasonable scientific doubt not to adversely affect the integrity of the Site/SAC. Mussel cultivation in the area is long-established, and has been shown to have positive environmental impacts, in contrast with other forms of aquaculture such as fish farming. The European Commission's comments in this regard apply to aquaculture in general and the positive impacts of mussel cultivation necessitate a far more positive appreciation of its role in the biological functioning and maintaining and enhancement of the conservation objectives and interests in an SAC.

100. The Minister, based on the NPWS's view, proposes to remove large areas of mussel cultivation. The effects of this proposed removal have not been scientifically assessed. In circumstances where the mussel cultivation which subsisted at the Site for centuries led to the designation of the Wexford Harbour area, including the Site, as an SAC/Natura 2000 site and has continued to support this status since, the removal of mussel cultivation without scientific assessment should not be permitted.

101. By analogy, at the Burren SAC, the grazing activity carried out by domestic animals has contributed to and continues to contribute to that area's conservation objectives by limiting the spread and cover of species that would otherwise be likely to deprive the listed habitats and species of light and space as well as nutrients. The drastic reduction of mussel cultivation and the periodic removal of excess nitrogen by the harvesting of same should not be enforced or compelled as to do so would be to risk a fundamental alteration of the balance within the SAC.

(iv) Breach of Appellant's Legitimate Expectations

102. The doctrine of legitimate expectations is a fundamental feature of Irish public/administrative law. In essence, the doctrine requires a public body such as the Minister honour a commitment as to the procedure(s) it will follow. The aim of the doctrine is partly to ensure legal certainty with regard to a public body's performance of its functions, and to ensure good administration³⁵. In *Glencar Exploration plc v Mayo County Council*,³⁶ Fennelly J in the Supreme Court stated the three principles of legitimate expectation. Firstly, a public authority must have made a promise or representation, express or implied. Secondly, that representation must be addressed to identifiable group of persons, such that it forms part of the relationship between the authority and those persons. Thirdly, that representation must create a reasonable (or legitimate) expectation, to the extent that it would be unjust for the authority to resile from it.

103. The same approach was adopted by the High Court in *Lett & Co v Wexford Borough Council*, a case which, coincidentally, related to a compensation scheme for mussel fishermen in Wexford Harbour who suffered

³⁵ See, for example, *Attorney General of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 which endorsed by the High Court in *Fakih v Minister for Justice* [1993] 2 IR 406.

³⁶ *Glencar Explorations plc v Mayo County Council*, [1992] 1 IR 84 at 162 – 163.

financial losses caused by the operation of a waste water facility. In that case, it was decided that the representation by the public body must relate to its exercise of a statutory power.³⁷

104. As documented above, the Appellant applied for its licence to be renewed in 2011. For six years, the Appellant had received no communication from the Minister or his officials regarding the licence application suggesting that any adverse finding was being considered. Relations with the Minister were, at all times, positive. There was thus an implied representation by the Minister that the Appellant would, at the very least, be consulted upon, and given the right to make submissions on, any proposed decision by the Minister. The Minister failed to process the Appellant's licence application expeditiously. The Appellant thus continued to farm the relevant sites for years, with no indication that an adverse decision was being contemplated.
105. The Appellant, together with some of its competitors who are also affected by similar decisions of the Minister (and have lodged separate appeals), comprise a clearly identifiable group of persons.
106. Finally, the Minister's implied representation gave no indication that there would be any reduction in the licensed area. At the very least, the Minister never gave any indication that a significant reduction, which poses a serious threat to the viability of the Appellant's business (and indeed of the other appellants) and their employees, was contemplated. Therefore, the Appellant (and the other appellants) had formed a legitimate expectation that their licences would be renewed in full.
107. It is also clear that the Minister's implied representation relates to a statutory function, namely the Minister's power to grant licences under Section 7 of the Act, in contrast with the facts of *Lett & Co* cited above.

Non-Exhaustive Nature of Claims

108. In addition to the factors outlined above regarding the Act and fundamental principles of public/administrative law, the Appellant reserves the right to make further submissions at an oral hearing and/or otherwise based on constitutional law, under the EU Charter of Fundamental Rights and/or under the European Convention on Human Rights.

Conclusion

109. In conclusion, the Decision is vitiated by errors of law both in the interpretation of the various criteria established by Section 61 of the Act and in the failure to follow key principles of administrative law.
110. Therefore, the Appellant requests ALAB to set aside the Decision and grant it the right to continue cultivating mussels at the Site.

WF-25224030-1

³⁷ In that case, the purported payment of compensation was not under a statutory power. Therefore, it was held that no legitimate expectation had been formed.

"Determination of Aquaculture/ Foreshore Licensing application – T03/047C

Loch Gorman Mussels Ltd., 84 Northumberland Road, Ballsbridge, Dublin 4, applied for authorisation for the bottom cultivation of mussels on the foreshore on an 42.11 ha site (T03/047C) in Wexford Harbour, Co. Wexford.

The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant **a variation** of the licences sought i.e. reducing the footprint of the site from 42.11 ha to 14.0778 ha. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to grant a variation of the licence sought: -

- a. *Scientific advice is to the effect that the waters are suitable. The site is located in Wexford Harbour Shellfish Designated Waters. Mussels in these waters currently have a "B" classification;*
- b. *This is a renewal application for existing aquaculture activity in Wexford Harbour and public access to recreational and other activities is already accommodated by this project;*
- c. *The proposed development should have a positive effect on the economy of the local area;*
- d. *All issues raised during Public and Statutory consultation phase;*
- e. *There are no effects anticipated on the man-made environment heritage of value in the area;*
- f. *Shellfish have a positive role in the ecosystem function in terms of nutrient and phytoplankton mediation;*
- g. *There are no issues regarding visual impact as the site to be utilised is for bottom culture;*
- h. *No significant effects arise regarding wild fisheries;*
- i. *The site is located within the Slaney River Valley SAC (Site Code: 00781), The Raven Point Nature Reserve SAC (Sited Code: 00710), Wexford Harbour and Slobs SPA (Site Code: 4076) and the Raven SPA (Site Code: 4019). An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC's/SPA's. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in these SAC's/SPA's, including this reconfigured site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Slaney River Valley SAC , The Raven Point Nature Reserve SAC , Wexford Harbour and Slobs SPA and the Raven SPA.*
- j. *Taking account of the recommendations of the Appropriate Assessment the aquaculture activity proposed at this (reconfigured) site is consistent with the Conservation Objectives for the SAC's/SPA's;*
- k. *A licence condition requiring full implementation of the measures set out in the draft Marine Aquaculture Code of Practice prepared by Invasive Species Ireland;*
- l. *The updated and enhanced Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection required under EU and National law."*



AQUAFAC

ENVIRONMENTAL SURVEY SPECIALISTS

A report on Mussel Cultivation activities
in Wexford Harbour,
Co. Wexford.



October 16th 2019

AQUAFAC International Services Ltd.
12, Kilkerrin Park, Galway, Ireland
Tel: 091 756812

E-Mail: info@aquafact.ie Web: www.aquafact.ie

Table of Contents

1.	Introduction	1
2.	AQUAFACr's Relevant Experience	2
2.1.	Experience in Wexford Harbour	2
2.2.	Experience with mussel farms	2
2.3.	Experience with Marine Subtidal Surveys	2
3.	Description of the mussel cultivation process.....	3
4.	Ecological services provided by mussel farming in Wexford	5
5.	Assessment of criteria listed in the Fisheries (Amendment) Act 1997.....	7
6.	Conclusion.....	9

1. Introduction

AQUAFACT has been retained and instructed to prepare this report by River Bank Mussels Ltd., TL Mussels Ltd., Loch Garman Harbour Mussels Ltd., Crescent Seafood Ltd., WD Shellfish Ltd. and Fjord Fresh Mussels Ltd. each of which holds mussel cultivation licences in Wexford Harbour. The Department of Agriculture, Food and the Marine (DAFM) has recently sought to vary these licences by reducing the foot print of the relevant sites by *ca* 66%.

Wexford Harbour lies with the Slaney River Valley Special Area of Conservation (SAC) (site code 00781) and within the Wexford Harbour and Slobbs Special Protection Area (SPA) (site code 004076) and is close to another SPA, the Raven SPA (site code 004019). These designations make the area a sensitive site in terms of its conservation status (see National Parks and Wildlife Service (NPWS) 2011a, b). Known as Natura 2000 sites, they form a network of nature protection areas in the EU. The network consists of both SACs and SPAs under the Habitats and Bird EU Directives.

AQUAFACT is an environmental consultancy specialising in monitoring and managing resources in marine, freshwater and terrestrial environments. AQUAFACT ensures a widely based service thanks to its contacts in the scientific community, its close association with the National University of Ireland, Galway (NUIG), Galway Mayo Institute of Technology (GMIT), University College Dublin, Trinity College and the expertise of its scientific staff. Since it was established in 1986, AQUAFACT has provided marine ecological consultancy to a wide range of clients including the State, semi-State and private sector. It has also carried out several studies in the Wexford Harbour area.

This report:

1. Outlines AQUAFACT's experience in Wexford Harbour;
2. Outlines AQUAFACT's experience with regard to mussel farms;
3. Outlines AQUAFACT's experience with regard to subtidal benthic surveys;
4. Describes the positive impacts of mussel cultivation on both the sea bed and the water column and
5. Provides an assessment of a suite of criteria listed in the Fisheries (Amendment) Act, 1997.

2. AQUAFAC T's Relevant Experience.

2.1. Experience in Wexford Harbour

In 2005, AQUAFAC T carried out subtidal benthic surveys in Wexford Harbour as part of the EU Water Framework Directive (WFD) monitoring programme on behalf of both the Marine Institute and the Environmental Protection Agency (EPA). AQUAFAC T was retained by Mott McDonald who were the consulting engineers for Glanbia in a project relating to the latter's food production facility in Wexford. AQUAFAC T was also part of the Bord Iascaigh Mhara-led UISCE project that studied Wexford Harbour in depth.

2.2. Experience with mussel farms

AQUAFAC T has carried out an extensive range of surveys at mussel farms, particularly in Killary Harbour, Co. Galway to assess the ecological impacts of mussel cultivation on the water column and the seabed. AQUAFAC T has also carried out similar studies on both oyster farms and salmon farms. During the period between 2000 – 2006, AQUAFAC T was appointed as experts to the International Council for the Exploration of the Seas (ICES) working group on aquaculture. In 2013, 2014, 2017 and 2018/19, AQUAFAC T has also carried out assessments on licence applications on behalf of the Aquaculture Licence Appeals Board (ALAB).

2.3. Experience with Marine Subtidal Surveys

AQUAFAC T has extensive experience in the planning, management, execution, analysis and reporting of biological seabed (benthic) survey work. Some examples of the more recent surveys that have been carried out for the Marine Institute and NPWS include the following:

- Benthic sampling and analysis of WFD benthic samples from Galway Bay, Kinvara Bay, Camus Bay and Kilkerrin Bay in 2013/2014 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Killiney Bay, Waterford Estuary, Roaringwater Bay, Cork Harbour and Kenmare Bay in 2013 for the Marine Institute;
- Taxonomic elements of WFD benthic samples from Baltimore, Boyne Estuary, Castletownbere, Clew Bay, Cromane, Dublin Bay, Gweebarra Bay, Inner Kenmare Bay, Killala Bay, Killybegs Harbour, Kilmakilloge, Northwest Irish Sea, Sligo Bay, Tralee Bay and Youghal in 2012 for the Marine Institute;
- Benthic sampling and analysis of the Codling Bank for the NPWS in July 2012;

-
- Benthic sampling and analysis of the Kish/Bray and Blackwater Banks in February 2012 for NPWS;
 - Benthic sampling and analysis at two proposed aquaculture sites in 2012 for the Marine Institute;
 - Benthic sampling analysis for the Galway Bay Cable Project in Inner Galway Bay August 2012 on behalf of the Marine Institute;
 - Benthic sampling and analysis of Kenmare Bay, Tralee Bay and the Magharees in 2011 for the Marine Institute and NPWS;
 - Benthic sampling of Killybegs Harbour, Dundalk Bay, Clew Bay, Newport Bay, Westport Bay, Killary Harbour, Broadhaven Bay and Lough Swilly for the Marine Institute and the EPA in 2011;
 - Benthic sampling and analysis of Mulroy Bay, Rutland Bay and Islands, Drumcliff Bay, Sligo Harbour, Killala/Moy Estuary, Kilkerrin Bay, Mannin Bay, Slyne Head, Kingstown Bay, Shannon Estuary, Hook Head, Saltee Islands and Carnsore Point in 2010 for the Marine Institute and NPWS and
 - Benthic sampling and analysis of Galway Bay, Clew Bay, Donegal Bay, Broadhaven Bay, Blacksod Bay, Lough Swilly, Wexford Harbour, Bannow Bay and the Blackwater Estuary in 2009 for the Marine Institute and NPWS.

3. Description of the mussel cultivation process.

The vast majority of seed mussels is sourced off the east coast of Ireland. This is regulated by DAFM. The range of seed size sourced is 15-40mm but the ideal range is 25-35mm. In general, the seed sourced on the east coast beds is brought back into the harbour on the same day for re-laying. The opening times of the seed beds vary and are dependent on when DAFM authorise same. Late summer is normally the seed fishing period.

Two sites within Wexford Harbour are proposed to be used for seed collection which involves identifying natural intertidal mussel settlement within the sites and relocating the seed mussels to subtidal areas. The stocking density of seed within the harbour varies across each producer and is site dependent. At present the seed stocking density ranges from 10-60 tonnes/hectare with the average around 30 tonnes /ha. Re-laying of seed mussels from the hold is carried out by water jet through holes in the side of vessel. Once re-layed, the mussels can take from 12-24 months to reach market size but the average growth period is around 18 months. However, the timing on the re-lay plot can depend on the stock level from the previous year, the progression of sales from the previous year's stock, the progression of sales of the current year's stock, the market price, demand and the fluctuations of meat yield levels.

Mussels sold have to be purified and de-gritted as Wexford Harbour outer is classified as B (mussels require to be depurated in sea water prior to sale), whereas Wexford Inner is classified as C (if for consumption, mussels must be cooked prior to sale) and mussels from here would have to be moved out into the outer harbour for finishing to have them classified as B mussels.

During the ongrowing period after re-laying of seed, stock can be fished for starfish and green crab although not all mussel producers do this. There are two boats fishing for green crab across the harbour on a variety of sites where they have permission or licence. Starfish are generally confined to the outer sections of the harbour closer to Raven Point.

Some producers move stock between sites *e.g.* they may have ground that is good for finishing (maximising meat yield) and will seek to finish their stock on such grounds. Cleaning of the sites is normally done through the action of harvesting. Most mussel harvesting is carried out from September to April with many operators finished by the end of December. Some harvesting can be carried out during the summer months but this depends on the market. The slack time is normally February to June. During this time monthly sampling occurs to track stock quality. However, during the harvesting period, sites would be checked more frequently and this varies considerably among the producers and is probably dependent on the quantity of stock the producer normally exports.

During the harvesting season, access varies from 1 to 6 times per week. Access to sites usually happens between half flood to half ebb where the tidal restriction is 3 hrs either side of high tide and for some sites, the restriction is greater (1.5 hours before and after high tide).

During harvesting and re-laying, the dredgers move slowly over the site with the dredges trailing about 30 meters behind the vessel which when full, are winched in and the contents emptied into the hold. Once in the hold, mussels are moved up a conveyor belt through a washer and crabs/starfish are picked off along with stones/waste. The mussels are then directed by conveyor to one tonne bags hanging in the other part of the hold. Normally about 20 tonnes are harvested for each transport to the market. Unloading from the boat is either carried out at the quayside by an onboard crane or using a crane on a lorry onto wooden pallets which are then loaded into a transport lorry.

It should be noted also that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and upturned sea bed will be quickly re-colonised by the same suite of the species that occur in this habitat.

4. Ecological services provided by mussel farming in Wexford Harbour.

There are several important ecological aspects of mussel cultivation that should be noted and these are:

1. The historical use of Wexford Harbour for the cultivation of mussels;
2. The eutrophication mitigation benefits arising from mussel cultivation in an area that is known to be suffering from mild eutrophication and
3. The ecological benefits associated with mussel cultivation.

1. *Mussel cultivation in Wexford Harbour.*

Mussels have been recorded in the harbour for at least 2 centuries and most likely for a much longer time period. The former time scale is confirmed by fisheries reports from the 19th century and the longer time scale, although a presumption, is entirely likely. It is clear, from early records, that mussels would have been present in the harbour presumably contributing positively to its ecosystem's functioning.

Within the conservation objectives of the Slaney River Valley SAC (site code 00781, NPWS 2011a, b), no community type is listed as mussel reefs; however, mussels are considered a component of the Mixed Sediment Community Complex found in the habitat feature Estuaries (1130) and it is ecologically correct to include this species within that community type. It is not possible however, to determine the numbers or extent of mussels currently in the harbour that can be considered as 'natural' or that derive aquaculture practices. AQUAFAC's historical records of this community type *i.e.* Mixed Sediment Community in Wexford Harbour show that it has been stable since the first survey was carried out in 2005.

2. *The trophic status of the Slaney Estuary.*

The Slaney River catchment supports extensive areas of agricultural lands from which non-point source run off feeds into the river. For this reason (and also arising from towns and small villages upstream in the catchment), the system has been classed as polluted or potentially eutrophic in the last number of cycles (EPA, 2015) (Table 1 below).

Year	Lower Slaney	Wexford Harbour
2012-2014	Eutrophic	Intermediate
2010-2012	Potentially Eutrophic	Potentially Eutrophic

2007-2009	Eutrophic	Unpolluted
2001-2005	Eutrophic	Intermediate

Bivalves, such as mussels, are suspension feeders and feed at the lowest trophic level, influencing the nutrient and organic interaction between the water column and the sea bed. They harvest phytoplankton and organically enriched particles. In linking these two systems, bivalves play an important role in the consumption and movement of energy within marine systems. The ability to control/mediate excess phytoplankton is an important ability of bivalves. Many papers have concluded that bivalves have the ability to control *i.e.* reduce, phytoplankton abundance in shallow water systems (Dame, 2013; Gallardi 2014; Filgueira *et al.* 2015; Petersen *et al.*, 2015).

○ For these reasons, grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is an important control mechanism for eutrophication in the system and by reducing numbers of mussels/production areas, this system will become even more eutrophic.

3. *Habitats provided by shellfish communities.*

Shellfish communities are known to provide important structure and enhance habitat heterogeneity in marine systems (Walles *et al.*, 2015). The shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. (Another role the shells play is in the sequestration of carbon).

○ For these reasons, the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

Based upon the information presented in Sections 1, 2 and 3, bottom mussel culture at current levels in Wexford Harbour has a positive role in ecosystem functioning in terms of:

1. Nutrient, phytoplankton and organic carbon sequestration
2. Provision of habitat for other marine flora and fauna and
3. Food resources for "Qualifying Interest" species of the SAC and "Species of Qualifying Interest" for the SPA.

5. Assessment of criteria listed in the Fisheries (Amendment) Act 1997.

AQUAFACT was also asked to consider and comment on the 7 following criteria as listed in Section 61 of the Fisheries (Amendment) Act 1997:

61. The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or a revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of

- a. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,*
- b. Other beneficial uses, existing or potential, of the place or waters concerned,*
- c. The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,*
- d. The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,*
- e. The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and*
- f. The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and*
- g. The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.*

1. The suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question.

The inner sections of Wexford Harbour is an entirely suitable place to carry out mussel cultivation as it is relatively sheltered and shallow.

2. Other beneficial uses, existing or potential, of the place or waters concerned.

The only other use of Wexford Harbour is for boating but the two activities are not mutually exclusive.

-
- 3. The particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters.**

As noted in the Introduction, two Natura 2000 sites (an SAC and an SPA) are present within Wexford Harbour and the NPWS has drawn up a suite of conservation objectives for both these sites that need to be complied with. The conservation objectives of the SAC are the more relevant to mussel farming in the harbour as sea floor communities are listed as a Qualifying Interest (QI) for the area and the action of dredging for harvesting the stock could be seen as having a negative impact on the conservation status of the SAC. However, as has been described above, Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

- 4. The likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on.**

The economic impact on the general area is seen as positive as the cultivation process provides employment for local people.

- 5. The likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna.**

As noted above, the ecological effects of mussel cultivation generally are seen as positive in Wexford Harbour.

- 6. The effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aquaculture is or is proposed to be carried on the foreshore, or at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977.**

As noted above, the ecological effects of mussel cultivation are seen as positive in Wexford Harbour.

- 7. The effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.**

No impacts are predicted on the man-made environment or its heritage value.

6. Conclusion

Mussel cultivation has been on-going in Wexford Harbour certainly for many decades and probably longer. As for all estuaries, the location is highly dynamic with short term and seasonal changes in flow rates, salinities, suspended solids and nutrient loadings and wave climate conditions. In addition, the catchment area of the River Slaney is highly agriculturally developed and also has a number of medium sized towns *e.g.* Bunclody and Enniscorthy all of which add nutrient loads to the river. This give rise to eutrophic conditions in the estuary. As mussels are suspension feeders and feed at the lowest trophic level they play an important role in regulating nutrient levels in the water column as they harvest phytoplankton and organically enriched particles. For these reasons, it is highly likely that grazing by mussels of phytoplankton and organic matter in the Slaney River Valley SAC is likely to be an important control mechanism of eutrophication in the system and by reducing numbers of mussels/production areas, the system will become even more eutrophic.

Shellfish communities provide important structure and enhance habitat heterogeneity in marine systems and the shells themselves provide an attachment location for both epiflora and epifaunal while the interstices provide refugia for mobile species. For these reasons, it is highly likely that the mussel beds in the Slaney River Valley SAC give rise to greater biodiversity in the system and if numbers of mussels/production areas are reduced, the system will become less biodiverse.

The main impact of bottom cultivation of mussels relates to the harvesting operation where dredges are used to collect the adult shellfish for sale to market. It should be noted that dredging is a temporary disturbance of the sea bed and not a permanent destruction of the habitat and that upturned sediments turned up by the dredging activity will be quickly re-colonised by the same suite of the species that occur in this habitat. Wexford Harbour is naturally a highly dynamic area with aperiodic changes freshwater flows and associated variations in salinity, suspended solids, nutrients and wave climate and it is considered that these fluctuations would mask any impacts associated with mussel dredging.

References

Dame, R.F. (2013). Ecology of marine bivalves: an ecosystem approach. 2nd Edition. CRC press. 271pp.

EPA. (2015). Trophic Status of Ireland's waters.

Filgueira, R., Byron, C.J., Comeau, L.A., Costa-Pierce, B., Cranford, P.J., Ferreira, J.G., Grant, J., Guyonnet, T., Jansen, H.M., Landry, T., McKindsey, C.W., Petersen, J.K., Reid, G.K., Robinson, S., Smaal, A., Sonier, R., Strand, O., and Strohmeier, T. (2015). An integrated ecosystem approach for assessing the potential role of cultivated bivalve shells as part of the carbon trading system. *Mar Ecol Prog Ser* 518: 281–287.

Gallardi, D. (2014). Effects of Bivalve Aquaculture on the Environment and Their Possible Mitigation: A Review. *Fish Aquac J* 5: 105. doi: 10.4172/2150-3508.1000105.

National Parks and Wildlife Service, (2011 a and b). Slaney Estuary SAC site synopsis and conservation objectives. NPWS website.

Petersen, J.K., Hasler, B., Timmermann, K., Nielsen, P., Tørring, D.B., Larsen, M.M., Holmer, M., (2014). Mussels as a tool for mitigation of nutrients in the marine environment. *Mar. Pollut. Bull.* 82, 137–143.

Petersen, J.K., Saurel, C., Nielsen, P. and Timmermann, K. (2015). The use of shellfish for eutrophication control. *Aquaculture International* DOI: 10.1007/s10499-015-9953-0

Walles, B., Mann, R., Ysebaert, T., Troost, K., Herman, P. and Smaal, A. (2015). Demography of the ecosystem engineer *Crassostrea gigas*, related to vertical reef accretion and reef persistence. *Estuar. Coast and Shelf Sci.*, 154 (2015) 224e233

APPOINTMENTS

BOOK KEEPER WANTED

Book Keeper required for a haulage company near Enniscorthy. Must have minimum 2 years experience in a similar role with strong Microsoft Office skills. Prior use of accounting systems preferred. Should have good organization, problem solving skills & the ability to work unsupervised.

If you are interested, please email office.adh1@gmail.com for further information, or call 085 8637633 between 9am - 1pm Monday to Friday.

SPECIAL NOTICES

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

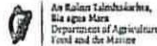
The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to T.L. Mussels Ltd., Clonard Business Park, Whitemill Industrial Estate, Wexford, Co. Wexford. SITE REFS: T03/030A2, T03/030B, T03/030E, T03/030F, T03/030/1 (site D) and T03/099A for the bottom cultivation of mussels on sites on the foreshore in Wexford Harbour, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

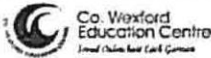
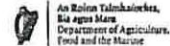
The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to FJORD FRESH MUSSELS LTD, C/O O'CALLAGHAN, O'MAHONY CODY & CO. CLONARD BUSINESS PARK, WHITEMILL IND. ESTATE, WEXFORD, CO. WEXFORD, REFS: T03/046A, T03/046B AND T03/046C for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



Temporary (Full-Time) Administrator position available at Co. Wexford Education Centre

Typical responsibilities of this role include:

- maintaining diaries and arranging appointments
- preparing and collating reports
- filing
- preparing accounts
- organising meetings
- managing databases
- liaising with relevant organisations and clients

Please forward your CV to Lorraine O'Garman, Director, Co. Wexford Education Centre, Milehouse Road, Enniscorthy, Co. Wexford or alternatively email director@ecwexford.ie on or before Friday September 20th 2019.

Co. Wexford Education Centre is an equal opportunities employer.

WEXFORD COMPUTER SERVICES

Providing affordable, reliable computer support.

All aspects of computer services covered including consultation, repair, upgrade, installation, health check, virus removal, laptop screen and power jack replacement

FREE PICKUP & RETURN
Call Dermot Lucking on 087-3229896
email: info@wexfordcomputerservices.ie
www.wexfordcomputerservices.ie

BNI

BNI (Business Network International) Menapia Chapter Wexford are holding an Open Evening on Thursday the 26th of September, from 5pm in the Ferrycarrig Hotel, Wexford, providing Wexford Businesses to network with successful businesses with a view to generate more income and build more contacts in Wexford and surrounding areas. Business Network International (BNI) is a membership organisation for small businesses where members network and receive referrals. It is an international organisation around the world and has about 120,000 active members.

We have vacancies in professions such as: Loss Assessor, Health & Safety Consultant, Trades, Beautician, Make Up Artist, Hair Salon, Interior Designer, Office Supplies, Engineer, Window Manufacturer, Landscape Gardener, Mechanic, Car Hire, Computer Services, Graphic Designer, Printer, Security Firm, HR Consultant, Cleaning Services.

To register, please contact Aoife Caulfield, President On 087-0993918 or email her: aofie@caulfieldfinancial.ie

SPECIAL NOTICES

Drains Unblocked
Chimney Cleaning
www.robertrochdrains.com
Tel. 087-2130669

teagasc Transferring the Family Farm Clinic 2019

Teagasc invite you to their popular series of 'Transferring the Family Farm' clinics designed to enlighten & educate you on the many details involved in creating an effective plan for succession.

Woodford Dolmen Hotel, Carlow
Thursday, 26 September | 10:30am
Attendance free | Pre-booking is essential

Register your place online at www.teagasc.ie/farmtransfer

What's on where and when.

Find out in our Entertainment guide

CONRADH NA GAELGE

Irish Language classes have re started from 11th September, continuing every Wednesday from 8.00-9.30pm at the C.B.S. Secondary School Thomas St. Wexford

Tá faillte roimh chách All are welcome

For enquires ring Pádraig 086-8306530 Big Linn

SPECIAL NOTICES

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT AQUACULTURE AND FORESHORE LICENCES.

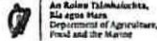
The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to WEXFORD MUSSELS LTD, ROCKFIELD, COOLCOTS, WEXFORD, CO. WEXFORD. REFS: T03/035A, T03/035B1, T03/035B2, T03/035C, T03/035F6G1, T03/035F6G2, T03/035F6G3, T03/072B, T03/090A for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquaculture/foreshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



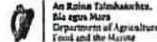
FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to WEXFORD MUSSELS LTD, ROCKFIELD, COOLCOTS, CO. WEXFORD, SITE REF: T03/072A for the bottom cultivation of mussels on a site on the foreshore in WEXFORD HARBOUR, CO. WEXFORD. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicensing

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



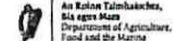
FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to, T.L. Mussels Ltd, Clonard Business Park, Whitemill Industrial Estate, Wexford, SITE REF: T03/030C for the bottom cultivation of mussels on a site on the foreshore in Wexford Harbour, Co. Wexford. The reasons for this decision are elaborated on the Department's website at www.agriculture.gov.ie/seafood/aquaculturelicensing

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie





Loreto Secondary School,
Pembroke Hill, Ballynagee,
Wexford.
Telephone: 053-9146162
Website: www.loreto-wexford.com

**Admission into
1st year, September 2020**

- The school will accept fully completed application forms in respect of girls in 6th class primary/national school (or its equivalent) for admission into our 1st year group (150 students) in September 2020 from 8.15 am on Thursday, 26 September 2019 until 1.00 pm on Friday, 18 October 2019. Forms received outside of these dates will be returned to sender.
- Application forms, as well as copies of the school's admission policy, are available from the School Secretary and Receptionist during normal school hours (8.15 am to 4.15 pm, Monday to Friday) and may also be downloaded from the school's website - www.loreto-wexford.com

Billy O'Shea,
Principal and Secretary to Board of Management.


**St. Peter's College
Secondary School**

St Peter's College Past Pupils AGM
Date: Wednesday 25th September 2019
Venue: St Peter's College
Mass celebrated in College Chapel at 7.30 pm,
followed by AGM in school at 8 pm
All Past Pupils welcome and encouraged to attend
Refreshments served
For further information please contact Declan Cloney,
President St Peter's College PPU, Tel: 086 8088678 or
David Power FRO SFC PPU, Tel: 087 7971077

CABINET MAKER AVAILABLE
For all the small jobs around the house
Shelving, Hot Press, Units, Doors,
Skirting Boards, Wardrobes etc.
All interior paint work
Walls, Ceilings and Woodwork
087-2436228

BOGGAN
SAND, GRAVEL,
ALL TYPES
OF STONE &
DECORATIVE
STONE.
**ENQUIRIES
087-9684393**

ROTHWELL CONTRACTING LTD.
Speciality is
Emptying Septic Tanks

- Fully Licensed
- Long Molds
- Septic Tanks
- Sewing all of Co. Wexford
- Specialist in Domestic, Business, Schools and Guest Houses

Contact us on our Web Site
www.rothwellcontracting.ie
or
Phone Irvin on 087 2588325

JOHNNY FLOOD WATER PUMPS
www.johnnyfloodwaterpumps.com

All makes of submersibles,
deep well,
shallow well, water filter &
treatment systems
75% grant now available
RATHHURE, ENNISCORRY,
CO. WEXFORD
Tel: 053 9255381 or 087 2532495

FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT/ REFUSE AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant (with variations) or refuse to grant Aquaculture and Foreshore Licence applications to the following in the table below in Wexford Harbour, Co. Wexford:

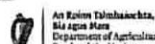
Reference Number	Name	Species	Decision
T03/047 (3 sites A, B & C) T03/083A T03/085A	Loch Garman Harbour Mussels Ltd. 24 Northumberland Road, Ballsbridge, Dublin 4	Mussels (Bottom culture)	Grant Licences (with variations)
T03/048A T03/091A	Noel Scallan, 29 William Street, Wexford Town and Sheila Scallan, Crosswinds, Avondale Drive, Wexford Town	Mussels (Bottom culture)	Grant Licences (with variations)
T03/049 (5 sites A, B, C, D & E) T03/077A	Riverbank Mussels Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/052 (2 sites A & B)	W. D. Shellfish Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/053 (2 sites E, F & G)	Crescent Seafoods Ltd. Mytilus, Ballaghblake, Curracloe, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/074 (2 sites A & B)	Patrick Swords, Crory Lane, Crossabeg, Co. Wexford and Florence Sweeney, Ballyhoe, Lower Screen, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/080A	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/078A	Crescent Seafoods Ltd. Mytilus, Ballaghblake, Curracloe, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/080B	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/093 (2 sites A & B)	Mr Eugene Duggan, 141 Belvedere Grove, Coolcots, Wexford Town and Mr Jason Duggan, 10 Antelope Road, Maudlinton, Wexford Town	Mussels (Bottom culture)	Refuse Licence

The reasons for these decisions are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquaculture/foreshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/wexford/>

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 <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

www.agriculture.gov.ie
@agriculture_ie



From: Xavier Montoya
Sent: Tuesday, 15 October 2019 10:55
To: Chopin, Nicolas
Cc: Sean Cullen <Sean.Cullen@gsi.ie>

Subject: W re: Satellite derived bathymetry Wexford 2012-Proteus

Dear Nicholas,

Thank you for your email

A few points to clarify the status of the Satellite Derived Bathymetry from Wexford (2012- Proteus)

1. Satellite bathymetry data from Wexford estuary was a pilot study delivered in 2012 by Proteus to explore the potential of applying such techniques in Irish coastal areas
2. After running a comparison with existing terrestrial Lidar (OPW) and multibeam bathymetry (GSI) we deemed the results as not satisfactory for any application related to coastal mapping
3. As a result GSI has not released that bathymetry data to the public
4. We are unaware that companies are accessing these datasets and using them in their applications

please contact GSI if you require any further information

Best regards,

[GSI]

Xavier Montoya Senior Geologist Marine and Coastal Unit Geological Survey Ireland, Eggers Bush, Haddington Road, Dublin D04 K7X4, Ireland.
T +353 (0) 1 6782807 M +353 (0) 872513667 E xavier.montoya@gsi.ie koen.verbruggen@gsi.ie <https://url1.safelinks.protection.outlook.com/?url=https://www.gsi.ie/&data=02%7C01%7CElpj-OCe@jeanain%40willamfray.com%7C651fd5db94d6faab03d751599510%7C687673ad9a2416-98a977244d4210a0317f0%7C637657317516677077&data=03%7CWWAnI2IIUyN3y5A5nmNR1RTI9-cYMP8NKm0UYCHU5%3D&reserved=0> <https://url2.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.gsi.ie%2F&data=02%7C01%7CElpj-OCe@jeanain%40willamfray.com%7C651fd5db94d6faab03d751599510%7C687673ad9a2416-98a977244d4210a0317f0%7C637657317516677077&data=4V7378K0Gp7Y%2F1K9w6Fvb6Tbvt%2FG5TQFgRSPQJprNw%3D&reserved=0>
A division of the Department of Communications, Climate Action & Environment