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)	NOEL & SHEILA SCALLAN		
Address of Appellant	21 WILLIAM STREET, WEXFORD		
Phone:		Email:	
Mobile:		Fax:	

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) * In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.	€76.18	✓

(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

PROPOSED AQUACULTURE LICENSES IN WEXFORD HARBOUR

AQUACULTURE LICENCES APPEALS BOARD
16 OCT 2019
RECEIVED

Please forward completed form to: Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois. Tel: (057) 8631912 Email: info@alab.ie

Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T03-71 AIN T03-48 AIN
Appellant's particular interest in the outcome of the appeal:	
PROPOSED LICENSEE	
Outline the grounds of appeal (and, if necessary, on additional page(s) give full grounds of the appeal and the reasons, considerations and arguments on which they are based):	
SEE ATTACHED	
Signed by appellant: Joel Scallan Sheila Scallan Date: 15-10-19	

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

Please forward completed form to: Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois. Tel: (057) 8631912 Email: info@alab.ie

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.

Grounds for Appeal

- Areas cultivated heretofore by Applicants have been reduced by approximately two thirds. This is unreasonable and disproportionate based on the grounds given by the Department.

- There is no rational or scientific bases for taking 15 per cent coverage as a standard to invite intervention for habitats.

- The vast majority of the existing area cultivated by Applicants does not constitute mud flats and sand flats not covered by sea water at low tide.

- No seed stock from outside Ireland are used by Applicants.

- The Licencing Authority admits that mussel cultivation has positive benefits to habitats and particularly on eutrophication status and additional mussels are likely to enhance benefits. It is perverse and irrational therefore to reduce the areas previously cultivated by two thirds.

- The Department relies on GSI mapping for determination. GSI mapping for Wexford estuary was carried out in 2012 and was deemed not satisfactory by those carrying it out. Reliance on GSI mapping is therefore a flawed basis upon which to reduce the cultivated area by approximately two thirds.

- Reliance is placed by the Department on Marine Institute reports including one prepared by Atkins. This report discloses the paucity of data and research carried out and reliance on it gives a questionable basis on which to make decisions. It records no evidence of decline of species or habitat over the one hundred year plus cultivation of mussels in Wexford harbour and offers no basis therefore for concluding that aquaculture activities have any appreciable impact upon the long-term welfare of the species detailed in the report. Most adverse effects recorded in the report relate to dredgers travelling to and from the sites. Reduction by approximately two thirds will not achieve any reduction of travelling to the sites and therefore the proposed reduction in area is illogical and perverse. The report admits there is no site specific data available to address the impact on the red merganser, which is the principal concern for habitats and species, and it is perverse therefore that concern for such impact should produce a conclusion that existing area cultivated should be reduced by approximately two thirds. There is no evidence that any of the research which the report recommends as necessary to reach informed conclusions has been undertaken and therefore reliance on the report to justify an approximate two third reduction in area is flawed. No adequate consideration has been given to the adverse affects on water quality and its affects on habitat and species by the dramatic proposed reduction in mussel cultivation.

- The size and layout of the proposed areas render mussel farming uneconomical on these sites.

- Such further grounds as appear in the attached report of Aquafact are relied upon.

AQUAFACT

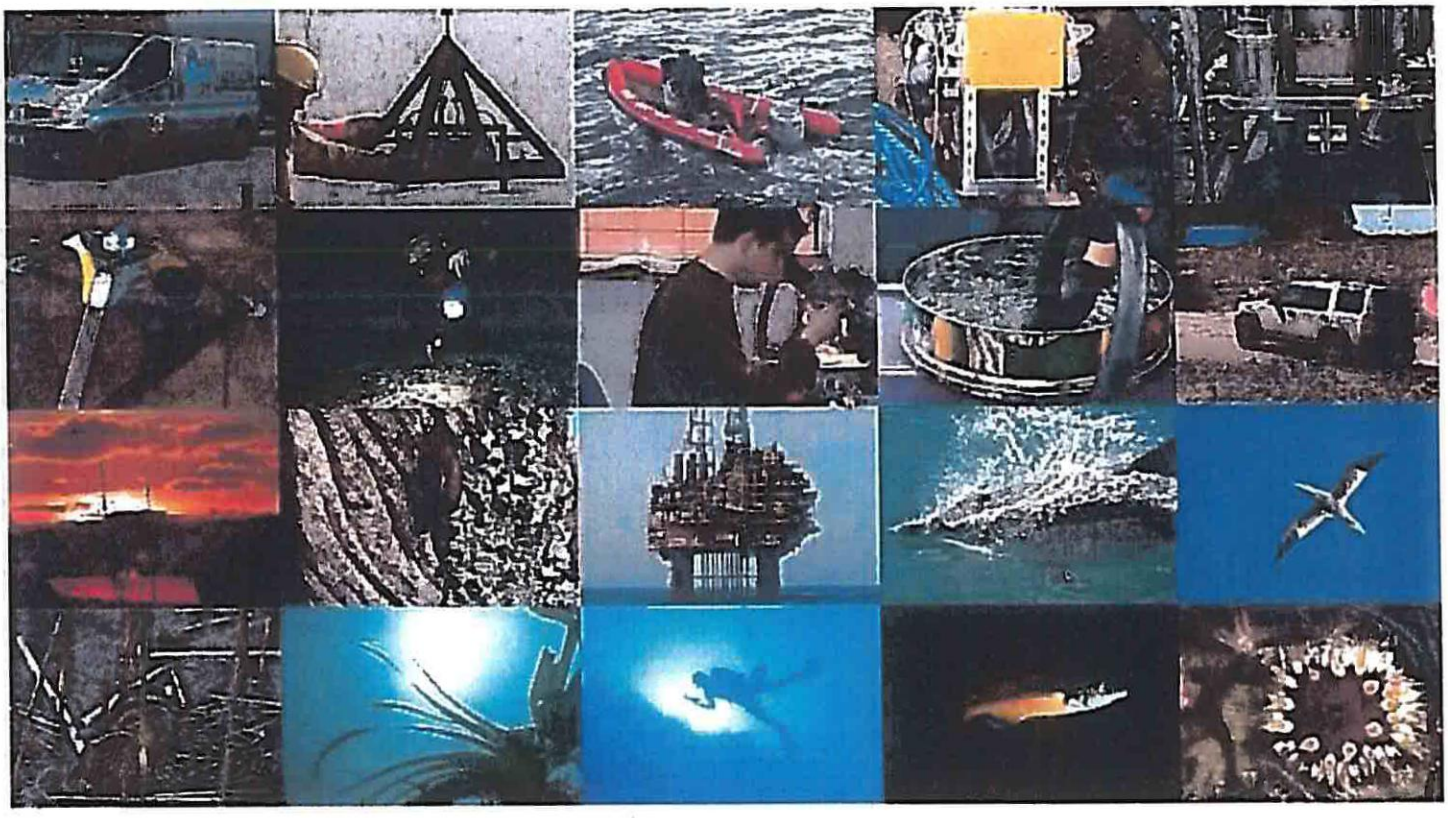
ENVIRONMENTAL SURVEY SPECIALISTS

A report on mussel cultivation activities

in Wexford Harbour,

Co. Wexford.

Draft Report.



October 2019

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1. Introduction

William Fry Solicitors, Dublin contacted AQUAFACT was regarding a number of its clients who hold mussel cultivation licences in Wexford Harbour. The Department of Agriculture, Food and the Marine (DAFM) has sought to vary these licences by reducing the foot print of the sites by *ca* 66%.

Wexford Harbour lies with the Slaney Estuary 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).

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 document:

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. Carrys out an assessment of a suite of criteria listed in the Fisheries (Amendment) Act, 1997.

- 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;
- 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 which 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 relaying. The opening of the seed beds vary and is dependent on when DAFM authorise it. Late summer is normally the seed fishing period.

Two sites within the 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 T/Ha with the average around 30 T/Ha. Relaying of seed mussels from the hold is carried out by water jet through holes in the side of vessel. Once relayed, it can take from 12-24 months to reach market size but the average is around 18 months. However, the timing on the relay 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 and demand and the fluctuations of meat yield levels.

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 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 to the ecosystem functioning of same.

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. AQUAFACT'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 Valley catchment supports extensive areas of agricultural lands from which non-point source run off feeds in 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).

Trophic status of Lower Slaney River and Wexford Harbour (EPA)		
Year	Lower Slaney	Wexford Harbour
2012-2014	Eutrophic	Intermediate
2010-2012	Potentially Eutrophic	Potentially Eutrophic
2007-2009	Eutrophic	Unpolluted
2001-2005	Eutrophic	Intermediate

Table 1. Trophic status of the Lower Slaney and Wexford Harbour.

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 actual 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 above, two Natura 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 are the more relevant to the mussel farming in the

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 related to the harvesting operation where dredges are used to collect the adult shellfish for sale to market. However, as noted 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.

References

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

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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.