Alab, Info

From: Nigel Ferry [redacted]
Sent: Sunday 1 November 2026 20:15
To: Alab, Info
Subject: Submission on Appropriate Assessment consultation: Ballyness Bay remitted appeals AP2/2025 to AP11/2025 – objection

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Re: Public consultation on the Appropriate Assessment of the remitted appeals concerning aquaculture licences in Ballyness Bay, Co. Donegal
Appeal Refs: AP2/2025 (T12/407B); AP3/1-2/2025 (T12/409A); AP4/2025 (T12/409B); AP5/2025 (T12/441A); AP6/2025 (T12/441B); AP7/2025 (T12/441C); AP8/2025 (T12/500A); AP9/2025 (T12/502A); AP10/2025 (T12/515A); AP11/1-2/2025 (T12/516A)

Dear Secretary,

I make this submission in response to the Board's public notice of 1 October 2026. It addresses the further information now before the Board: the applicants' Revised Screening for Appropriate Assessment and Natura Impact Statement (AQUAFACT-APEM, May 2026, "the NIS"), their Supporting Information for S61 Assessment (May 2026, "the S61 submission"), their Annex IV Risk Assessment (September 2026), and the Board's own updated Screening for Appropriate Assessment (August 2026). Please place it on, and consider it in, each of the appeal files listed.

I was born and raised in Falcarragh, and Ballyness Bay is one of my favourite places in the world. A large framed photograph of the bay, taken from the pier looking out towards Tory, hangs in my home in Letterkenny. I still visit my family in Falcarragh most weekends, and a walk at the bay is a regular part of those visits. This is not an abstract question of policy for me: it is the place I grew up near and still come back to week after week.

Like the thousands of people in this community who have opposed these licences since 2019, I am not opposed to shellfish farming. I am opposed to shellfish farming in this bay, and I ask the Board to refuse all of the licences under appeal.

SUMMARY OF GROUNDS

1. The NIS does not remove reasonable scientific doubt; it records it. It states that "The risk of Pacific oysters naturalising in Ballyness Bay cannot be discounted" and that effects on part of the protected sandflats are "unknown", yet concludes that there is "no reasonable scientific doubt".
2. The NIS conflicts with the Board's own screening, and with the applicants' own Annex IV report, on the location of the seal haul-out, the exposure of the bay, and the access route past the priority grey dunes.
3. The NIS relies on 2019 data for twenty sites and on generic conservation objectives, not the site-specific "Restore" objectives the Board now applies.

4. The mitigation is largely optional ("recommended", "where practicable") or not yet written, and cannot be relied on under Article 6(3).
5. The NIS does not assess the proposed Uisce Éireann wastewater outfall identified in the Board's screening.
6. The S61 submission does not address the bay's history of failed oyster farming, public safety, landscape or tourism.

My specific requests to the Board are set out at the end of this submission.

1. THE LEGAL TEST

The Board's May 2024 determination on these appeals was quashed after the Board conceded the judicial review. On remittal, the Board's updated screening found that significant effects cannot be excluded, on the basis of objective scientific information, on fourteen European sites: Ballyness Bay SAC, Gweedore Bay and Islands SAC, Horn Head and Rinclevan SAC, Cloghernagore Bog and Glenveagh National Park SAC, and ten Special Protection Areas.

Under Article 6(3) of the Habitats Directive and Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011, consent may be given only where the Board has made certain that the project will not adversely affect the integrity of any European site. No reasonable scientific doubt may remain (Waddenzee, C-127/02). The assessment must contain complete, precise and definitive findings capable of removing all such doubt (Sweetman, C-258/11). Mitigation may be taken into account only where it is sufficiently certain that it will be effective (Grace and Sweetman, C-164/17). Where doubt remains, the only lawful outcome is refusal.

2. THE NIS RECORDS THE VERY DOUBT IT CLAIMS TO REMOVE

The NIS concludes (section 3.5): "There is no reasonable scientific doubt in relation to this conclusion." Yet it also states:

- "The risk of Pacific oysters naturalising in Ballyness Bay cannot be discounted." (section 3.2.13.2)
- On the Mobile sand community complex, part of the protected sandflats (1140): "it is unknown if the overlap with the trestles would be considered a significant disturbance." (section 3.2.1.2)
- On seals: "little research has been undertaken to assess the impacts of aquaculture operations on seal species." (section 3.2.4.2)

A risk that "cannot be discounted" is, by definition, a reasonable scientific doubt. Section 3.4 then states that the project "does not introduce pathways for ... the spread of invasive species", which cannot be reconciled with section 3.2.13.2.

The oyster risk is not theoretical. The NIS describes triploid oysters as only "partially sterile" and cites research identifying "large intertidal areas" as a factor in Pacific oyster recruitment in Irish bays. It describes Ballyness Bay as "a large and shallow estuarine complex, with extensive areas of sandflats which are exposed at low tide" (section 2.2). Peer-reviewed research has found that triploid Pacific oysters are not completely sterile (e.g. Wang et al., Heredity, 2002). Pacific oysters have naturalised in Lough Swilly and Lough Foyle, where a restoration project is now working to reduce them so that the native oyster can recover. An introduction to Ballyness Bay could not be reversed.

3. OUT-OF-DATE AND INCOMPLETE EVIDENCE

(a) Habitat overlap. The NIS does not calculate how much of the protected sandflats the ten sites

would occupy, although the Annex IV report gives their combined footprint (14.69 ha). It relies instead on the Marine Institute's 2019 figures for the original twenty sites and states that "we can expect this percentage to be reduced even further" (section 3.2.1.2). The S61 submission repeats for each site that the footprint is below the 15% threshold, without stating the figure.

(b) Conservation objectives. The NIS (Table 2-5) gives most SPAs a blanket objective, "To maintain or restore favourable conservation condition". The Board's August 2026 screening applies updated site-specific objectives, which are "Restore" for many of the species screened in: Common Gull, Lesser Black-backed Gull and Arctic Tern at Inishbofin, Inishdooey and Inishbeg SPA, 2.4 km from site T12/407B; Cormorant and Shag at Horn Head to Fanad Head SPA; and Cormorant and Herring Gull at West Donegal SPA. A "Restore" objective means the population is not in favourable condition. The NIS does not consider whether additional disturbance is compatible with restoring these populations. For example, it scores the effect on Cormorant as "Slight" without reference to that objective.

(c) Production. The tonnages assessed are the applicants' "best estimates", which "may differ from original licence application figures" (NIS section 1.1). The maximum production the licences would permit over their ten-year term is not assessed.

4. THE DOCUMENTS DISAGREE ON BASIC FACTS

(a) Seals. The Board's screening, relying on the Marine Institute, places the bay's identified seal haul-out on a sandbank "in northwest of Bay", 668 m from site T12/407B. The NIS places it "in the middle of the bay" (section 2.5.2) and, later, "towards the northeast of the bay" (section 3.2.4.2), and gives no distance from any site. The S61 submission (section 3) states that the boundary of T12/409B, the largest production site, "was revised to stay at a 200m distance from the known seal haul-out area", which is the minimum buffer the NIS itself recommends. The proposed "strict 200 m distance buffer ... between any aquaculture activities and any seal species present in the bay" has no monitoring, recording or reporting attached.

(b) Exposure. The NIS relies on the bay being "moderately exposed" to disperse organic deposits from beneath the trestles (section 3.2.7.2). The Board's screening describes "this well-sheltered bay", with the Dooey Peninsula "leaving only a narrow strait to the open sea". The applicants' own Annex IV report (section 1.3) agrees with the Board: "The bay is sheltered by the Dooey Peninsula, with a narrow opening to the sea." No hydrodynamic data are presented to resolve this.

(c) Access and the grey dunes. The NIS accepts that the priority habitat fixed "grey" dunes (2130*) are "already in a degraded condition" (section 3.2.2). Their conservation objective is to restore them, and site T12/407B is 246 m from them. The protection offered is a commitment to use a southern access route suggested by the Department, avoiding the "established sand track that runs through" the dunes from Magheraroarty Pier (NIS section 2.1). Yet the Board's August 2026 screening records that access to T12/407B is "from Magheraroarty Pier and Ballyness Pier". The documents do not agree on how the western sites will be reached, and nothing explains how use of the existing dune track would be prevented or checked. The southern route itself adds approximately 1 km (0.85 ha) of tractor track across the protected sandflats (section 2.1).

5. MITIGATION THAT IS NOT CERTAIN

The conclusions of the NIS depend on "the appropriate mitigation adhered to", but the measures are framed as "recommended", "strongly advised", "where practicable" and "where possible". The use of triploid oysters only is itself just "recommended" (section 3.3, item 11).

- Invasive species. The contingency plan for removing invasive species is "to be approved by DAFM before commencement" (section 3.2.14). It does not yet exist and cannot be assessed. The CLAMS process relied on is described as "non-statutory".
- Otters. The NIS proposes "Avoidance of activities during early morning/evening hours" (section 3.3, item 4), which the Annex IV report qualifies as "where practicable" (section 5.2). Husbandry is tied to spring low tides, with tractors driven "through shallow water on the receding tide" (NIS section 2.1), and neither document explains how the two can be reconciled. Neither presents the results of any otter survey of the bay, although the Annex IV report notes that the most recent national survey found the highest otter densities in the south and north-west.
- Salmon. The Board screened in Atlantic salmon because the sites lie on its migratory route. The NIS discounts nutrient-driven algal growth because the bay lacks rock for wracks and kelp (section 3.2.16.2). But Ulva, which the NIS itself names, forms mats on sheltered sand and mudflats without needing rock, and the NIS accepts that the trestles will add hard surfaces for growth. Its conclusion rests on there being "no evidence" of harm, which is not the certainty Article 6(3) requires.

6. THE PROPOSED WASTEWATER OUTFALL

The Board's screening identifies a maritime usage licence (MUL230038, issued 11 June 2026) to Uisce Éireann for surveys "to inform location/design of proposed WWTP outfall pipe", 1.55 km from site T12/407B. The NIS treats this as temporary survey work (Tables 2-8 and 3-8) and does not assess the outfall itself. Its conclusion on sewage pressures relies on the earlier appropriate assessment of the bay, which predates this proposal. The Board's screening also records that the bay "is currently not a Designated Shellfish Area nor a Classified Bivalve Mollusc Production Area". The combined effect of a new outfall and shellfish grown for human consumption has not been assessed.

7. THE 2024-25 OPERATIONS

The NIS (section 2.1) records that trestles were installed at T12/407B, T12/515A and T12/441A in August 2024, stock was placed in September 2024 and removed in March and April 2025, and tractors crossed the protected sandflats. Both the NIS and the S61 submission state that the sites were restored to their original condition, but this rests on "Information provided by the applicants". No survey, photographs or monitoring results are presented from the only period in which these operations have actually taken place in the bay.

8. SECTION 61 MATTERS

Under section 61 of the Fisheries (Amendment) Act 1997, the Board must consider the suitability of the place, other uses of the area, its statutory status, and the effects on the local economy and on ecology. The S61 submission repeats near-identical paragraphs for each site and does not engage with the issues that matter most here.

- Suitability. Every site is found "suitable", but the submission does not mention that oyster farming has been tried in this bay before and ceased. The last licence lapsed in 1999, as the Board's screening confirms. Local people attribute that failure to the instability of the sandy substrate. Nor does the submission mention that the bay is not classified for shellfish production, or the proposed outfall.
- Public safety. The submission accepts that trestles will be "submerged or partially submerged at higher states of tide" in a bay used for kayaking and windsurfing, and that "Appropriate site marking would therefore be required". No marking scheme is proposed. It says nothing about swimmers, or about the surfers who use the bay.

- Landscape. The submission accepts that the sites are "located within a scenic coastal landscape" and that trestles will be visible "due to the open and flat nature of Ballyness Bay". No landscape or visual assessment or photomontages are provided. The effect is dismissed as "tide-dependent", but low tide is when the strand is most walked and used.
- Local economy. The applicants estimate approximately 7 full-time and 10 part-time positions from approximately 63 tonnes a year. The effect on tourism, on which this area depends, is addressed in a single sentence: aquaculture "can coexist with tourism and recreation where appropriately managed". No data on visitors, accommodation or local businesses are provided. Section 61 requires the Board to consider the effect on the economy of the area as a whole.
- Statutory status. The bay is a Special Area of Conservation and an OSPAR Marine Protected Area, beside a Special Protection Area, in the Gaeltacht. The S61 submission deals with this in one sentence per site.

REQUESTS TO THE BOARD

1. I ask the Board to refuse all of the licences under appeal.

2. If the Board does not refuse at this stage, I ask that it not determine the appeals until it has:
(a) required the applicants to calculate the overlap of the ten sites with each community type of the protected sandflats;
(b) required a single, mapped location for the seal haul-out, with the distance from each site;
(c) required assessment against the current site-specific conservation objectives for every European site screened in;
(d) required assessment of the proposed wastewater outfall in combination with the project;
(e) obtained independent verification, by the NPWS or the Marine Institute, of the condition of the three sites used in 2024-25;
(f) required binding, specified measures, rather than recommendations, for access routes, marking of structures, working hours and invasive species control;
(g) required proper assessment of the landscape, public safety and tourism effects; and
(h) held an oral hearing, and given the public a further opportunity to comment on any new information.

3. I ask the Board to confirm receipt of this submission and that it has been placed on each appeal file.

The Board has been here before. In 2024 it confirmed these licences, and it then had to concede that its decision could not stand. The material now before it is no stronger. The applicants' own consultants state that the risk of Pacific oysters naturalising in the bay "cannot be discounted". They contradict the Board's screening, and each other, on where the seals haul out and whether the bay is sheltered. And the mitigation they offer is largely a list of recommendations.

The law does not ask this community to prove that harm will happen. It asks the Board to be certain that it will not. On this record, that certainty does not exist, and the only lawful decision is refusal.

What is at stake cannot be undone. A non-native oyster, once established, cannot be taken back out of the bay. A protected habitat already in poor condition will not recover from years of tractor traffic. A landscape that has drawn people to Cloughaneely for generations will not be the same once it is lined with steel trestles.

I grew up beside Ballyness Bay, and I want the children of Cloughaneely to grow up beside the same bay I did. I respectfully urge the Board to refuse every one of these licences.

Yours faithfully,
Nigel Ferry

