



**ALAB**

An Bord Achomhairc Um  
Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board

# Technical Advisor's Final Report – Shellfish Appeals

Appeal Ref No.'s  
AP34/2019, AP36-40/2019 and 42-44/2019

## Appeals description:

Appeals against the decision by the Minister for Agriculture, Food and the Marine to grant (with variations) Aquaculture Licences to T.L Mussels Ltd, Loch Garman Harbour Mussels Ltd and Noel & Sheila Scallan, for the bottom cultivation of mussels at various Sites on the foreshore at Wexford Harbour, Co. Wexford.

**Technical Advisor: Mary Hegarty, MSc., 19 February 2025**

**Date of site inspection: 15 January 2025**

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**Note on the Final Report:**

This report, prepared in February 2025, has had regard to all the information provided in the following documents (in addition to the information contained in the appeals and other submissions made to ALAB in relation to the remaining live appeals before it):

- the DAFM aquaculture licence files,
- the KRC Ecological Technical Advisor’s Report to ALAB dated 01 June 2023,
- the submissions made in response to a Section 46 notice issued on the 29 June 2023 relating to the issues raised in the Section 46 notice and the KRC Ecological Technical Advisor’s Report, issued on the 29 June 2023,
- the 05 December 2023 KRC Supplementary Report
- the submissions made in response to a Section 46 notice issued on the 31 January 2024 in relation to the issues raised in the Section 46 notice, the KRC report of 01 June 2023 and the supplementary report provided by KRC to ALAB on 05 December 2023.
- the ALAB Technical Advisor’s Final Interim Report dated 21 March 2024,
- the KRC Gap Analysis Report (revision) dated 26 September 2024,
- the KRC statement confirming that the conclusions of the Gap Analysis Report are still applicable to the assessment of the actual and proposed activities the subject of the remaining live appeals before ALAB – letter of the 30 January 2025,

As set out in the Final Interim Report of March 2024, all parties to the appeals were issued a Section 46 notice on the 31 January 2024, allowing them the opportunity to make submissions until 01 May 2024. These submissions had not been received as of the date of the Interim Report and the Interim Report accordingly notes that they will be dealt with at a later date and that it was not possible to make a final recommendation at that time.

This Report accordingly assesses these submissions subsequently received on the Section 46 Notice and makes final recommendations.

Sections 1 to 3 of this report are updated versions of sections 1 to 3 of the ALAB Technical Advisor's (TA) Final Interim Report of March 2024.

Section 4 of this report sets out the submissions received in response to the Section 46 Notice issued in January 2024 in relation to the issues raised in the notice, the KRC report of 01 June 2023 and the supplementary report provided by KRC to ALAB on 05 December 2023.

Section 5 affirms the EIA Screening Conclusions contained in the Interim Report.

Section 6 addresses Appropriate Assessment and AA Screening.

Section 7 contains an updated Section 61 Assessment.

Section 8 considers the effects of mussel culture on water column nutrient levels.

Section 9 provides an evaluation of the issues raised with a focus on the submissions made since the Interim Report and the TAs response to these issues.

This report addresses all the appeals in one document. I confirm that I have considered all the appeals individually including with respect to carrying out individual Screenings for AA for each application under appeal. However, it was considered appropriate to prepare a single TA report particularly in circumstances where the Appropriate Assessment issues arise across all of the appeals and where the same submissions are made with respect to this issue in response to the Section 46 Notices in all the remaining live appeals (save with respect to the Noel and Sheila Scallan Appeal Ref 36/2019 and 37/2019 which submissions I have also addressed).

## 1.0 General Matters / Appeal Details

### 1.1 Licence Application

The minister decided to grant fourteen aquaculture licences in 2019 for the bottom-cultivation of mussels in Wexford Harbour, as listed below in Table 1 with their relevant appeal number. Ten of the licence applications were for renewals of existing sites and four were for new sites. All decisions were to grant variation licences i.e. all licences had a reduction in the site area originally applied for.

**Table 1** - All licence applications granted by the Minister for Wexford Harbour in 2019

Appeal Number	Site Reference	Applicant	Licence Type	Aquaculture Type	Minister's Decision
AP34/2019	T03/30E	T.L Mussels Ltd	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP35/2019	T03/35A, B, C, F&G	Wexford Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP36/2019	T03/48A	Noel & Sheila Scallan	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP37/2019	T03/91A	Noel & Sheila Scallan	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP38/2019	T03/30A2, B, C, E	T.L Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP39/2019	T03/030/1 (site D)	T.L Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP40/2019	T03/099A	T.L Mussels Ltd.	New License	Bottom Cultivation of Mussels	Grant with variation
AP41/2019	T03/46A, B, C	Fjord Fresh Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP42/2019	T03/047A, B, C	Loch Garman Harbour Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP43/2019	T03/083A	Loch Garman Harbour Mussels Ltd.	New License	Bottom Cultivation of Mussels	Grant with variation
AP44/2019	T03/085A	Loch Garman Harbour Mussels Ltd.	New License	Bottom Cultivation of Mussels	Grant with variation
AP45/2019	T03/049A, B, C, C1 & D	Riverbank Mussels Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP46/2019	T03/077A	Riverbank Mussels Ltd.	New License	Bottom Cultivation of Mussels	Grant with variation
AP47/2019	T03/52A & B	WD Shellfish Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation
AP48/2019	T03/55E	Crescent Seafoods Ltd.	Renewal	Bottom Cultivation of Mussels	Grant with variation

## 1.2 Appeal Details

All fourteen decisions to grant the aquaculture licences (with variations) were appealed. Apart from AP34/2019, all appeals were taken by each of the licence applicants against the Minister’s Decision to grant the licences with a reduced area, as shown in Table 2. AP34/2019 was taken by BirdWatch Ireland against the Minister’s Decision to grant (with variations) site T03/30E.

Six appeals were withdrawn (AP35/2019, AP41/2019, AP45/2019, AP46/2019, AP47/2019 and 48/2019) on 27 June 2024.

**Table 2** - Applicants and appellants for each remaining live appeal in Wexford Harbour

Appeal Number	Site Reference	Date Appeal Received	Applicant	Appellants(s)
AP34/2019	T03/30E	09/10/2019	T.L. Mussels Ltd	BirdWatch Ireland
AP36/2019	T03/48A	16/10/2019	Noel & Sheila Scallan	Noel & Sheila Scallan
AP37/2019	T03/91A	16/10/2019	Noel & Sheila Scallan	Noel & Sheila Scallan
AP38/2019	T03/30A2, B, C, E	16/10/2019	T.L Mussels Ltd.	T.L Mussels Ltd.
AP39/2019	T03/030/1 (site D)	16/10/2019	T.L Mussels Ltd.	T.L Mussels Ltd.
AP40/2019	T03/099A	16/10/2019	T.L Mussels Ltd.	T.L Mussels Ltd.
AP42/2019	T03/047A, B, C	16/10/2019	Loch Garman Harbour Mussels Ltd.	Loch Garman Harbour Mussels Ltd.
AP43/2019	T03/083A	16/10/2019	Loch Garman Harbour Mussels Ltd.	Loch Garman Harbour Mussels Ltd.
AP44/2019	T03/085A	16/10/2019	Loch Garman Harbour Mussels Ltd.	Loch Garman Harbour Mussels Ltd.

## 1.3 Name of Appellant (s):

**Table 3** Names and addresses of current appellants.

Appeal Number	Site Reference	Appellant	Address
AP34/2019	T03/30E	Birdwatch Ireland	Unit 20 Bullford Business Campus, Kilcoole, Greystones, Wicklow
AP36/2019	T03/48A	Noel & Sheila Scallan	29 William Street, Wexford Town Wexford

AP37/2019	T03/91A	Noel & Sheila Scallan	29 William Street, Wexford Town Wexford
AP38/2019	T03/30A2, B, C, E	T.L Mussels Ltd.	Clonard Business Park Whitemill Industrial Estate, Wexford
AP39/2019	T03/030/1 (site D)	T.L Mussels Ltd.	Clonard Business Park Whitemill Industrial Estate, Wexford
AP40/2019	T03/099A	T.L Mussels Ltd.	Clonard Business Park Whitemill Industrial Estate, Wexford
AP42/2019	T03/047A, B, C	Loch Garman Harbour Mussels Ltd.	84 Northumberland Road Ballsbridge, Dublin 4
AP43/2019	T03/083A	Loch Garman Harbour Mussels Ltd.	84 Northumberland Road Ballsbridge, Dublin 4
AP44/2019	T03/085A	Loch Garman Harbour Mussels Ltd.	84 Northumberland Road Ballsbridge, Dublin 4

#### 1.4 Name of Observer (s)

Observations were submitted for four appeals, AP34-37/2019 inclusive, in January 2020, by An Taisce, Tailor's Hall, Back Lane, Dublin 8

#### 1.5 Grounds for Appeal

Appeal Number	Site Reference	Appellant	Appeal Issues Raised:
AP34/2019	T03/30E	Birdwatch Ireland	<ol style="list-style-type: none"> <li>1. Breach of Conservation Objectives for Wexford Harbour and Slob's SPA and The Raven SPA</li> <li>2. Threat to Conservation Interests of the Wexford Harbour and Slob's SPA and The Raven SPA</li> <li>3. Lack of evidence highlighted in the Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture Report (28 July 2016) has not been resolved and therefore the possibility of significant impacts have not been ruled out.</li> <li>4. The AA conclusion statement does not meet the required standard of ensuring beyond reasonable scientific doubt there is no likelihood of significant impacts on the conservation interests of the SPAs and SACs under consideration.</li> <li>5. There is a particular concern in relation to the lack of data and potential impacts to Red</li> </ol>

			<p>breasted Merganser, Little Tern and Common Scoter</p> <ol style="list-style-type: none"> <li>6. Concerns relating to lack of data relating to habitat use of SCIs for the SPA within the Slaney SAC due to lack of survey data.</li> <li>7. Cumulative impacts not adequately assessed under the AA assessment.</li> <li>8. Mitigation plan suggested for Little Tern population not suitable or based on reliable baseline data.</li> </ol>
AP36/2019	T03/48A	Noel & Sheila Scallan	<ol style="list-style-type: none"> <li>1. The reduction in site size granted is unreasonable and disproportionate based on the grounds given by the Department.</li> <li>2. There is no rational or scientific basis for taking 15 per cent coverage as a standard to invite intervention for habitats.</li> <li>3. 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.</li> <li>4. The Department relies on GSI mapping for determination which was deemed not satisfactory by those carrying it out.</li> <li>5. Disagreement with conclusions of AA reports.</li> <li>6. The size and layout of the proposed areas render mussel farming uneconomical on these sites.</li> <li>7. Further grounds as given in the Aquafact 2019 report, a copy of which was submitted with the appeal.</li> </ol>
AP37/2019	T03/91A	Noel & Sheila Scallan	Identical appeal issues to AP36/2019
AP38/2019	T03/30A2, B, C, E	T.L Mussels Ltd.	<ol style="list-style-type: none"> <li>1. The Minister was mistaken in his assessment under Section 61 (a) of the Fisheries Act (1997) as the waters are suitable for mussel cultivation.</li> <li>2. That the Minister was mistaken in his assessment under Section 61 (c) of the Fisheries Act (1997), that the granting of the entire licence areas as applied for would not affect the integrity of local Natura 2000 sites and that reducing the area granted for mussel cultivation may actually have negative environmental impacts.</li> <li>3. The Minister was mistaken in his assessment under Section 61 (d) of the Fisheries Act (1997) that the reduced developments would benefit the local economy as it will negatively affect the</li> </ol>



applicant's business, as well as other local businesses.

4. The Minister was mistaken in his assessment under Section 61 (e) of the Fisheries Act (1997) as mussels have a positive ecological impact on the relevant ecosystem, improve biodiversity and act as a control mechanism for eutrophication in the Harbour, as detailed in the Aquafact report (2019) submitted with the appeal.
5. The appellant disputes the accuracy of taking 15% as the allowable rate of disturbance for a habitat within an SAC, they also state that the rate of disturbance is not continuous.
6. That the EU guidance specifies that a level of more than 25% of an SAC has to be designated as unfavourable to the conservation objectives before the Conservation Status is deemed "Unfavourable – Bad" and that the licensing of aquaculture in an area does not necessarily mean the status of the habitat becomes unfavourable. No other EU state has interpreted the regulations in this manner according to the appellant.
7. Mussels play a positive role in the ecosystem of Wexford Harbour, are historically a part of that ecosystem and help act against eutrophication in Wexford Harbour.
8. The appellant the NPWS carried out a three-day study on white fronted geese and disturbance by mussel boats but never produced a report. The appellant claims BIM carried out a similar survey at the same time looking at the same species and found a positive impact on the birds due to the presence of the mussel boats.
9. That the Minister has incorrectly assessed the intertidal extent in Wexford Harbour and that the bathymetric data used in the Ministers assessment was incorrect or inaccurate. They state the figure used of 1,400 hectares of intertidal area is an over-estimate.
10. The Minister was mistaken in his assessment under Section 61 (f) of the Fisheries Act (1997) that there was a reason to reduce the total area due to potential impacts on the environment.

			<p>11. The Minister made errors under some fundamental principles of Public/Administrative law when assessing these licences by:</p> <ul style="list-style-type: none"> <li>• Failing to give adequate reasons for his decision, specifically why a reduction in size was granted rather than the total area as applied for.</li> <li>• Breaching the right of the applicant to be heard by not allowing them an opportunity to rebut evidence against them and respond to the Minister's preliminary conclusions, in this case, that the size of the sites applied for should be reduced.</li> <li>• Failing to exercise proportionality/abusing discretionary powers by incorrect interpretation of the EC Guidelines of a 25% allowance of the habitat area of an SAC for activities that may be damaging to the habitat and that a scientific assessment on the habitat and ecosystem due to the removal of the mussels should have been carried out.</li> <li>• Breaching the applicant's legitimate expectations that the Minister honour a commitment to the procedures they will follow. The applicant claims that as they had no indication from the Minister of an adverse result and relations with the Minister were at all times positive that there was an implied representation by the Minister that the applicant would be consulted on and given the right to make submissions on any proposed decision by the Minister.</li> </ul>
AP39/2019	T03/030/1 (site D)	T.L Mussels Ltd.	Identical appeal issues to AP38/2019
AP40/2019	T03/099A	T.L Mussels Ltd.	<p>1. The decision to cut the size of the site by an initial 20-hectare reduction was arbitrary and without basis. An application for planning permission does not override an existing foreshore/aquaculture licence, and even so, the area indicated by the County Council as potentially required for future developments was less than 7 hectares, while 20 hectares was removed.</p>



## 1.6 Observations

An Taisce submitted observations on a number of appeals: AP34/2019, AP35/2019, AP36/2019 and AP37/2019. AP35/2019 has been withdrawn and I am therefore only considering AP34/2019, AP36/2019 and AP37/2019. These observations also referenced earlier submissions to ALAB and to the Minister, along with legal submissions from Alan Doyle BL which have also been reviewed by the technical advisor and are available on the ALAB website.

The observations submitted were the same for the four appeals listed above and the main points as outlined by the appellants are as follows:

### General issues:

- An Taisce were not given sufficient time to comment properly on the appeals due to the timing of the notice.
- An Taisce was not given time to properly prepare their own appeal due to issues with receiving the relevant information in a clear and timely manner from the DAFM.
- An Taisce should have been able to appeal all the licences granted under one appeal fee rather than being restricted to making observations on appeals submitted by other parties. An Taisce requested that ALAB make a Section 58 referral to the High Court to clarify this question of law.
- Due to discrepancies in the licence numbers used in the application process, the DAFM website, the decision notifications received by An Taisce and published in the Wexford People, An Taisce found it was not reasonably possible to determine which sites had been granted licences.

### Procedural Issues:

- A number of applications were invalid as they used altered application forms and contained incomplete particulars which is in breach of Article 4 (2) of S.I. No. 236/1998 - Aquaculture (Licence Application) Regulations, 1998 as amended, which provides that: *“Application shall be made on an application form approved by the Minister.”*
- No indication if the particulars of applications made over a range of years were still valid, with some applications dating back to 2007, and that the time taken for the Minister to decide on the licences was questionable and compromises public participation, regulation and assessment obligations under AA and EIA.
- That there was a requirement for the applicant to publish a public notice on the applicants within 2 weeks of an instruction of the Minister, with no indication this had been done.

### Appropriate Assessment issues:

- Failings and inadequacies in the information furnished to support the conduct of an Appropriate Assessment by the Minister for the SAC and SPA respectively, including:
  - a. Exceedance of the arbitrary 15% threshold of overlap with Qualifying Interest, QI, habitats and constituent community types, and reliance on this arbitrary threshold and

- b. Lack of data on certain QI species in the SPA, namely the Red-Breasted Merganser and the Little Tern
- The licensing of the proposed bottom mussel projects would be in contravention of Article 6(3) of the Habitats Directive.
- A lack of data for QI bird species, and the proposed use of an adaptive management plan.
- Multiple failings in the Appropriate Assessment Annex I and II reports, and licensing should not go ahead until these were adequately addressed.

Issues raised in legal submissions (in summary), which are related to the AA as carried out by the Minister:

- The legislation is not capable of supporting a valid appropriate assessment.
- The Minister failed to prepare or make available for inspection any fisheries Natura plan.
- The assessment as carried out is incomplete.
- The assessment insofar as it was carried out at all, was concluded prior to the receipt of public submissions.
- The reasons were inadequate.
- The assessment did not demonstrate beyond reasonable scientific doubt and without gaps or lacunae that the proposed activities would not adversely affect the integrity of the Wexford Harbour and Raven Point SAC and SPA.

Environmental Impact Assessment Issues:

- An EIA screening should have been carried out for this licence/these licences as the development may fall under the definition of intensive aquaculture in the relevant legislation, rather than extensive as the Minister found and that EIA screening is required to resolve this question.
- The developments in Wexford Harbour represent examples of project splitting under EIA as there are multiple applications in the same area from the same operators and in some cases, from different operators who share the same Directors.
- That the dredging of mussel seed in the Irish Sea is an intrinsic part of the development and should also be screened for EIA.
- Failure to consider which version of the EIA legislation the developments in Wexford Harbour should be assessed under given the time taken to decide the applications for licences.
- Conflict of interest concerns under Article 9A of the EIA Directive due to the fact that the DAFM is responsible for both the promotion and licencing of aquaculture and ALABs responsibility to resolve such conflicts

## 1.7 Minister's submission

Section 44 of the Fisheries (Amendment) Act 1997 states that:

*“The Minister and each other party except the Appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it”*

No submission was received from the Minister in response to this appeal/these appeals.

## 1.8 Applicant response

The Applicant may submit a response to appeal submissions under the provision set out in Section 44(2) of the Fisheries Amendment Act 1997 which states:

*“The Minister and each other party except the Appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it.”*

There was one applicant response for appeal AP34/2019. TL Mussels responded to the appeal submitted by Birdwatch Ireland in regard to Site T03/30E as part of a general response submitted by William Fry Solicitors on behalf of the companies it is representing for these appeals: TL Mussels Ltd, Loch Garman Harbour Mussels, Crescent Seafood Ltd, WD Shellfish Ltd, Riverbank Mussels Ltd and Fjord Fresh Mussels Ltd.

As Bird Watch Ireland (BWI) had originally sought to appeal all licences granted, William Fry was responding to all the licences granted to companies it represented. However, as BWI had only submitted one appeal fee, it amended its appeal to Site T03/30E only. This site licence was applied for by TL Mussels, therefore the response by William Fry to BWI appeal was considered by the Board to be from TL Mussels only and in respect of Site T03/30E only.

The full submission is available on the ALAB website and rejects the validity of the BWI appeal. It also references the issues raised by TL Mussels in their appeal AP38/2019 as being relevant as it refers to the same site. The applicants claim the BWI appeal contains serious flaws including a failure to provide statutory analysis and is highly subjective. The applicants contend that:

- BWI have not shown how the AA was fundamentally flawed.
- An unconfirmed negative impact to a bird species is insufficient to prevent a long-standing commercial activity.
- Potential impacts for other bird species were considered in the AA as possibly not being very likely to occur.
- The BWI appeal did not consider Section 61 of the Act
- Aquaculture in Wexford Harbour is long established and referenced in the County Development Plan and the National Strategic Plan for Sustainable Aquaculture Development 2015
- BWI did not demonstrate how the AA was in breach of the Birds and Habitats Directive

- BWI did not provide any scientific evidence to support the assertions made in their appeal.
- BWI do not deal with the potential negative impact on the wider ecosystem that would follow from the cessation of mussel culture in Wexford Harbour
- The Birds Case as referenced by BWI is not relevant here.
- The applicants dispute a number of BWI's finding in respect to specific bird species.
- They dispute BWI's assertion that cumulative impacts were not adequately assessed.

## 2.0 Minister's file

For each licence, the Minister provided on the 10 December 2019, the relevant documentation, in response to ALAB's request of the 26 November 2019. This included:

- The relevant application forms.
- Technical and Statutory reports received in relation to the application.
- Submission to the Minister for an Aquaculture Licence
- Submission to the Minister for a Foreshore Licence
- Draft licences as attached to submissions to the Minister.
- Notification of Ministers decision to the applicant
- Publication of the Ministers decision in the Wexford People
- Notification to ALAB of the Ministers decision
- Hyperlinks to the DAFM website for the 3 parts of the AA Report and the AA Conclusion Statement
- A location map was not provided at this time, but it was noted that a request for same had been made to the Marine Engineering Division. A map was submitted following a further request on the 17 September 2021.

Updated file requests were made to DAFM in February 2020 and on 3 March 2020 ALAB received the file from DAFM for a second time along with further clarifications on 4 March 2020.

On 21 March 2023, following the discovery of issues with the files submitted by DAFM, ALAB requested further updates and clarifications to the file. These were provided by DAFM on 24 March 2023 and included:

- The final Ministerial submissions in relation to each Ministerial decision appealed as the draft submission were sent previously
- The original email regarding T03/030C documentation which was sent to ALAB on 10 December 2019 and the second email with the documentation sent again on 03 March 2020.
- The email regarding T03/030E documentation which was sent to ALAB on 03 March 2020.
- The email regarding T03/049 C & C1 documentation which was sent in two emails both dated 04 March 2020.



A request for an updated location map was made to DAFM on the 04 December 2024 and was received from DAFM Aquaculture and Foreshore Management Division on the 19 of December 2024.

### 3.0 Context of the Area

#### 3.1 Physical descriptions

Wexford Harbour is located at the mouth of the River Slaney in County Wexford, on the southeast coast of Ireland (Figure 1). It is a large shallow bay, with areas of reclaimed land to the north and south created by dykes and drainage systems in the 19<sup>th</sup> century. These areas of land, known as the Slobs, are used for agriculture and are important for a number of bird species. The Slaney is the main freshwater input to the Harbour and its catchment area is notable for the high level of agricultural activity, including mainly dairy and tillage farming.

The underlying geology of the upper and central Slaney catchment consists of granite. The bedrock geology of the middle and lower reaches of the River Slaney comprises slate, schist and greywacke. The soils of the Slaney catchment are mainly Grey Brown Podzolics and Brown Podzols which are regarded as very fertile soil types. The soils of the River Slaney catchment are predominately well drained with only 22% being considered poorly drained soils (EPA Hydrotool). CORINE land use statistics show that approximately 63% of the River Slaney catchment is under pasture while approximately 24% is under arable agriculture and a further 8.7% is used for forestry (Corine, 2018).

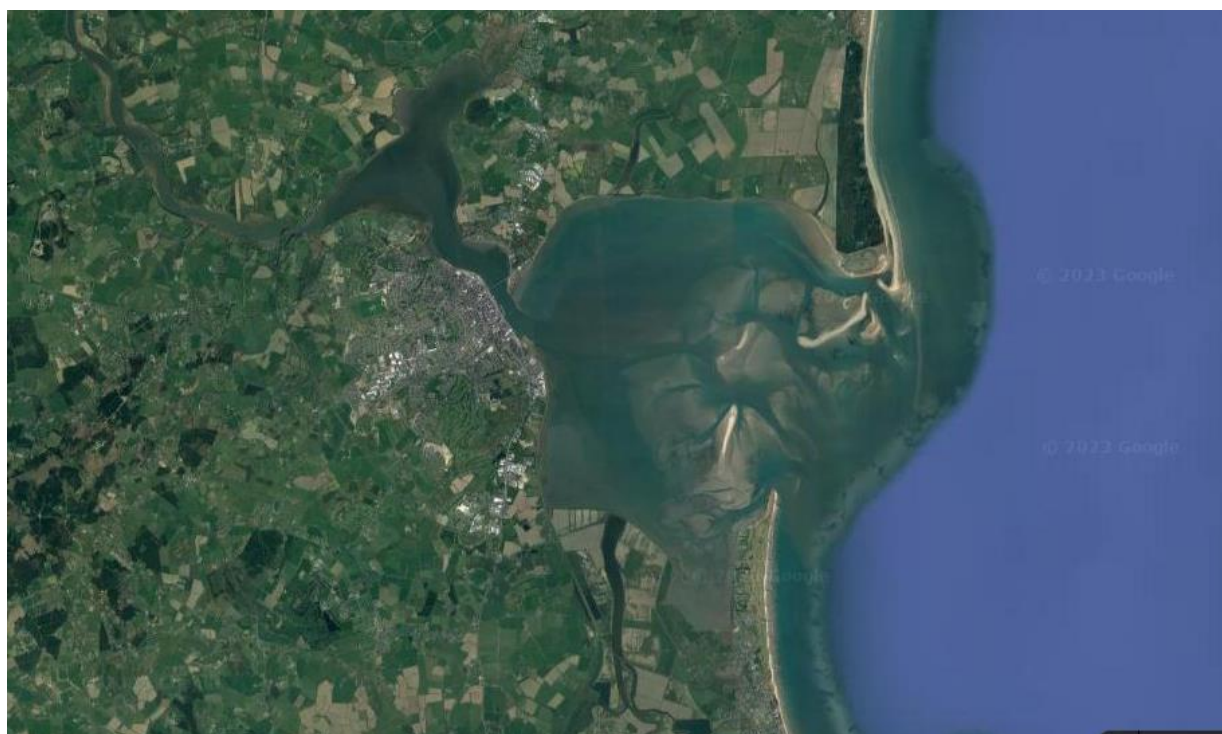


Figure 2: Map of Wexford Harbour, taken from Google Maps.



### 3.1.1 Water Quality

The EPA State of the Environment Report 2024 (EPA 2024) states that “Nitrate concentrations are too high in 40% of river sites and in 20% of estuarine and coastal water bodies nationally. The agricultural sector is responsible for more than 85% of the total nitrogen losses to water in certain catchments in the south and south-east.”

These results can be seen reflected in Figures 3 and 4, in the water quality level of Eutrophic for the Lower Slaney Estuary and Intermediate for Wexford Harbour in 2020 (most recently available maps) shown in Figure 3 and the WFD Status shown in Figure 4 which gives a value of Poor for the Lower Slaney Estuary, Moderate for Wexford Harbour, Good for the Southwestern Irish Sea and High for the Eastern Celtic Sea.

In the 2022 EPA Water Quality Report (EPA 2022), it was found that Nitrogen values in Wexford Harbour were 89% above the threshold value and have significantly increased between 2012 and 2022. The EPA considers agriculture and sewage inputs to be the two main sources of the elevated levels of Nitrogen in the water bodies monitored. Other nutrients are also of concern in the area, including phosphorous, but nitrogen has the greatest impact on the health of marine and coastal waters.

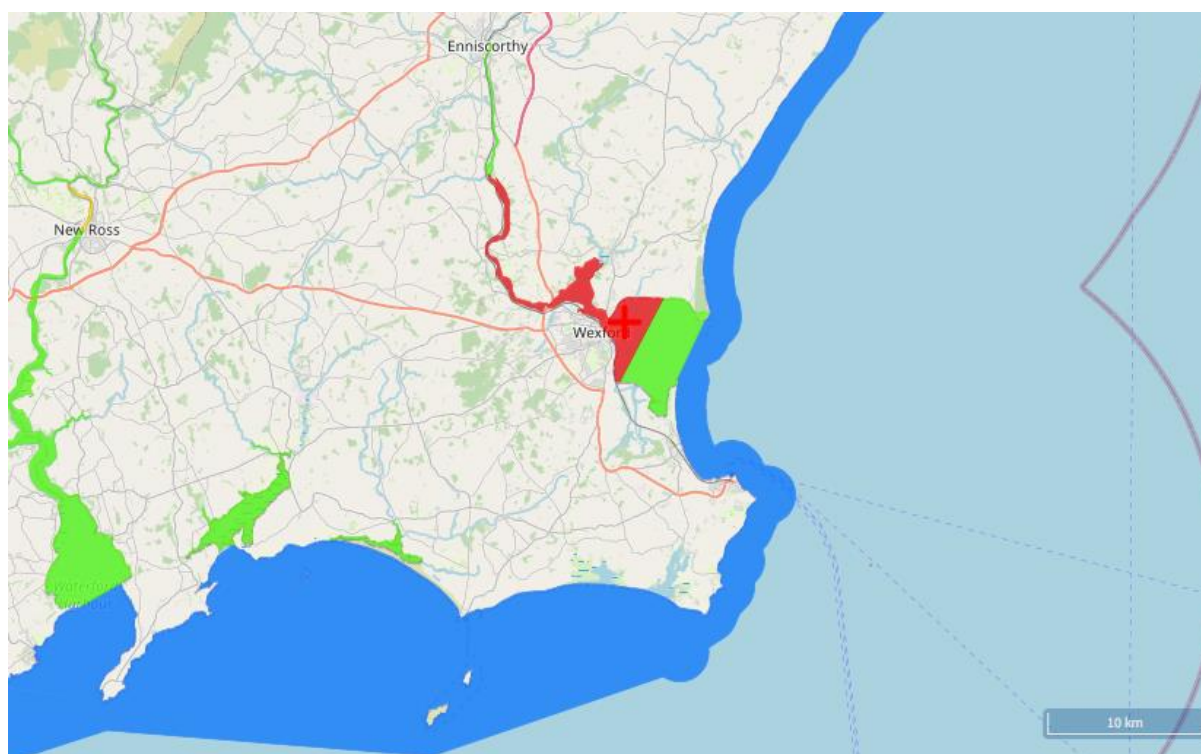


Figure 3: Transitional and Coastal Water Quality levels for Wexford Harbour and Surrounds under the Water Quality Report 2018-2020. Source EPA maps. Red = Eutrophic, Green = Intermediate and Blue = Unpolluted

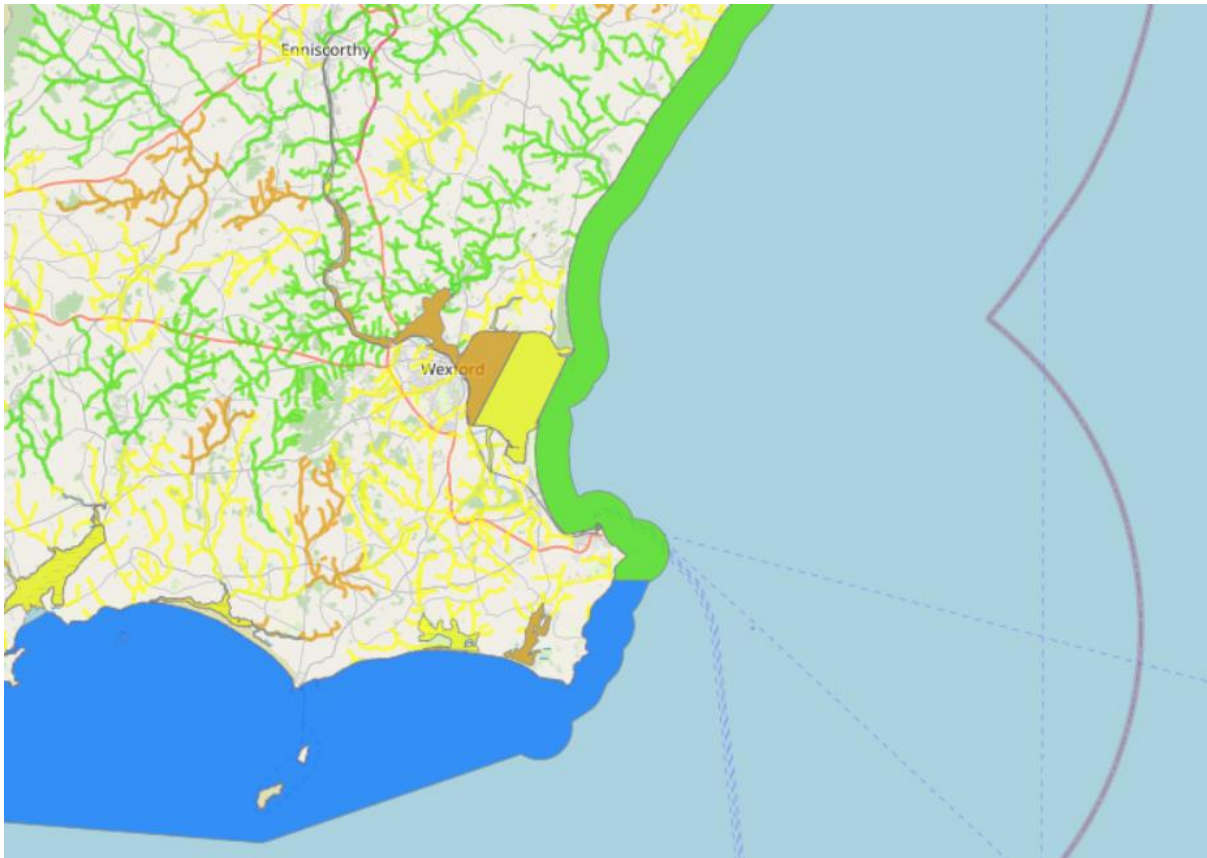


Figure 4: Transitional and Coastal WFD Water Status for Wexford Harbour and Surrounds under WFD Monitoring 2016-2021.

Source EPA map viewer <https://gis.epa.ie/EPAMaps/agriculture>

Source EPA maps. Orange = Poor, Yellow = Moderate, Green = Good and Blue = High

### 3.1.2 Population

Wexford town has a population of over 20,000 according to the 2016 Census and other settlements in the area include Rosslare Strand and Harbour, which see an increase in population during the summer months. The relevant Wastewater treatment plants (WWTP) are deemed to have sufficient capacity for their populations for Wexford Town and Rosslare Harbour, but Rosslare Strand is deemed to be approaching capacity (Uisce Eireann, [www.water.ie](http://www.water.ie)). Upstream, the main settlements on the Slaney are the towns of Enniscorthy and New Ross, with populations of just over 11,000 and 8,000 respectively according to the 2016 Census. Both of these town's WWTP's are deemed to have sufficient capacity for their populations according to information on Uisce Eireann's website.

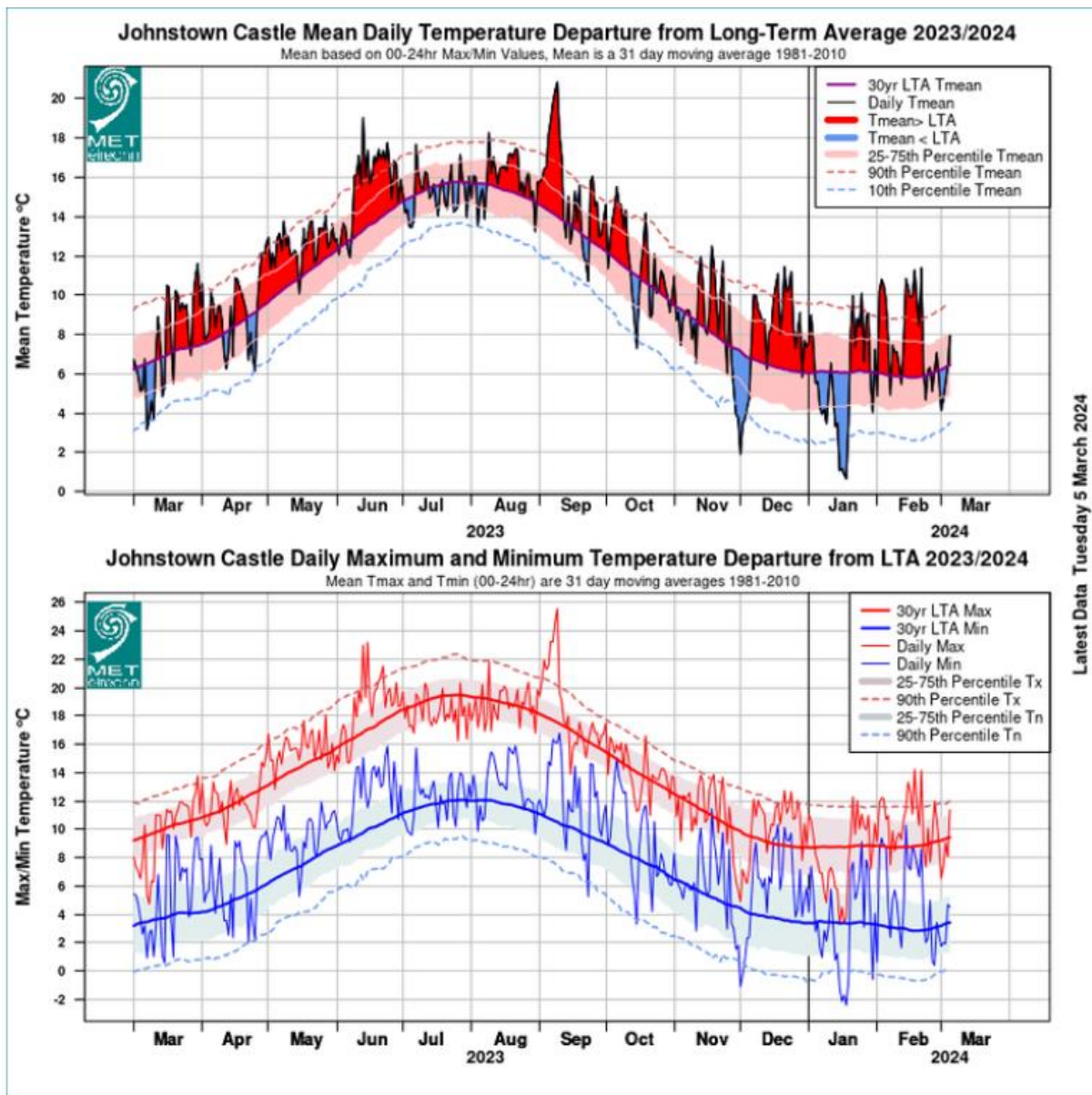
### 3.1.3 Land Use

The Slaney catchment has a large proportion of land under agricultural use (Corine, 2018) and a combination of this and the soil present in the region is believed to be part of the cause of such elevated Nitrogen loading in the transitional and coastal waters of the area (EPA, 2023).

### 3.1.4 Weather

Johnstown Castle is the nearest weather station some 4km east of the site and has a mid-oceanic climate, with a Long-Term average (LTA) of 1059 mm of rain on average a year. As

can be seen from the charts below the temperature is mild throughout the year normally ranging between 0 and 25 degrees.



### 3.2 Resource Users

Bottom mussel culture is currently the main activity in Wexford Harbour; there may be some limited shore angling, but the shallow water depth and lack of access limits the areas suitable for this. Angling activity in the locality is mainly sea fishing in the vicinity of the Saltee Islands. There is currently very limited access for leisure boats in Wexford Harbour as there is no marina development. Kilmore Quay is the nearest marina facility for leisure boats as well as the main commercial fishing harbour in the area and the harbour used by ferries accessing the Saltee islands and boats carrying out sea angling activities. Wexford Harbour pier area, located in Wexford town, is primarily a working pier occupied by local mussel dredging boats engaged in bottom mussel culture.

### 3.3 Statutory Status

#### 3.3.1 Nature Conservation Designations

##### *Special Areas of Conservation (SAC)*

The licence application areas in Wexford Harbour which are under appeal are all within the Slaney River Valley SAC (Site Code: 000781) and adjacent to the Raven Point Nature Reserve SAC (Site Code: 000710), as can be seen in Figure 5.

The Qualifying Interests for the Slaney River SAC (Site Code:000781) are:

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Petromyzon marinus* (Sea Lamprey) [1095]
- *Lampetra planeri* (Brook Lamprey) [1096]
- *Lampetra fluviatilis* (River Lamprey) [1099]
- *Alosa fallax fallax* (Twaites Shad) [1103]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]
- *Phoca vitulina* (Harbour Seal) [1365]

Three constituent community complexes recorded within the qualifying interests of Estuaries (1130) and Mudflats and sandflats not covered by seawater at low tide (1140) are listed below (NPWS 2023a):

- Mixed sediment community complex.
- Estuarine muds dominated by polychaetes and crustaceans community complex; and
- Sand dominated by polychaetes community complex.

An additional community complex, 'fine sand with *Spiophanes bombyx* community complex', is described for subtidal elements outside of the Estuaries habitat.

The Qualifying Interests for the Raven Point Nature Reserve SAC (Site Code: 000710) are:

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Annual vegetation of drift lines [1210]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]



Three constituent community complexes recorded within the qualifying interest Mudflats and sandflats not covered by seawater at low tide (1140) are listed below (NPWS 2023b):

- Mixed sediment community complex
- Estuarine muds dominated by polychaetes and crustaceans community complex.
- Fine sand with *Spiophanes bombyx* community complex
- Sand dominated by polychaetes community complex.

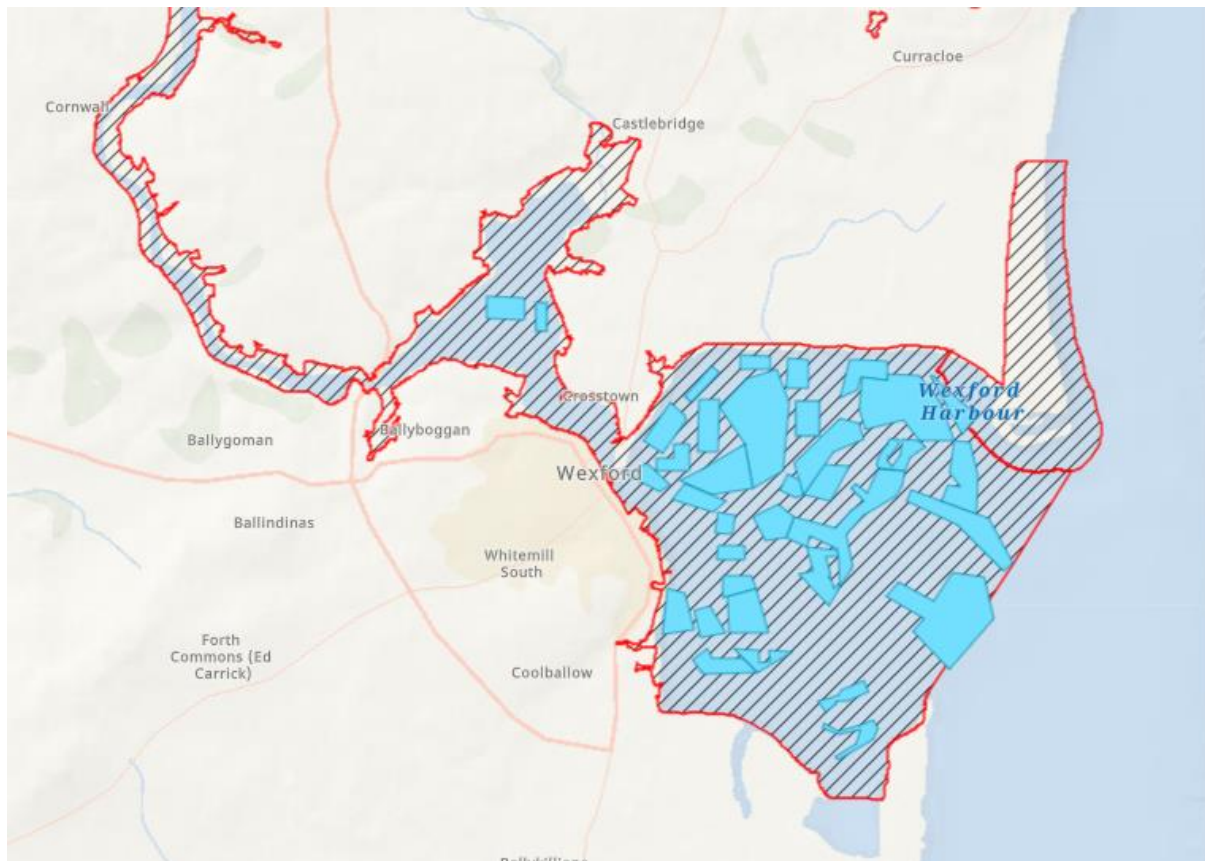


Figure 5: Location of aquaculture licensed sites in Wexford Harbour- including those under appeal with SAC areas that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer, January 2025).

#### *Special Protected Areas:*

The licence application areas in Wexford Harbour which are under appeal are all within the Wexford Harbour and Slobbs SPA (site code 004076), either in or adjacent to the Raven SPA (site code 004019) and adjacent to the Seas off Wexford SPA (site code 004237) as can be seen in Figure 6. An assessment of nearby SPAs for consideration was carried out by Atkins in their 2016 SPA AA report, a map of which is shown in Figure 8.

In February 2025 ALAB Technical Advisors carried out Screenings for Appropriate Assessment for Wexford Harbour aquaculture licence sites under appeal (see section 6.1). The following SPA sites were screened in for stage 2 Appropriate Assessment:

- Wexford Harbour and Slobs SPA (site code 004076)
- Seas off Wexford SPA (site code 004237)
- Raven SPA (site Code 004019)
- Lady's Island Lake SPA (site code 004009)
- Saltee Islands SPA (site code 004002)
- Keeragh Islands SPA (site code 0041180)
- Mid-Waterford Coast SPA (site code 004193)

### *Wexford Harbour and Slobs SPA*

The Qualifying Interests for the Wexford Harbour and Slobs SPA are:

- Little Grebe (*Tachybaptus ruficollis*) [A004]
- Great Crested Grebe (*Podiceps cristatus*) [A005]
- Cormorant (*Phalacrocorax carbo*) [A017]
- Grey Heron (*Ardea cinerea*) [A028]
- Bewick's Swan (*Cygnus columbianus bewickii*) [A037]
- Whooper Swan (*Cygnus cygnus*) [A038]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Shelduck (*Tadorna tadorna*) [A048]
- Wigeon (*Anas penelope*) [A050]
- Teal (*Anas crecca*) [A052]
- Mallard (*Anas platyrhynchos*) [A053]
- Pintail (*Anas acuta*) [A054]
- Scaup (*Aythya marila*) [A062]
- Goldeneye (*Bucephala clangula*) [A067]
- Red-breasted Merganser (*Mergus serrator*) [A069]
- Hen Harrier (*Circus cyaneus*) [A082]
- Coot (*Fulica atra*) [A125]
- Oystercatcher (*Haematopus ostralegus*) [A130]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Lapwing (*Vanellus vanellus*) [A142]
- Knot (*Calidris canutus*) [A143]
- Sanderling (*Calidris alba*) [A144]
- Dunlin (*Calidris alpina*) [A149]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Bar-tailed Godwit (*Limosa lapponica*) [A157]
- Curlew (*Numenius arquata*) [A160]
- Redshank (*Tringa totanus*) [A162]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Lesser Black-backed Gull (*Larus fuscus*) [A183]
- Little Tern (*Sterna albifrons*) [A195]
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]
- Wetland and Waterbirds [A999]

### *The Raven SPA*

Qualifying Interests for the Raven SPA are:

- Red-throated Diver (*Gavia stellata*) [A001]
- Cormorant (*Phalacrocorax carbo*) [A017]
- Common Scoter (*Melanitta nigra*) [A065]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Sanderling (*Calidris alba*) [A144]
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]
- Wetland and Waterbirds [A999]

### *The Seas off Wexford SPA*

Qualifying Interests for the Seas off Wexford SPA are:

- Red-throated Diver (*Gavia stellata*) [A001]
- Fulmar (*Fulmarus glacialis*) [A009]
- Manx Shearwater (*Puffinus puffinus*) [A013]
- Gannet (*Morus bassanus*) [A016]
- Cormorant (*Phalacrocorax carbo*) [A017]
- Shag (*Phalacrocorax aristotelis*) [A018]
- Common Scoter (*Melanitta nigra*) [A065]
- Mediterranean Gull (*Larus melanocephalus*) [A176]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Lesser Black-backed Gull (*Larus fuscus*) [A183]
- Herring Gull (*Larus argentatus*) [A184]
- Kittiwake (*Rissa tridactyla*) [A188]
- Sandwich Tern (*Sterna sandvicensis*) [A191]
- Roseate Tern (*Sterna dougallii*) [A192]
- Common Tern (*Sterna hirundo*) [A193]
- Arctic Tern (*Sterna paradisaea*) [A194]
- Little Tern (*Sterna albifrons*) [A195]
- Guillemot (*Uria aalge*) [A199]
- Razorbill (*Alca torda*) [A200]
- Puffin (*Fratercula arctica*) [A204]

### *Lady's Island Lake SPA*

Qualifying Interests for Lady's Island Lake SPA are:

- Gadwall (*Anas strepera*) [A051]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Sandwich Tern (*Sterna sandvicensis*) [A191]
- Roseate Tern (*Sterna dougallii*) [A192]
- Common Tern (*Sterna hirundo*) [A193]

- Arctic Tern (*Sterna paradisaea*) [A194]
- Wetland and Waterbirds [A999]

#### *Saltee Islands SPA*

Qualifying Interests for the Saltee Islands SPA are:

- Fulmar (*Fulmarus glacialis*) [A009]
- Gannet (*Morus bassanus*) [A016]
- Cormorant (*Phalacrocorax carbo*) [A017]
- Shag (*Phalacrocorax aristotelis*) [A018]
- Lesser Black-backed Gull (*Larus fuscus*) [A183]
- Herring Gull (*Larus argentatus*) [A184]
- Kittiwake (*Rissa tridactyla*) [A188]
- Guillemot (*Uria aalge*) [A199]
- Razorbill (*Alca torda*) [A200]
- Puffin (*Fratercula arctica*) [A204]

#### *Keeragh Islands SPA*

Qualifying Interest for Keeragh Islands SPA is:

- Cormorant (*Phalacrocorax carbo*) [A017]

#### *Mid-Waterford Coast SPA*

Qualifying Interests for Mid-Waterford Coast SPA are:

- Cormorant (*Phalacrocorax carbo*) [A017]
- Peregrine (*Falco peregrinus*) [A103]
- Herring Gull (*Larus argentatus*) [A184]
- Chough (*Pyrrhocorax pyrrhocorax*) [A346]



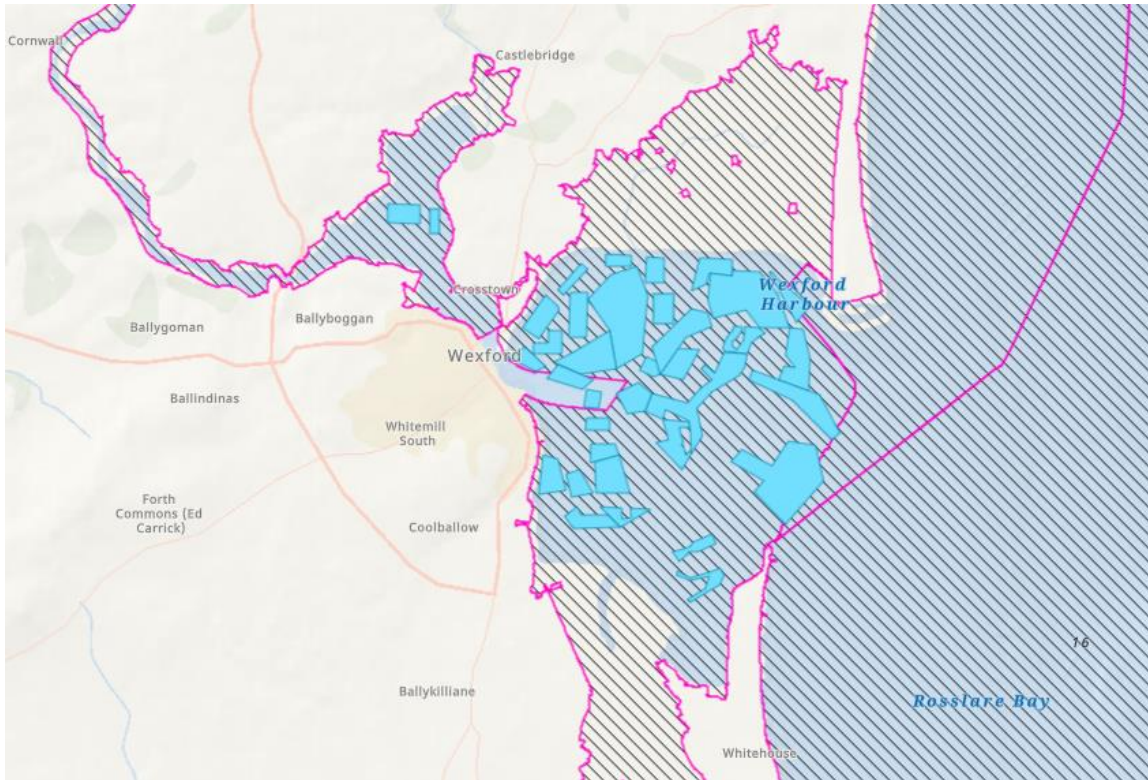


Figure 6: Location of aquaculture license sites in Wexford Harbour- with SPA sites that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer, January 2025).

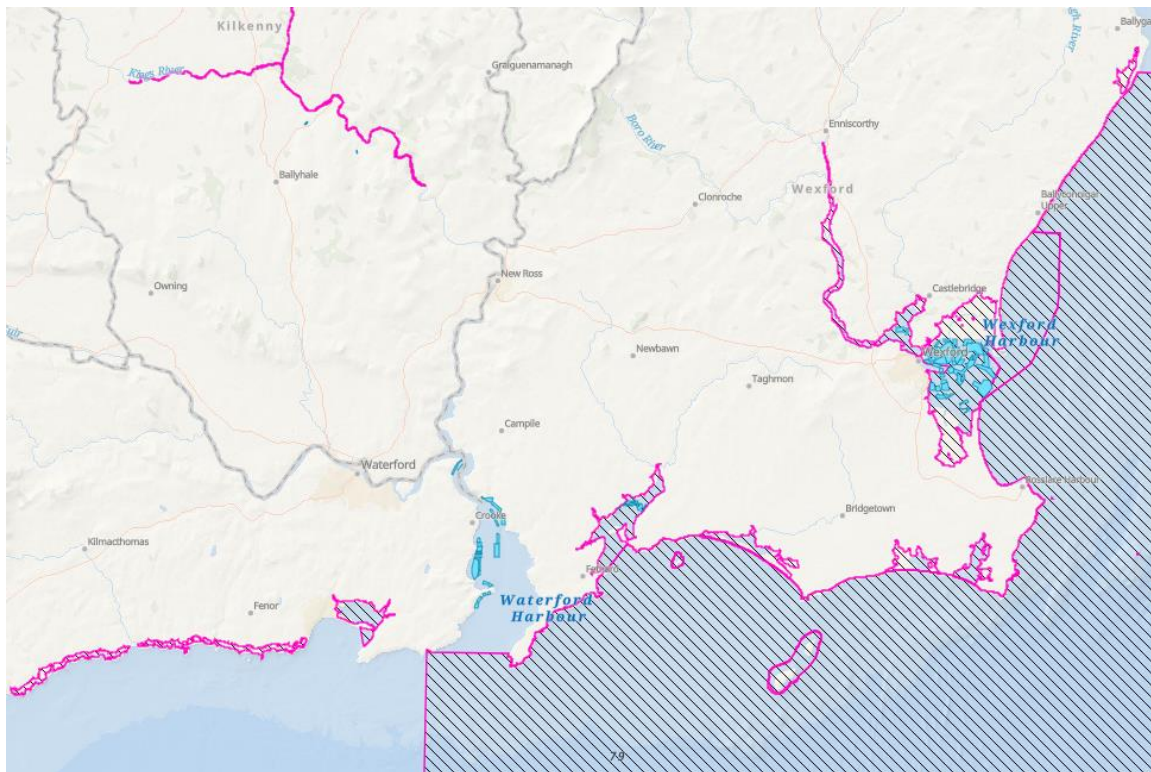


Figure 7: Location of aquaculture licence sites in Wexford Harbour- source-pathway-receptor SPA sites in black hatched lines (Source: Aquamis viewer, January 2025).



Figure 8: Assessment site and other SPAs assessed by Atkins in their 2016 SPA AA report.

**Harbour Seals:**

The Marine Institute’s SAC AA Report (2016) assesses the potential impact of the proposed developments on harbour seals. The Slaney River Valley SAC is designated for the Harbour seal (*Phoca vitulina*) and the site has been the subject of targeted monitoring surveys in 2003 (Cronin et al. 2003) and 2012 (Duck and Morris, 2013). These surveys and separate work carried out by the NPWS recorded an increasing population over the time period, while bottom culture of mussels was ongoing in the Harbour. While no definitive conclusions can be drawn regarding the current population status of harbour seals in Wexford Harbour and more widely around Ireland, it is noted that from a conservation perspective, the population is considered ‘favourable’.

**Otter:**

There is very little available research regarding the otter and its potential interactions with aquaculture. According to the NPWS (2009) habitat destruction, pollution and accidental death /persecution are considered the major threats to this species. However, given the type of aquaculture being carried out here, there is no discernible source-pathway-receptor route between this species and the proposed activity.

### 3.3.2 Protected Species

Below is a Table listing all recorded protected animals in the Wexford Harbour area as of March 2024. Data taken from the Biodiversity Ireland website:

Species group	Species name	Record count	Date of last record
amphibian	Common Frog ( <i>Rana temporaria</i> )	66	12/03/2023
amphibian	Smooth Newt ( <i>Lissotriton vulgaris</i> )	4	01/08/2020
bird	Barn Owl ( <i>Tyto alba</i> )	5	08/02/2018
bird	Barn Swallow ( <i>Hirundo rustica</i> )	34	29/03/2021
bird	Barnacle Goose ( <i>Branta leucopsis</i> )	17	07/02/2023
bird	Bar-tailed Godwit ( <i>Limosa lapponica</i> )	16	13/01/2023
bird	Black-headed Gull ( <i>Larus ridibundus</i> )	42	13/01/2023
bird	Black-necked Grebe ( <i>Podiceps nigricollis</i> )	7	31/12/2011
bird	Black-tailed Godwit ( <i>Limosa limosa</i> )	32	02/11/2018
bird	Brent Goose ( <i>Branta bernicla</i> )	40	13/01/2023
bird	Common Coot ( <i>Fulica atra</i> )	20	09/12/2017
bird	Common Goldeneye ( <i>Bucephala clangula</i> )	25	13/01/2023
bird	Common Grasshopper Warbler ( <i>Locustella naevia</i> )	12	23/07/2021
bird	Common Greenshank ( <i>Tringa nebularia</i> )	12	28/02/2021
bird	Common Guillemot ( <i>Uria aalge</i> )	4	29/01/2012
bird	Common Kestrel ( <i>Falco tinnunculus</i> )	32	13/01/2023
bird	Common Kingfisher ( <i>Alcedo atthis</i> )	13	02/01/2023
bird	Common Linnet ( <i>Carduelis cannabina</i> )	35	13/01/2023
bird	Common Pheasant ( <i>Phasianus colchicus</i> )	31	09/12/2017
bird	Common Pochard ( <i>Aythya ferina</i> )	14	10/01/2016
bird	Common Redshank ( <i>Tringa totanus</i> )	33	13/01/2023
bird	Common Shelduck ( <i>Tadorna tadorna</i> )	26	13/01/2023
bird	Common Snipe ( <i>Gallinago gallinago</i> )	31	16/12/2022
bird	Common Starling ( <i>Sturnus vulgaris</i> )	51	13/01/2023
bird	Common Swift ( <i>Apus apus</i> )	37	06/07/2022
bird	Common Wood Pigeon ( <i>Columba palumbus</i> )	49	13/01/2023
bird	Corn Crake ( <i>Crex crex</i> )	2	31/07/1991
bird	Dunlin ( <i>Calidris alpina</i> )	11	13/01/2018
bird	Eurasian Curlew ( <i>Numenius arquata</i> )	44	13/01/2023
bird	Eurasian Oystercatcher ( <i>Haematopus ostralegus</i> )	35	13/01/2023
bird	Eurasian Reed Warbler ( <i>Acrocephalus scirpaceus</i> )	4	26/05/2020
bird	Eurasian Teal ( <i>Anas crecca</i> )	32	13/01/2023
bird	Eurasian Wigeon ( <i>Anas penelope</i> )	21	13/01/2023
bird	Eurasian Woodcock ( <i>Scolopax rusticola</i> )	5	16/01/2023
bird	European Golden Plover ( <i>Pluvialis apricaria</i> )	13	09/12/2017
bird	Gadwall ( <i>Anas strepera</i> )	11	09/12/2017

bird	Great Black-backed Gull ( <i>Larus marinus</i> )	17	13/01/2023
bird	Great Cormorant ( <i>Phalacrocorax carbo</i> )	33	13/01/2023
bird	Great Crested Grebe ( <i>Podiceps cristatus</i> )	29	26/02/2023
bird	Great Northern Diver ( <i>Gavia immer</i> )	12	13/01/2023
bird	Greater Scaup ( <i>Aythya marila</i> )	6	10/01/2014
bird	Greater White-fronted Goose ( <i>Anser albifrons</i> )	38	13/01/2023
bird	Hen Harrier ( <i>Circus cyaneus</i> )	16	26/02/2019
bird	Herring Gull ( <i>Larus argentatus</i> )	20	13/01/2023
bird	House Martin ( <i>Delichon urbicum</i> )	17	12/04/2021
bird	House Sparrow ( <i>Passer domesticus</i> )	52	01/01/2023
bird	Jack Snipe ( <i>Lymnocyptes minimus</i> )	2	27/12/2014
bird	Lesser Black-backed Gull ( <i>Larus fuscus</i> )	15	10/01/2014
bird	Lesser Whitethroat ( <i>Sylvia curruca</i> )	1	01/09/2014
bird	Little Egret ( <i>Egretta garzetta</i> )	32	19/01/2023
bird	Little Grebe ( <i>Tachybaptus ruficollis</i> )	24	13/01/2023
bird	Long-tailed Duck ( <i>Clangula hyemalis</i> )	5	31/12/2011
bird	Mallard ( <i>Anas platyrhynchos</i> )	45	13/01/2023
bird	Mediterranean Gull ( <i>Larus melanocephalus</i> )	7	03/06/2020
bird	Mew Gull ( <i>Larus canus</i> )	14	16/12/2022
bird	Mute Swan ( <i>Cygnus olor</i> )	33	13/01/2023
bird	Northern Lapwing ( <i>Vanellus vanellus</i> )	45	20/01/2023
bird	Northern Pintail ( <i>Anas acuta</i> )	12	02/01/2014
bird	Northern Shoveler ( <i>Anas clypeata</i> )	14	13/01/2023
bird	Northern Wheatear ( <i>Oenanthe oenanthe</i> )	11	23/03/2021
bird	Peregrine Falcon ( <i>Falco peregrinus</i> )	11	10/09/2020
bird	Pink-footed Goose ( <i>Anser brachyrhynchus</i> )	13	07/02/2023
bird	Red Kite ( <i>Milvus milvus</i> )	7	02/06/2020
bird	Red-breasted Merganser ( <i>Mergus serrator</i> )	22	10/01/2018
bird	Red-throated Diver ( <i>Gavia stellata</i> )	6	13/01/2023
bird	Rock Pigeon ( <i>Columba livia</i> )	22	02/01/2023
bird	Ruff ( <i>Philomachus pugnax</i> )	8	13/01/2018
bird	Sand Martin ( <i>Riparia riparia</i> )	2	29/03/2021
bird	Sandwich Tern ( <i>Sterna sandvicensis</i> )	6	07/06/2020
bird	Sky Lark ( <i>Alauda arvensis</i> )	20	15/03/2021
bird	Slavonian Grebe ( <i>Podiceps auritus</i> )	11	10/01/2018
bird	Spotted Flycatcher ( <i>Muscicapa striata</i> )	5	13/05/2020
bird	Tufted Duck ( <i>Aythya fuligula</i> )	29	13/01/2023
bird	Water Rail ( <i>Rallus aquaticus</i> )	13	08/11/2020
bird	Whooper Swan ( <i>Cygnus cygnus</i> )	22	13/01/2023
bird	Yellowhammer ( <i>Emberiza citrinella</i> )	16	22/05/2021
marine mammal	Common Dolphin ( <i>Delphinus delphis</i> )	3	05/07/2017
marine mammal	Common Porpoise ( <i>Phocoena phocoena</i> )	2	18/03/2017
marine mammal	Common Seal ( <i>Phoca vitulina</i> )	8	05/02/2020
marine mammal	Grey Seal ( <i>Halichoerus grypus</i> )	218	08/05/2022
reptile	Common Lizard ( <i>Zootoca vivipara</i> )	3	07/09/2019



terrestrial mammal	Daubenton's Bat ( <i>Myotis daubentonii</i> )	80	27/08/2014
terrestrial mammal	Eurasian Badger ( <i>Meles meles</i> )	75	04/07/2018
terrestrial mammal	Eurasian Pygmy Shrew ( <i>Sorex minutus</i> )	9	22/06/2018
terrestrial mammal	European Otter ( <i>Lutra lutra</i> )	19	10/06/2018
terrestrial mammal	Pine Marten ( <i>Martes martes</i> )	3	11/04/2021
terrestrial mammal	West European Hedgehog ( <i>Erinaceus europaeus</i> )	78	22/12/2022

### 3.3.3 Statutory Plans

The National Biodiversity Action Plan (NBAP) 2023-2030 refers to aquaculture specifically in terms of engaging the sector to promote the benefits of conservation and sustainable use of biodiversity for the benefit of their businesses. There is a target within (Target 10) which states that areas under agriculture, aquaculture, fisheries and forestry are managed sustainably, in particular through the sustainable use of biodiversity, including through a substantial increase of the application of biodiversity friendly practices, such as sustainable intensification, agroecological and other innovative approaches, contributing to the resilience and long-term efficiency and productivity of these production systems, and to food security, conserving and restoring biodiversity and maintaining nature's contributions to people, including ecosystem functions and services.

The Wexford County Development Plan 2022-2028 came into effect on Monday, 25<sup>th</sup> July 2022. Relevant objectives include:

- Strategic Economic Development Objective ED01: To facilitate sustainable economic development, increase and improve job opportunities and ensure that County Wexford provides an outstanding business environment
- Environmental Management Strategy Objective EM01: To ensure that proposed projects/developments comply with the requirements of EIA Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, and as transposed into Irish law under national legislation, including in Schedule 5 Part 1 and Part 2 of the Planning and Development Regulations 2001 (as amended).
- Environmental Management Strategy Objective EM02: To ensure that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, will not have a significant effect on a European site, or where such a development proposal is likely or might have such a significant effect (either alone or in combination), the planning authority will, as required by law, carry out an appropriate assessment as per requirements of Article 6(3) of the Habitats Directive 92/43/EEC
- Environmental Management Strategy Objective EM05: To implement the provisions of EU and National legislation and other relevant legislative requirements on protecting and improving surface and ground water quality, air quality and climate, and on reducing adverse noise and light nuisance, as appropriate and in

conjunction with all relevant stakeholders in the interests of the protection of the environment, public health and the sustainable development of the county

- Coastal Zone Management Strategic Objective CZM01: To ensure the sustainable development of the county's coastal areas and the maritime area for the long-term benefit of coastal communities and the economic well-being of these areas and the county whilst protecting and enhancing environmental quality and managing and restoring biodiversity.
- Coastal Zone Management Strategic Objective CZM02: To prepare a County Coastal Strategy, which will be subject to Strategic Environmental Assessment and compliance with the Habitats Directive, to provide the framework to sustainably manage our coastal areas, in particular, those areas at risk of coastal erosion and coastal flooding, and to have regard to the Strategy when preparing land use plans and assessing planning applications
- Coastal Zone Management Strategic Objective CZM03: To maximise the economic development potential of the county's coastal and maritime areas subject to compliance with the objectives of the County Development Plan with regard to the location of economic development, the protection of the scenic amenity and views associated with coastal areas and the maritime area which is crucial to the tourism industry, the protection of the amenity, livelihood and cultural well-being of coastal communities, the protection and restoration of coastal features, habitats and species, compliance with the Habitats Directive and normal planning and environmental criteria and the proper planning and sustainable development of these areas.
- Coastal Zone Management Strategic Objective CZM11: To support the sustainable growth and development of the maritime area and the maritime economy in accordance with the objectives of this chapter and the relevant objectives in Chapter 6 Economic Development Strategy, Chapter 8 Transportation Strategy, Chapter 9 Infrastructure Strategy, Chapter 11 Landscape and Green Infrastructure, Chapter 13 Heritage and Conservation and Volume 10 Energy Strategy as referred to in Table 12-1 and subject to compliance with the Habitats Directive and the proper planning and sustainable development of the area.

### 3.3.4 Water Quality Status

#### *Water Framework Directive*

The Status of the waterbodies being considered here under the Water Framework Directive are discussed above under Section 3.1.

#### *Shellfish Designated Waters*

Following the European Council Directive 79/923/EEC on the quality required of shellfish waters and the numerous subsequent amendments to this directive, a codified version was produced - Directive 2006/113/EC on the quality required of shellfish waters. This directive sets out physical, chemical and microbiological parameters and regulations for the designation and sampling of Shellfish Designated Waters to protect or improve these waters in order to support shellfish (bi-valve and gastropod molluscs) life and growth, the directive also provides for the establishment of pollution reduction programmes for designated waters and thus, contribute to the high quality of shellfish products directly edible by man. Wexford

Harbour has much of its waters designated as Shellfish Designated Waters, as can be seen from Figure 9.

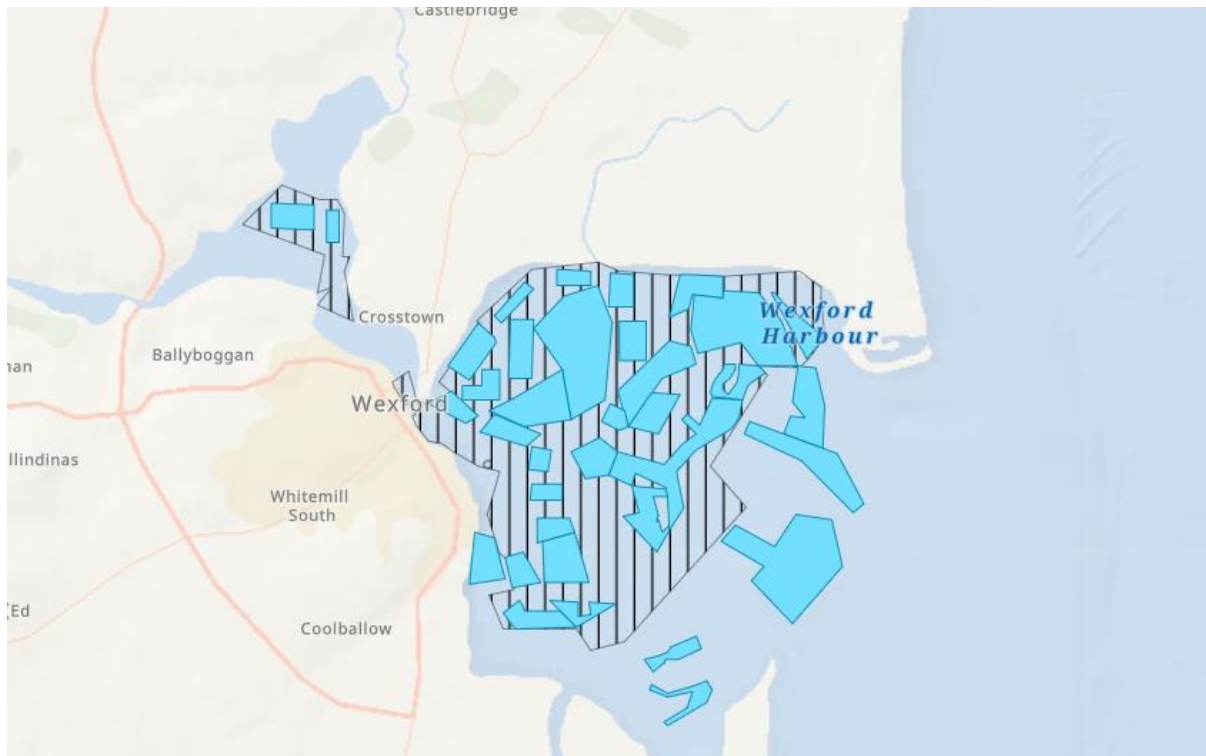


Figure 9: Location of all licensed sites in Wexford Harbour- with Shellfish Water Directive Areas that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer, January 2025).

### *Shellfish Classification*

The SFPA has classified mussels produced from Wexford Harbour for 2024/2025 as Class B year-round.

### 3.4 Man-made heritage

A search of the Historic Environment Viewer (Archaeological Survey of Ireland <http://webgis.archaeology.ie/historicenvironment/> [Accessed 19/06/2023] identified a number of land based features of historical importance in the immediate area of the Harbour, but outside of the area of impact of the proposed development. (to note - this site was under maintenance in January and February 2025).

A search of the WreckViewer application <https://www.archaeology.ie/underwater-archaeology/wreck-viewer> [Accessed 28/01/2025] found that there were seven recorded shipwrecks in the harbour, none of which have any further details available (Figure 10).



Figure 10: Unidentified wrecks within Wexford Harbour.  
Source: archaeology.ie

#### 4.0 2024 Notices and Submissions

Section 46 of the Fisheries (Amendment) Act 1997 enables the Board to request that a party to the appeal or other person who has already made submissions/observations to the Board to make submissions /observations in relation to a matter which has arisen in relation to the appeal.

Section 47 of the Act enables the Board to request documents, particulars or other information that it deems necessary to enable it to determine an appeal from a party or other person who has made submissions or observations to the Board in relation to the appeal.

All Section 46 and Section 47 Notices sent from ALAB and the subsequent Submissions, in relation to Wexford Harbour appeals prior to March 2024, are set out in section 6.10 of the March 2024 TAs Final Interim Report.

This section deals the following documents:

1. The KRC Ecological Technical Advisor's Report to ALAB dated 01 June 2023 and its conclusions which led to the 29 June 2023 Section 46 requests,
2. Submissions to the 29 June 2023 Section 46 requests,
3. The supplemental KRC Report provided in response to the above round of submissions,
4. Section 46 request issued on the 31 January 2024,
5. The submissions made in response to the 31 January 2024 Section 46 request, and



## 6. The KRC Gap analysis.

There were no further Section 47 Notices.

### 4.1 The KRC Report

The KRC Environmental Consultants sent the KRC report (2023a) dated 01 June 2023 includes an assessment of the available waterbird data for Wexford harbour and Slobs and concludes that the significant data gaps and uncertainties are such that it is not possible to assess the potential impacts of the proposed aquaculture activities, the subject of the licence applications, and to complete an AA in accordance with the requirements of the Habitats Directive 92/43/EEC.

Following the conclusions of this report a Section 46 Notice was sent to all parties on 29 June 2023 requesting comments on the KRC report of 01 June 2023 and the matters referred to in the letter. The deadline for responses was the 29 September 2023.

### 4.2 Submissions to the 29 June 2023 Section 46 requests

The below parties responded to the 29 June 2023 Section 46:

1. Marine Institute dated 19 September 2023.
2. The Minister dated 21 September 2023.
3. Wexford Mussels Ltd dated 25 September 2023.
4. NPWS dated 25 September 2023.
5. An Taisce dated 29 September 2023.
6. Submissions on behalf of Crescent Seafoods Limited, Fjord Fresh Mussels Limited, Loch Garman Harbour Mussels Limited, River Bank Mussels Limited, TL Mussels Limited and WD Shellfish Limited dated 29 September 2023, sent by William Fry LLP.

### 4.3 The supplemental KRC Report

Following on from these submissions KRC provided a supplementary report (KRC 2023b) to ALAB dated 05 December 2023 (report available on the ALAB website). This supplementary report concluded that:

*'The industry (applicants) responses appeared to accept that (a) the AA was inadequate, (b) primarily due to the lack of data, and (c) that a multi-year study to address these inadequacies would be supported with their engagement at at least the analysis stage. An Taisce agreed that the AA was inadequate and insufficient to base licencing decisions on.*

*Both NPWS and The Marine Institute gave detailed responses. As the competent authority responsible for the protection of Wexford Harbour, NPWS were precautionary and highlighted a need for a better evidence-base on which to make decisions including potential mitigation measures. The Marine Institute accepted the failings of the AA (with respect to data inadequacies) but made sound arguments with respect to the potential positives of existing and expansion of mussels in Wexford Harbour.*

*It is my opinion that the responses received are in agreement that a further study is required. This study would benefit from being very carefully planned and involve The Marine Institute, NPWS and the industry to ensure a transparent and robust, well-designed and executed project be carried out. This should not solely focus on the potential negative impacts of activities on QIs but also consider the broader ecosystem and certainly the potential positive ecosystem services for inter alia nutrient cycling.'*

#### 4.4 Section 46 request issued on the 31 January 2024

A further Section 46 notice was issued to all parties on the 31 January 2024 in relation to the matters referred to in the notice, the submissions received in response to the Section 46 notice issued in June 2023 and the Supplemental KRC Report dated 05 December 2023.

#### 4.5 Submissions made on the 31 January 2024 Section 46 request

T.L. Mussels Ltd, Fjord Fresh Mussels Ltd, Loch Garman Harbour Mussels Ltd, Riverbank Mussels Ltd and WD Shellfish Ltd Submissions.

Five submissions were received from William Fry Solicitors on the 01 May 2024, on behalf of the following appellants:

1. T.L. Mussels Ltd. for appeals AP34/2019, AP38/2019, AP39/2019 and AP40/2019,
2. Fjord Fresh Mussels Ltd. for appeal AP41/2019,
3. Loch Garman Harbour Mussels Ltd. for appeals AP42/2019, AP43/2019 and AP44/2019,
4. Riverbank Mussels Ltd. for appeals AP45/2019 and AP46/2019,
5. WD Shellfish Ltd. for appeal AP47/2019.

On the 27 June 2024 Fjord Fresh Mussels Ltd withdrew appeal AP41/2019, Riverbank Mussels Ltd. withdrew appeals AP45/2019 & AP46/2019 and WD Shellfish Ltd. withdrew appeal AP47/2019.

As such the T.L. Mussels submissions for AP34/2019, AP38/2019, AP39/2019 & AP40/2019 and the Loch Garman Harbour Mussels submissions for AP42/2019, AP43/2019 & AP44/2019 only are dealt with in this report.

#### BIM Submission

One submission was received, from BIM (Bord Iascaigh Mhara) on the 30 April 2024, in relation to AP34-48/2019. As appeals AP41/2019, AP45/2019, AP46/2019 and AP47/2019

were withdrawn on the 27 June 2024 only appeals AP34/2019, AP36-40/2019 and 42-44/2019 are dealt with in this report.

#### An Taisce Submission

One submission was received, from An Taisce on 01 May 2024, in relation to AP34-48/2019. As appeals AP41/2019, AP45/2019, AP46/2019 and AP47/2019 were withdrawn on the 27 June 2024 only appeals AP34/2019, AP36-40/2019 and 42-44/2019 are dealt with in this report.

#### Martin Scallan

One submission was received, from Martin Scallan on 01 May 2024, on behalf of Scallan Mussels in relation to AP36-37/2019.

A copy of one of the Section 46 notices send on the 31 January 2024 is provided in Appendix 1 to this report.

The Technical Advisors responses to the issues raised in the above submissions are presented in section 9.0 of this report.

#### 4.6 The KRC Gap analysis Report

KRC Ecological provided ALAB with the 'KRC Gap Analysis report' on the 01 September 2024 and a revision to this report on the 26 September 2024.

The Gap Analysis report provides possible approaches for addressing the information gaps identified in the Atkins (2016) report (and confirmed in the KRC Report of June 2023) and essentially confirms in more detail that which the previous reports had already set out in terms of the information gaps and the work that is needed to address them.

The report provides a review of all available information in relation to the bird species in question, a review of the use of technological approaches to provide information for the multiple projects outlined and finally the report outlines a modelling approach which should be an overall goal of the components of the work.

The report provides recommendations for the following 10 information gaps:

1. Detailed analysis of waterbird population trends using existing data sources and increasing the frequency of high water 'core' counts,
2. Low-tide waterbird counts,
3. Surveys of high-tide roosts of 'wintering' waders and post-breeding terns,
4. Surveys of high-tide roosts of post-breeding terns,
5. Assessment of the displacement effects of aquaculture and associated activities (especially disturbance) on selected SCI species including Red-breasted Merganser, Great Crested Grebe, Goldeneye and Scaup,
6. Understanding the behaviour of breeding and foraging Little Terns,
7. Assessment of the potential effect of bottom mussel culture on roosting and feeding Greenland White-fronted Geese,

8. Understanding the general movements and behaviour of waterbirds in Wexford Harbour,
9. Assessment of the impacts of bottom mussel culture on inter-tidal mussel beds, and
10. Modelling the effects of environmental change within Wexford Harbour including expansion of aquaculture.

## 5.0 Screening for Environmental Impact Assessment

An Environmental Impact Assessment (EIA) must be carried out by the Board in respect of an appeal of:

- (a) aquaculture of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Aquaculture (Licence Application) Regulations 1998 as amended,
- (b) intensive fish farming of a class specified in Annex II of the EIA Directive 2011/92/EU as amended by Directive 2014/52/EU which the Board determines would be likely to have significant effects on the environment.

The proposed aquaculture the subject of the appeal is not of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Application Regulations.

In addition, it is not “intensive fish farming” for the purposes of Annex II of the EIA Directive.

As the aquaculture activities, the subject of the appeals before the Board, are not of a class of project specified in the 1998 Regulations and/or Annex II of the EIA Directive, there is no requirement to carry out a screening for EIA or EIA.

## 6.0 Appropriate Assessment

### 6.1 DAFM Appropriate Assessment and KRC June 2023 Report

The TAs Final Interim Report of March 2024 provides a comprehensive summary and comments on the August 2016 DAFM ‘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 Slobs SPA (site code 004076) and Raven SPA (site code 004019)’ and Annex I and II to this report (the Marine Institutes ‘Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)’ and the Atkins ‘Marine Institute Bird Studies Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture’).

The TAs Final Interim Report of March 2024 summarises the findings and recommendations of the June 2023 KRC report.

The TAs Final Interim Report of March 2024 also summarises and comments on the DAFM 'Updated Appropriate Assessment Conclusion Statement' (report undated).

I agree with the findings of the TAs Final Interim Report of March 2024 in relation to the SAC AA report i.e. that:

- The Conclusions provided in the SAC AA report, the mitigation/management measures are not sufficient to rule out any potential impacts on the conservation objectives of the relevant Natura 2000 sites,
- A lack of consideration is given to in-combination effects,
- Weight is given incorrectly to the positive effects on water quality due to the filtration carried out by mussels in the SAC AA report, the length of time mussel culture has occurred in the Harbour and positive ecosystem impacts of mussel reefs,
- Point 3) of the mitigating/qualifying factors list as provided in the SAC AA report which states that the "input of mussels into the system is limited by seed availability which, if consistent with previous inputs (of seed stock), will result in greater dilution of stock within larger surface areas licenced" does not account for future increases in mussel seed and suggests no limit to the proposed licence if such an increase does occur in future.

I agree with the findings of the TAs Final Interim Report of March 2024 in relation to the 01 June 2023 KRC report and in particular in relation to the recommendations on pages 26 to 28 of that report.

I agree with the findings of the TAs Final Interim Report of March 2024 in relation to the SPA AA report in relation to the unsuitability of the Atkins report proposed little tern mitigation strategy.

**The Appropriate Assessment as carried out by DAFM is not, in the technical advisor's opinion, sufficient or fit for purpose and does not rule out beyond reasonable scientific doubt the potential impact of the proposed developments either individually or in combination with other plans or projects on each of the Natura 2000 sites likely to be affected.**

## 6.2 Technical Advisor's Screening for Appropriate Assessment Reports

Following on from the Submissions made on behalf of Loch Garman Harbour Mussels and T.L. Mussels dated 1 May 2024, and as recommended by the ALAB Board, the newly appointed ALAB Technical Advisors carried out Screenings for Appropriate Assessment, from December 2024 to February 2025, for all 13 sites under appeal i.e. for sites T03/030A2, T03/030B, T03/030C, T03/030E, T03/030/1 (site D), T03/099A, T03/047A, T03/047B, T03/047C, T03/083A, T03/085A, T03/48A and T03/91A.

These Screenings are dated 14 February 2025 and confirm, as also determined at the application stage, that a Stage 2 Appropriate Assessment is required.

## 7.0 Section 61 Assessment

Section 61 (a-e) of the 1997 Act outlines the matters which the licensing authority shall take account of, as may be appropriate in the circumstances of a particular case, when an application for or an appeal regarding a decision on an aquaculture licence application is being considered. This section is used to assess the impact of the proposed aquaculture development under these headings, which are listed in 7.1 – 7.7 below.

### 7.1 Site Suitability

Section 61 (a) considers the suitability of the site at or in which the aquaculture is proposed to take place.

Wexford Harbour can be said to be suitable for bottom culture of mussels, having supported a bottom culture industry for a number of years and fishing for mussels has occurred in the Harbour on a commercial level for over a century. The substrate of the Harbour is suitable for mussel settlement and growth.

A literature review carried out by Atkins (2016) found that mussel culture beds can increase the diversity and abundance of fauna on the seafloor by providing an additional food resource for species that predate on the mussels themselves or other species that may be attracted to the mussel bed to predate on the species that are attracted to the mussel beds for refuge. This change in fauna on the seafloor is contrasted with a change of species found within the seafloor as increased organic rich sediments deposited by the mussels changes the characteristics of the sediments beneath the culture plot.

I agree with the statement in the TAs Final Interim Report of March 2024 that ‘there is disagreement as to the effectiveness of mussel beds to increase or decrease the abundance of other filter feeding benthic species positively by providing an additional habitat for larvae to establish or negatively by consuming the larvae of other species that may otherwise occupy the area. Local site-specific factors may play an important role in determining the impact of bottom mussel plots on benthic fauna. To date, not enough research has been carried out to answer this question conclusively and Wexford Harbour would likely require a localised survey to answer these questions.’

**Overall, it cannot be concluded at this time that the sites are suitable for the proposed development due to the outstanding potential impacts on Natura 2000 sites and associated species as set out in Section 6.0.**

## 7.2 Other uses

Section 61 (b) takes account of other beneficial uses, both in existence or future in the area and / or waters of the proposed site.

For appeals 34/2019, 36/2019, 37/2019, 38/2019, 39/2019, 42/2019, 43/2019, and 44/2019 the review by the technical advisor has not found other users of the Wexford Harbour marine area. See Section 3 for more detail.

**Therefore, the proposed developments have no significant impact on the possible other uses or users of the area for appeals 34/2019, 36/2019, 37/2019, 38/2019, 39/2019, 42/2019, 43/2019, and 44/2019.**

In relation to **Appeal AP40/2019**, there is an overlap between the area applied for in the renewal licence application and the proposed plans of Wexford County Council to develop a marina on part of the site. It appears that the licence application predates Wexford County Council's plans. However, given the findings of Section 6 above, this was not considered further by the technical advisor at this point in time.

## 7.3 Statutory Status

Section 61 (c) considers the statutory status of the area under consideration including the provisions of any development plan.

Under the Wexford County Development Plan 2022-2028, as discussed above in Section 3.3.3., the proposed developments in their current form would facilitate Strategic Economic Development Objective ED01, to develop the economy and Coastal Zone Management Strategic Objective CZM03, to maximise the economic development potential of the county's coastal and maritime areas **but** breach Environmental Management Strategy Objective EM02, to ensure proposed Developments comply with the Birds and Habitats Directives (AA)

**Overall, it is concluded that the sites are not suitable for the proposed development due to the outstanding potential impacts on Natura 2000 sites and associated species, along with breaches of the Wexford County Development Plan.**

## 7.4 Economic effects

Section 61 (d) takes into account the likely effect a proposed aquaculture development (or its amendment / revocation) would have on the economy of the area in which the aquaculture is to be located.

The existing developments have a strong positive impact on the local economy. Determinations to grant the licences (with variations as decided by the Minister) are likely to negatively impact this, and Determinations to refuse to grant the licences (and in particular as regards the renewal applications) will severely negatively impact this.

**Overall, it is concluded that the proposed developments will have a positive impact on the local economy.**

## 7.5 Ecological Effects

Section 61 (e) considers the likely effect that the proposed aquaculture operation would have on wild fisheries, natural habitats and the fauna and flora of the area.

This is discussed above in Sections 6 and 7.1.

**Given the current uncertainty of impacts of the proposed development on protected European Sites, there is potential for a significant adverse effect on the natural habitats, wild fisheries and fauna and flora of the area as a result of the proposed developments due to the gaps in data outlined in this Report.**

## 7.6 General Environmental Effects

Section 61 (f) considers any other effects on the environment in general that could occur in the vicinity of the area where the proposed site is to be located.

This is discussed above in Sections 6 and 7.1.

**Given the current uncertainty of impacts of the proposed development, there is potential for a significant adverse effect on the general environment of the area as a result of the proposed operation due to the gaps in data outlined in this Report.**

## 7.7 Effect on man-made heritage

The Department of Housing and Local Government expressed reservations about the potential impact on maritime heritage in Wexford Harbour due to a lack of underwater archaeological survey and the fact that several unidentified shipwrecks were known to exist in the harbour. The Ministers file submitted by DAFM in December 2019 states that an Underwater Archaeological Assessment is currently being carried out by contractors appointed by BIM. However, this report was not submitted to ALAB at that time or in the interim period.



**There is the possibility of a negative effect on the man-made heritage of value in the area as a result of the proposed operation due to the lack of available information on existing shipwrecks in Wexford Harbour.**

## 7.8 Section 61 Assessment Conclusions

- Section 61 (a): Overall, it is concluded that the site is not suitable for the proposed development due to the outstanding potential impacts on Natura 2000 sites and associated species.
- Section 61 (b): Overall, the proposed developments have no-significant impact on the possible other uses or users of the area as none can be established.
- Section 61 (c): Overall, the sites are not suitable for the proposed developments due to the outstanding potential impacts on Natura 2000 sites and associated species, along with breaches of the Wexford County Development Plan.
- Section 61 (d): Overall, the current developments have a strong positive impact on the local economy. Determinations to grant the variation licences is likely to negatively impact this, and determinations to refuse these licences will severely impact this.
- Section 61 (e): Overall, given the current uncertainty of impacts of the proposed developments, there is potential for significant adverse effects on the natural habitats, wild fisheries and fauna and flora of the area as a result of the proposed operations due to the gaps in data outlined in this Report.
- Section 61 (f): Overall, given the current uncertainty of impacts of the proposed developments, there is potential for significant adverse effects on the general environment of the area as a result of the proposed operation due to the gaps in data outlined in this Report.
- Section 61 (g): There is the possibility of a negative effect on the man-made heritage of value in the area as a result of the proposed operations due to the lack of available information on existing shipwrecks in Wexford Harbour.

## 7.9 Confirmation re Section 50 Notices

I confirm there are no matters which arise in section 61 which the Board ought to take into account which have not been raised in the appeal documents, and therefore it is not necessary to give notice in writing to any parties in accordance with section 50 (2) of the 1997 Act.

## 8.0 Literature review of the effects of mussel culture on water column nutrient levels

It is recognized, as noted in various submissions made during the course of the appeals, that mussel farms have the potential to remove excess nutrients from the water column (Lindahl & Kollberg 2009, Maar et al., 2023). And several studies highlight mussels as a potential

mechanism for the removal of excess nutrients from eutrophic estuaries (Timmermann et al., 2019; van der Schatte., 2021).

However, the rates at which nutrients are removed vary greatly between studies. Maar, et al., (2023) state that the net effect of mussel production on nutrient cycling in the ecosystem is not straightforward due to the interaction with physical and biogeochemical processes regulating ecosystem functioning. Guyondet (2022) states that nitrogen extraction may be affected by a combination of various non-linear interactions between the cultured organisms and the receiving ecosystem, and he goes on to quantify the effects of the various biological, physical, geomorphological and hydrodynamic processes.

Mcleod and Mcleod (2019) state that there is a need for site specific assessments to be carried out in order to gain site specific values for [the removal of] Nitrogen and Phosphorus. This is reiterated by Van der Schatte (2021) where he states that the role of environmental conditions in driving variation in [mussel] tissue and shell nutrient content remains unclear.

And interestingly Van der Schatte (2021) concludes that rope cultured mussels removed double the amount of Nitrogen and Phosphorus per tonne of live mussel compared with bottom cultured mussels.

In their 01 May 2024 submissions T.L. Mussels and Loch Garman Harbour Mussels Ltd submit that:

*The Board appears to have given no consideration to the impact of the judgment of the Court of Justice of the European Union (CJEU) in the case of Eco Advocacy v An Bord Pleanála (Case C-721/21), where the CJEU has held that where measures incorporated into the design of a project which do not have the aim of reducing the negative effects of that project on the site concerned, but are standard features required for all projects of the same type, cannot be regarded as indicative of probable significant harm to that site. This will require a thorough screening exercise to determine that an AA is actually required.*

However following on from the findings of the literature review and having had regard to the judgment of the Court of Justice of the European Union (CJEU) in the case of Eco Advocacy v An Bord Pleanála (Case C-721/21), it is my opinion that any potential reduction in water column nutrient levels in Wexford Harbour associated with the bottom cultivation of mussels cannot be considered grounds to negate the obligations to carry out an Appropriate Assessment as required under Article 6(3) of the Habitats Directive 92/43/EEC for the reasons set out in the AA Screening Reports.

## 9.0 Technical Advisor's Evaluation of the Issues in Respect of Appeals and Submissions/Observations Received

### 9.1 Evaluation of the Issues in Respect of Appeals received

The TAs Final Interim Report of March 2024 provides a comprehensive summary of all appeal issues raised prior to March 2024 and provides responses to each issue (see section 7.0 of TA Final Interim Report report).

I agree with all responses provided in the TAs Final Interim Report of March 2024.

The following appeal issue is impacted by the 2024 Section 46 Notices and Submissions:

*The Minister was mistaken in his assessment under Section 61 (e) of the Fisheries Act (1997) as mussels have a positive ecological impact on the relevant ecosystem, improve biodiversity and act as a control mechanism for eutrophication in the Harbour, as detailed in the Aquafact report (2019) submitted with the appeal.*

My response to this issue is as follows:

When applied to the bottom cultivation of mussels the statement that *'mussels have a positive ecological impact on the relevant ecosystem'* is arguable; the dredging of bottom cultivated mussels will inevitably affect the ecosystem and cannot be described as a positive ecological impact.

There is some merit in the statement that *'mussels...improve biodiversity'* however the effects following the ultimate dredging of bottom cultivated mussels cannot be described as an improvement to biodiversity.

There is also some merit in the statement that *'mussels...act as a control mechanism for eutrophication in the Harbour'*. However, any improvement to biodiversity or potential positive effects on water quality due to mussel filtration is not relevant to the primary issue in all the remaining appeals before ALAB, i.e. that of the disturbance to habitats and species listed in section 3.3.1 of this report and the gaps in the information to enable the Board to carry out an appropriate assessment of the impacts of the proposed development on SPA.

## 9.2 Evaluation of the Issues in Respect of Submissions received

All parties to the appeal, observers and certain prescribed bodies were issued a Section 46 notice on the 31 January 2024 which (together with the June 2023 Notice), gave them the opportunity to make submissions, in relation to the issues raised in the notices, the KRC report of 01 June 2023, the supplementary report provided by KRC to ALAB on 05 December 2023 and the submissions made in response to the June 2023 Section 46 notice.

Five submissions were received from William Fry Solicitors on behalf of T.L. Mussels Ltd, Fjord Fresh Mussels Ltd, Loch Garman Harbour Mussels Ltd, Riverbank Mussels Ltd and WD Shellfish Ltd

on the 01/05/24, in relation to AP34/2019, AP38/2019, AP39/2019, AP40/2019, AP41/2019, AP42/2019, AP43/2019, AP44/2019, AP45/2019, AP46/2019 and AP47/2019.

Appeals AP41/2019, AP45/2019, AP46/2019 and AP47/2019 were withdrawn on the 27 June 2024 and as such the submissions on behalf of T.L. Mussels (AP34/2019, AP38/2019, AP39/2019, AP40/2019) and Loch Garman Mussels (AP42/2019, AP43/2019 and AP44/2019) only, are dealt with below.

The submissions made on behalf of T.L. Mussels and Loch Garman Harbour Mussels are identical and as such the below table represents the combined issues raises and combined TA response.

As this Report is a technical assessment of the issues raised, I have not addressed some of the procedural matters raised in the submissions made on behalf of T.L. Mussels and Loch Garman Harbour Mussels i.e. submissions 2, 3, 4a, 4h and 7 which are matters which can be addressed by the Board.

Below is the Technical Advisors response to the 01 May 2024 submissions made on behalf of T.L. Mussels Ltd. for AP34/2019, AP38/2019, AP39/2019 & AP40/2019 and Loch Garman Harbour Mussels Ltd. for AP42/2019, AP43/2019 & AP44/2019:

Submission	Submission Issues Raised:	Technical Advisors response:
<p><b>Submissions by T.L. Mussels and Loch Garman Harbour Mussels 01 May 2024</b></p>	<ol style="list-style-type: none"> <li>1. Clients are deeply concerned by the Boards indication that it has “provisionally” formed the view that the Appeals should be dismissed, in circumstances where postponing the determination of the Appeals for a lengthy period is contrary to the Board's "statutory objective to ensure that appeals are determined expeditiously" as per Section 56 of the Fisheries (Amendment) Act 1997 ("Section 56") indicating that the Board has adopted a contradictory position.</li> <li>2. Clients are extremely concerned that the choice of language used by the Board in its letter of 31 January demonstrates a likely pre-judgment of the issue on the part of the Board, so that the ultimate outcome of the appeal(s) has been set in stone and rendered a fait accompli.</li> <li>3. Requirement for an Appropriate Assessment - The suggestion that to implement the work programme identified in the KRC Report is "<i>beyond</i> [the Board's] <i>remit</i>" is misguided and indicates a confusion as to the statutory role and obligations of the Board.</li> <li>4. Lack of and incomplete information available to the Board             <ol style="list-style-type: none"> <li>a. the KRC Report concluded that information needed to close the gaps in the ecological</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. This is a matter for the Board. The Board is obliged under Section 56 to as far as practicable, ensure that appeals are dealt with and determined expeditiously and that are steps are taken to avoid unnecessary delays.</li> <li>2. This issue is to be addressed by the Board.</li> <li>3. This issue is to be addressed by the Board.</li> <li>4.             <ol style="list-style-type: none"> <li>a. This issue is to be addressed by the Board.</li> <li>b. The MI report states that mussel cultivation <b>may</b> be having a positive impact on Wexford Harbour; this is not an established fact.</li> <li>c. There is some merit to the claim that mussel farming (and to a greater degree rope cultured farms) can reduce nitrogen and phosphorus levels in the water column, however any potential positive effects on water quality due to mussel filtration is not relevant to the issue at hand, i.e. that of disturbance to habitats and species listed in section 3.3.1 of this report and associated information gaps to enable an appropriate assessment to be carried out. When applied to the bottom cultivation of mussels the</li> </ol> </li> </ol>

	<p>information can be provided by further studies, so as to enable the Board to conduct a lawful appropriate assessment in respect of the appeals. And the Board has a statutory obligation to bring the environmental assessments up to date and ensure that the baseline has not changed. The obligation to ensure the appropriate assessment is completed is on the decision maker irrespective of the costs and time associated with same.</p> <p>b. The Marine Institute's (MI) Appropriate Assessment of Aquaculture in Slaney River Valley SAC and Raven Point Nature SAC notes that the mussel cultivation may be having a positive impact on Wexford Harbour.</p> <p>c. The submissions refer to appendix 2 Interreg report which states that 'mussel farming can both significantly reduce amounts of nitrogen and phosphorous from the water while the environmental impacts of mussel farming are close to zero'.</p> <p>d. The submissions refer to Appendix 3 NUI Galway report in relation to N and P reduction</p> <p>e. The submissions refer to Appendix 4 BIM report in relation to N and P reduction</p> <p>f. The submissions refer to Appendix 5 the BIM/Bottom Grown Mussel Consultative Forum draft fishery plan 2023-2027 and section 4 re protective measures.</p> <p>g. The submissions refer to Appendix 6 DCU report.</p>	<p>statement that the environmental impacts of mussel farming are close to zero is in my opinion incorrect; the dredging of bottom cultivated mussels will inevitably affect the ecosystem and cannot be described as a close to zero impact.</p> <p>d. See 4c response above.</p> <p>e. See 4c response above.</p> <p>f. Section 4 of the BIM/Bottom Grown Mussel Consultative Forum draft fishery plan 2023-2027 management measures relates to fishing for seed mussel; not relevant to the issues at hand, i.e. that of disturbance to habitats and species listed in section 3.3.1 of this report.</p> <p>g. Not relevant to the issues at hand, i.e. that of disturbance to habitats and species listed in section 3.3.1 of this report.</p> <p>h. This issue is to be addressed by the Board.</p> <p>i. The submissions appear to equate the filtering effect of mussels as an inherent standard design feature of the project which can be considered at AA screening stage. It is not clear that this is what the judgment means but, even if that is the correct legal position, I believe this effect does not impact the AA screening assessment as any potential positive effects on water quality due to mussel filtration is not relevant to the issue at hand, i.e. that of disturbance to habitats and species listed in section 3.3.1 of this report.</p> <p>Secondly the Department of Agriculture, Fisheries &amp; Food's,</p>
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	<p>h. It is possible for a decision-maker such as the Board to properly discharge its primary function of determining appeals substantively, while at the same time discharging obligations imposed by the Habitats Directives in respect of ensuring the integrity of European sites</p> <p>i. The Board appears to have given no consideration to the impact of the judgment of the Court of Justice of the European Union (CJEU) in the case of <i>Eco Advocacy v An Bord Pleanála</i> (Case C-721/21), where the CJEU has held that where measures incorporated into the design of a project which do not have the aim of reducing the negative effects of that project on the site concerned, but are standard features required for all projects of the same type, cannot be regarded as indicative of probable significant harm to that site. This will require a thorough screening exercise to determine that an AA is actually required.</p> <p>5. Mussel cultivation in Wexford Harbour – a historical tradition.</p> <p>6. Economic and employment impact of the bottom cultivation of mussels in Wexford Harbour.</p> <p>7. Section 47 of the 1997 Act and Regulation 42 of the European Communities (Bird and Natural Habitats) Regulations 2011 (“Section 47”)</p> <p>8. Third Party Submissions regarding the Appeal</p> <p>9. Oral Hearing</p>	<p>The Rising Tide, 2008 review of the Bottom Grown Mussel Sector on the Island of Ireland recommends that competent authorities continue the appropriate assessment process where aquaculture sites for bottom grown cultivation lie within or adjacent to Natura 2000 sites (Department of Agriculture, Fisheries &amp; Food et al., 2008)</p> <p>5. See Section 7 of this report - Section 61 Assessment, pages 37 to 41 above.</p> <p>6. See Section 7 of this report - Section 61 Assessment, pages 37 to 41 above.</p> <p>7. This issue is to be addressed by the Board.</p> <p>8. The third-party submissions received further to the January 2024 Notice do not raise any material new issues and do not require to be circulated pursuant to Section 46.</p> <p>9. See section 10 of this report.</p>
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One submission was received, from BIM (Bord Iascaigh Mhara) on the 30 April 2024, in relation to AP34-48/2019. As appeals AP41/2019, AP45/2019, AP46/2019 and AP47/2019 were withdrawn on the 27 June 2024 the following TA responses relates only to appeals AP34/2019, AP36-40/2019 and 42-44/2019:

<b>Submission</b>	<b>Submission Issues Raised:</b>	<b>Technical Advisors response:</b>
<p><b>BIM Submission 30 April 2024</b></p>	<ol style="list-style-type: none"> <li>1. Given the longstanding economic and social contribution of the bottom mussel industry in Wexford Harbour and the catastrophic implications of a blanket refusal on the mussel industry, we believe this [these appeals] merits further consideration prior to final decision.</li> <li>2. BIM suggest that based on the following criteria that an Oral Hearing is both appropriate and founded:               <ol style="list-style-type: none"> <li>a. the appeals relate to projects of significant public importance in the Wexford region.</li> <li>b. there appears to be conflicting technical information on relevant and significant aspects of the appeal i.e. concerns relating to the adequacy of the management response in relation to bird species.</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. See Section 7 of this report - Section 61 Assessment, pages 38 to 41 above.</li> <li>2. See Section 7 of this report - Section 61 Assessment, pages 38 to 41 above and Section 10 Oral Hearing Assessment page 47.</li> </ol>



One submission was received, from An Taisce on 01 May 2024, in relation to AP34-48/2019. As appeals AP41/2019, AP45/2019, AP46/2019 and AP47/2019 were withdrawn on the 27 June 2024 the following TA responses relates only to appeals AP34/2019, AP36-40/2019 and 42-44/2019:

<b>Submission</b>	<b>Submission Issues Raised:</b>	<b>Technical Advisors response:</b>
<p><b>An Taisce Submission 01 May 2024</b></p>	<ol style="list-style-type: none"> <li>1. An Taisce welcome the intention expressed by ALAB to not grant these licences at this time, and believe it is the only correct, legally compliant decision which can be made at this point.</li> <li>2. An Taisce submit that the continued operation under section 19A(4) of the 1997 Fisheries (Amendment) Act is an inexcusable practice and has served to:               <ol style="list-style-type: none"> <li>a. Compromise rights of public participation,</li> <li>b. Compromise proper regulation,</li> <li>c. Compromise assessment obligations under both the EIA and Habitats Directive.</li> </ol> </li> <li>3. It is incumbent on ALAB to uphold the requirements and intent of the Habitats Directive in their decision-making capacity. Any further postponement of a decision will further exacerbate the extant and very real risks to birds which should, to date, have been heavily protected under the Birds and Habitats Directives.</li> <li>4. An Taisce call on ALAB not to seek to rely on Section 19(4), but to uphold the supremacy of EU law and quash the licences given the unacceptable risks posed to Natura 2000 protected species. To take any other course of action would be inconsistent with the requirements of the EIA Directive and the Habitats Directive that the necessary assessment must</li> </ol>	<ol style="list-style-type: none"> <li>1. An Taisce’s opinion on this matter is noted.</li> <li>2. This issue is to be addressed by the Board.</li> <li>3. This issue is to be addressed by the Board.</li> <li>4. This issue is to be addressed by the Board.</li> </ol>

	precede the activities for which authorisation is sought.	
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One submission was received, from Martin Scallan on behalf of Scallan Mussels on 01 May 2024, in relation to AP36-37/2019 and therefore the following TA responses relates only to appeals AP36-37/2019:

Submission	Submission Issues Raised:	Technical Advisors response:
<b>Martin Scallan (MS) Submission 01 May 2024</b>	<ol style="list-style-type: none"> <li>1. MS states that they are the only producer in the whole harbour subjected to have all of their sites reduced by a huge percentage [66%] and as such are disproportionately negatively impacted.</li> <li>2. There was no consultation had with any of the operators in Wexford Harbour when it came to these proposed reduced areas and therefore there are issues in relation to site layout and capacity of tonnage. Leading to an unviable business.</li> <li>3. Disruption due to location of site</li> <li>4. Request to realign site</li> <li>5. Request for Oral Hearing</li> </ol>	<ol style="list-style-type: none"> <li>1. There is merit in this statement that the T03/48A &amp; T03/91A sites have been reduced to a greater degree however this follows from the DAFM Marine Engineering Division habitats-based assessment. Also see Section 7 of this report - Section 61 Assessment, pages 37 to 41 above.</li> <li>2. There is merit in this statement however variation site layout determined following DAFM Marine Engineering Division habitats-based assessment.</li> <li>3. As above.</li> <li>4. Not relevant to TA Final Report/Section 61 Assessment.</li> <li>5. See section 10 below (page 49 of this report).</li> </ol>

## 10.0 Oral Hearing Assessment

It is the Technical Advisors opinion that given the time required to address the gaps identified in the Atkins report and in the subsequent KRC reports that it would not be beneficial at this time to proceed with an Oral Hearing. Notwithstanding the BIM submission regarding the economic impacts, as the data gaps could not be addressed in an oral hearing, I do not recommend holding an oral hearing.

## 11.0 Natura Impact Statement (NIS)

It is the Technical Advisor's opinion that an NIS is required to address the knowledge gaps identified in the Atkins report and in the subsequent KRC reports, however it is noted that an NIS will take 3 to 4 years to complete. Also to note the submissions in response to the Section

46 Notices do not dispute the nature and extent of the information required to enable an AA to be carried out.

## 12.0 Recommendation of Technical Advisor with Reasons and Considerations

**Based on the information currently available and in the absence of an NIS addressing the identified data gaps, I recommend refusing to grant the applications for a licence the subject of the following appeals AP34/2019 (site T03/030E), AP36/2019 (site T03/048A), AP37/2019 (site T03/091A), AP38/2019 (sites T03/030A2, T03/030B, T03/030C, T03/030E), AP39/2019 (site T03/030/1 [site D]), AP40/2019 (site T03/099A), AP42/2019 (sites T03/047A, T03/047B, T03/047C), AP43/2019 (site T03/083A) and AP44/2019 (site T03/085A) on the basis that it cannot be established beyond a reasonable scientific doubt that the proposed developments, either individual or in combination with other plans and projects, would not adversely affect the integrity of the relevant Natura 2000 sites as outlined in this report.**

**Senior Technical Advisor: Mary Hegarty, MSc.**

**Date: 19/02/25**

## References

Atkins (2016) Marine Institute Bird Studies Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture

Cronin et al (2003) Harbour seal population assessment in the Republic of Ireland: August 2003. Irish Wildlife Manuals, No. 11. National Parks & Wildlife Service, Department of Environment, Heritage and Local Government, Dublin, Ireland

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Marine Institute (2016) Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710). Galway, 2016.

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NPWS (2023a) Conservation Objectives for Slaney River Valley SAC (000781). Version 1.0. Department Arts, Heritage and the Gaeltacht. Version 1 (21st October 2011); 27pp

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Van der Schatte Olivier A, Le Vay L, Malham SK, et al. (2021) Geographical variation in the carbon, nitrogen, and phosphorus content of blue mussels, *Mytilus edulis*. *Mar Pollut Bull.* 2021; 167:112291. doi: 10.1016/j.marpolbul.2021.112291

## Appendix 1 – Section 46 and Section 47 notices

Section 46 of the Act provides for the Board to request that a party to the appeal or a person who has already made submissions/observations to the Board make further submission /observations in relation to a matter which has arisen in the course of the appeal.

Section 47 of the Act provides for the Board to request documents, particulars or other information that it deems necessary to enable it to determine an appeal from a party to the appeal or a person who has made submissions or observations to the Board in relation to the appeal.

### **Section 46 Notices:**

**Sample Section 46 notice as sent to IFI on 31 January 2024:**

**An Bord Achomhairc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board**



Mr. Francis O'Donnell, CEO  
Inland Fisheries Ireland  
3044 Lake Drive  
Citywest Business Campus  
Dublin  
D24 CK66

31 January 2024

Our Refs: AP34-48/2019 (S46 01.2024)

Site Refs: T03/030E; T03/035A, B, C, F & G; T03/091A; T03/048A; T03/030A2, T03/030B, T03/030C, T03/030E, T03/030/1, T03/099A; T03/046A, T03/046B, T03/046C; T03/047A, T03/047B, T03/047C, T03/083A, T03/085A; T03/049A, T03/049B, T03/049C1, T03/049C, T03/049D, T03/077A; T03/052A, T03/052B; T03/055E

**Appeals against decisions of the Minister for Agriculture, Food and the Marine in relation to Aquaculture Licences to bottom cultivate mussels at sites on the foreshore at Wexford Harbour.**

Dear Mr O'Donnell

We refer to the above appeals and to the Aquaculture Licence Appeals Board (ALAB) Section 46 request dated 29 June 2023.

ALAB received the following submissions in response to similar Section 46 requests which issued in respect of Appeal Refs 34-48 /2019:

1. Submissions of the Marine Institute, both dated 19 September 2023 (received 20 September 2023 - 2x no.)
2. Submission of the Minister dated 21 September 2023.
3. Submission of Wexford Mussels Ltd dated 25 September 2023.
4. Submission of the NPWS dated 26 September 2023.
5. Submission of An Taisce dated 29 September 2023.
6. Submissions by William Fry LLP on behalf of Crescent Seafoods Limited, Fjord Fresh Mussels Limited, Loch Garman Harbour Mussels Limited, Riverbank Mussels Limited, TL Mussels Limited and WD Shellfish Limited dated 29 September 2023.

Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

Guthán/Telephone: 057 8631912 R-phost/Email: [info@alab.ie](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)



## An Bord Achomhairc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



The second submission of the Marine Institute is a response to Section 46 Requests dated 23 August 2023 to the Marine Institute and to the NPWS in relation to the Slaney River Valley and Raven Point Nature Reserve Special Area of Conservation (SAC).

KRC Ecological Ltd has reviewed the submissions received in all appeals and prepared a supplemental report dated 5 December 2023 (the Supplemental KRC Report).

This concludes *inter alia* that, notwithstanding some of the points made in particular by the Marine Institute, the over-arching conclusions in the KRC report of June 2023 stand with respect to data inadequacies and the inability, based on the available evidence, to rule out the potential for significant impacts of the activities on Special Protected Areas (SPAs) beyond a reasonable scientific doubt in accordance with the requirements of the Habitats Directive 92/43/EEC.

ALAB has considered the submissions received and the Supplemental KRC Report.

It appears to be generally accepted that further survey work is required. However, no indication is given in any of the submissions that this work is being undertaken or is planned.

For the avoidance of doubt, ALAB considers that it is beyond its remit and functions to design, coordinate or implement the work programme identified in the KRC Report. It also would not be feasible to expect licence applicants to do so by way of information requests under Section 47 of the 1997 Act or Regulation 42 of the European Communities (Bird and Natural Habitats) Regulations 2011. In any event, postponing the determination of these appeals for a lengthy and potentially indefinite period would be contrary to:

1. ALAB's statutory objective to ensure that appeals are determined expeditiously.
2. The objectives of the Habitats Directive, particularly in respect of the renewal applications where the activities are continuing to operate further to Section 19A of the 1997 Act, given the uncertainties identified as regards the potential for significant impacts on SPAs.

The Board has therefore provisionally formed the view that the Licence Applications the subject of the above appeals should be refused as it would not be possible or appropriate to seek to address the deficiencies in the scientific data in the context of these appeals.

However, before proceeding to make its final determination, the Board is of the opinion that, in the particular circumstances of these appeals, it is appropriate in the interests of justice to HEREBY REQUEST you further to Section 46(1)(a) of the 1997 Act to make submissions or observations in relation to the matters referred to in this letter, the submissions listed at 1 to 6 above and the Supplemental KRC Report.

The submissions and the Supplemental KRC Report are available on ALAB's website, which can be accessed at [www.alab.ie](http://www.alab.ie) or by following the links set out in the schedule to this letter.

Cúirt Choil Mhínsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

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**An Bord Achomhairc Um Cheadúnais Dobharshaothraithe**  
**Aquaculture Licences Appeals Board**



Should you have any difficulties accessing the website or the scheduled links, please contact me as set out below.

Such submissions or observations must be received by ALAB not later than **1<sup>st</sup> March 2024**. If they are not received before the expiration of this period ALAB will, without further reference to you, determine the appeals. This notice is being copied to all parties to the appeals.

ALAB has not made a final decision on whether to hold an oral hearing of the appeals. However, in light of the submissions to date and the position in relation to data deficiencies, it does not appear that it would serve any useful purpose at this time. The Board will make a final decision in light of any submissions made on foot of this notice.

On receipt of any further submissions, ALAB accordingly intends to consider all the submissions received, complete the assessments required under EU law and to proceed to make a final determination on the appeals.

Please ensure to quote the following reference: **AP34-48/2019 (S46 01.2024)** in your reply.

Please note that hard copies of the documents referred to are available on request by contacting me in writing, by email or by phone - The Secretary, Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co Laois. R32 DTW5, Email: [info@alab.ie](mailto:info@alab.ie). Phone: (057) 8631912.

Yours sincerely

A handwritten signature in black ink that reads 'Margaret Carton'.

Margaret Carton  
Secretary to the Board

Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

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**Section 46 notice was sent to DAFM Minister on 29 June 2023:**

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board**



Mr Charlie McConalogue TD  
Minister for Agriculture, Food and the Marine  
Agriculture House  
Kildare Street  
Dublin 2

29 June 2023

Our Ref: AP37/2019  
Site Ref: T03/091A

**Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to grant with variations an Aquaculture Licence to Noel and Sheila Scallan for the bottom cultivation of mussels on the foreshore on site ref T03/091A in Wexford Harbour, Co Wexford**

Dear Minister,

We refer to the above appeal of the decision to grant, with variations, an aquaculture licence for the bottom cultivation of mussels in Wexford Harbour.

Pursuant to section 35 of the Fisheries (Amendment) Act 1997 as amended, KRC Ecological Ltd was commissioned by ALAB to complete a report for the purposes of ALAB's Appropriate Assessment (AA) in respect of appeal refs: AP34-48/2019, including the above appeal, and the potential effects of mussel aquaculture on potentially impacted Special Protected Areas (SPAs)(the KRC Report).

The KRC Report includes an assessment of the available waterbird data for Wexford Harbour and Slobbs and concludes that the significant data gaps and uncertainties are such that it is not possible to assess the potential impacts of the proposed aquaculture activities, the subject of the licence applications, and to complete an AA in accordance with the requirements of the Habitats Directive 92/43/EEC at this time. The KRC Report is available on ALAB's website at the following link:

<https://alab.ie/appeals-open/wexford/> (Schedule of Documents)

The KRC Report also refers to the 2016 AA prepared by Atkins for the Marine Institute in respect of various SPAs (the Atkins Report).

The Atkins report concluded that (a) the available evidence indicated a high likelihood of significant impacts on certain species and (b) there were other potential impacts where the available evidence was not sufficient to rule out significant impacts beyond a reasonable scientific doubt. It identified management measures, research and information compilation which would be required to complete the assessment.

The Atkins Report is available on ALAB's website at the following link:

<https://alab.ie/appeals-open/wexford/> (Schedule of Documents)

Cúirt Choill Mhíne, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
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## An Bord Achomharc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



The additional work and information identified in the Atkins Report as required for the purposes of completing an AA is not referred to in the AA Conclusion Statement prepared by the Department of Agriculture, Food and the Marine.

The KRC Report also notes that most if not all of the recommendations in the Atkins Report appear not to have been implemented and makes a series of recommendations on the further information and analysis required to complete an AA. In summary, these set out the need for:

- a) A revised AA based on much more recent data to assess in situ and ex situ impacts.
- b) An initial review of the recommendations arising from the Atkins Report.
- c) An independent programme of work commissioned to undertake desk, field, and analytical work with expert prescriptive input.
- d) New field studies to take place over a period of a minimum of two, ideally three years.
- e) Production of a site-based Total Allowable Catch (TAC) model which would utilise the data collected over the field study period.

ALAB notes the deficiencies existing in scientific data for Wexford Harbour and that a timeframe of up to four years is needed to collect and analyse the data required to properly assess the impact of the proposed activities which are the subject of the licence applications on the SPAs, including the potential for cumulative impacts, before an AA can be completed.

In addition, significant resources and the involvement of government bodies, such as the NPWS and experts in the design and implementation of the work programme would appear necessary given the nature and extent of the programme of work needed to address these deficiencies.

In view of these timelines and the nature and extent of the work required, it appears to ALAB that it would not be possible to address the deficiencies in the scientific data in the context of the appeals and that it would be premature to consider the grant of a licence at this time.

However, before making a final decision in this respect, the Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the matters referred to in this letter and the KRC Report.

Section 46(1)(a) of the 1997 Act provides that

*"Where the Board is of the opinion that, in the particular circumstances of an appeal, it is appropriate in the interests of justice to request a party or other person who has made submissions or observations to the Board in relation to the appeal to make submissions or observations in relation to any matter which has arisen in relation to the appeal, it may, in its discretion, notwithstanding section 41(3), 44(4), 45(4) or 50(4), serve on the party or person a notice—*

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Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

Guthán/Telephone: 057 8631912 R phost/Email: [info@alab.ie](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe**  
**Aquaculture Licences Appeals Board**



*(a) requesting the party or person, within a period specified in the notice (being not less than 30 days beginning on the date of service of the notice) to submit to the Board submissions or observations in relation to the matter,"*

Therefore, in accordance with the provisions of section 46(1)(a) of the 1997 Act, ALAB HEREBY REQUESTS you to make any submissions or observations you have in relation to the matters referred to in this letter and the KRC Report.

Such submissions or observations must be received by ALAB not later than Friday 29 September 2023.

If the submissions or observations are not received before the expiration of the period specified above ALAB will, without further reference to you, determine the appeal. This notice is being copied to all parties to the Appeal.

Please note that ALAB has not yet made a decision on whether to hold an oral hearing of the appeal.

Finally, hard copies of the KRC Report and the Atkins Report are available on request by contacting me in writing, by email or by phone - The Secretary, Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co Laois. R32 DTW5, Email: [info@alab.ie](mailto:info@alab.ie). Phone: (057)8631912

Yours sincerely,

Margaret Carton  
Secretary to the Board

Cúirt Choill Mhíni, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

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