

Aquaculture Licences Appeals Board

Technical Advisor's Report – Shellfish Appeals

Appeal Ref No.'s AP34-48/2019

Appeal description:

Appeal against the decision by the Minister for Agriculture, Food and the Marine to grant (with variations) Aquaculture Licences to a number of applicants for the bottom cultivation of mussels at various Sites on the foreshore at Wexford Harbour, Co. Wexford

Technical Advisor: Dr Ciar O'Toole

Date of site inspection: September 2021 and July 2022

Version No: Interim Final, 21 March 2024

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Note on the Interim-Final Report:

This report, prepared in late March 2024, assesses all information provided in:

- the DAFM file,
- the report of KRC dated 01 June 2023,
- the submission of all parties to a Section 46 notice request relating to the issues raised in this report, issued on the 29 June 2024,
- the submissions made by the Marine Institute (MI) and National Parks and Wildlife (NPWS) in response to a Section 46 notice issued on 23 August 2023,
- the supplementary report provided by KRC in response to the first round of submissions from all parties in response to the 29 June notice,
- and any other publicly available information available to the technical advisor at this time.
- This report also presents the data for all appeals in one document, as an interim measure.

All parties to the appeal were issued a Section 46 notice on the 31 January 2024, allowing them the opportunity to make submissions until 01 May 2024, in relation to the issues raised in the KRC report of 01 June 2023 and the supplementary report provided by KRC to ALAB on 05 December 2023. These submissions will be dealt with at a later date in the final report.

1.0 General Matters / Appeal Details

1.1 Licence Application

Fourteen licences were granted by the Minister in 2019 for the bottom-cultivation of mussels in Wexford Harbour, listed below in Table 1 with their relevant appeal number. Ten of the licences were for renewals of existing sites and four were new sites. One licence was appealed twice, once by the applicant, once by an outside party. Otherwise, each appeal number relates to an individual licence grant, however, most licence grants included multiple sites (see Table 1). These licences were granted with variation in all cases, where a reduction in the site area originally applied for was granted.

Table 1 showing details of 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 14 sites were appealed. With the exception of AP34/2019, all other appeals are taken by each of the applicants against the Minister's Decision to grant the new sites with variations, as shown in Table 2.

Table 2 showing applicants and appellants for each 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
AP35/2019	T03/35A, B, C, F&G	14/10/2019	Wexford Mussels Ltd.	Wexford Mussels Ltd.
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.
AP41/2019	T03/46A, B, C	16/10/2019	Fjord Fresh Mussels Ltd.	Fjord Fresh 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.
AP45/2019	T03/049A, B, C, C1 & D	16/10/2019	Riverbank Mussels Ltd.	Riverbank Mussels Ltd.
AP46/2019	T03/077A	16/10/2019	Riverbank Mussels Ltd.	Riverbank Mussels Ltd.
AP47/2019	T03/52A & B	16/10/2019	WD Shellfish Ltd.	WD Shellfish Ltd.

AP48/2019	T03/55 E	16/10/2019	Crescent Seafoods Ltd.	Crescent Seafoods Ltd.
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1.3 Name of Appellant (s):

Table 3 showing names and addresses of all appellants.

Appeal Number	Site Reference	Appellant	Address
AP34/2019	T03/30E	Birdwatch Ireland	Unit 20 Bullford Business Campus, Kilcoole, Greystones, Wicklow
AP35/2019	T03/35A, B, C, F&G	Wexford Mussels Ltd.	Rockfield, Coolcots, Wexford
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
AP41/2019	T03/46A, B, C	Fjord Fresh 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
AP45/2019	T03/049A, B, C, C1 & D	Riverbank Mussels Ltd.	Cornmarket, Wexford Town Wexford
AP46/2019	T03/077A	Riverbank Mussels Ltd.	Cornmarket, Wexford Town Wexford
AP47/2019	T03/52A & B	WD Shellfish Ltd.	Cornmarket, Wexford Town Wexford
AP48/2019	T03/55E	Crescent Seafoods Ltd.	Mytilus, Ballaghblake, Curracloe Wexford

1.4 Name of Observer (s)

Observations were submitted for four appeals, AP34-37/2019 inclusive 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"> 1. Breach of Conservation Objectives for Wexford Harbour and Slob's SPA and The Raven SPA 2. Threat to Conservation Interests of the Wexford Harbour and Slob's SPA and The Raven SPA 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. 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. 5. There is a particular concern in relation to the lack of data and potential impacts to Red breasted Merganser, Little Tern and Common Scoter 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. 7. Cumulative impacts not adequately assessed under the AA assessment. 8. Mitigation plan suggested for Little Tern population not suitable or based on reliable baseline data.
AP35/2019	T03/35A, B, C, F&G	Wexford Mussels Ltd.	<ol style="list-style-type: none"> 1. Appealing against reduction in site size granted 2. Reduced sites have been in use by company since 1970's and are their most productive areas. 3. Disagreement with use of 15% of habitat area within SAC as per the AA Conclusion Statement 4. Disagreement with suggestion that mussel farming by their company occurs in intertidal areas. 5. Lack of consultation with department and therefore opportunity to make suggestions for

			alternate areas/adjustments etc., which have been submitted as part of the appeal.
AP36/2019	T03/48A	Noel & Sheila Scallan	<ol style="list-style-type: none"> 1. The reduction in site size granted is unreasonable and disproportionate based on the grounds given by the Department. 2. There is no rational or scientific basis for taking 15 per cent coverage as a standard to invite intervention for habitats. 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. 4. The Department relies on GSI mapping for determination which was deemed not satisfactory by those carrying it out. 5. Disagreement with conclusions of AA reports. 6. The size and layout of the proposed areas render mussel farming uneconomical on these sites. 7. Further grounds as given in the Aquafact 2019 report, a copy of which was submitted with the appeal.
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"> 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. 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. 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 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.
11. The Minister made errors under some fundamental principles of Public/Administrative law when assessing these licences by:
 - Failing to give adequate reasons for his decision, specifically why a reduction in size was granted rather than the total area as applied for.
 - Breaching the right of the applicant to be heard by not allowing them an opportunity to rebut evidence against them and respond to

			<p>the Minister’s preliminary conclusions, in this case, that the size of the sites applied for should be reduced.</p> <ul style="list-style-type: none"> • 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. • 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.
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> <p>Issues 2-12 of Appeal AP40/2019 are identical to issues 1-11 of Appeals AP38/2019 and AP39/2019.</p>
AP41/2019	T03/46A, B, C	Fjord Fresh Mussels Ltd.	Identical appeal issues to AP38/2019
AP42/2019	T03/047A, B, C	Loch Garman Harbour Mussels Ltd.	Identical appeal issues to AP38/2019

AP43/2019	T03/083A	Loch Garman Harbour Mussels Ltd.	Identical appeal issues to AP38/2019
AP44/2019	T03/085A	Loch Garman Harbour Mussels Ltd.	Identical appeal issues to AP38/2019
AP45/2019	T03/049A, B, C, C1 & D	Riverbank Mussels Ltd.	Identical appeal issues to AP38/2019
AP46/2019	T03/077A	Riverbank Mussels Ltd.	Identical appeal issues to AP38/2019
AP47/2019	T03/52A & B	WD Shellfish Ltd.	Identical appeal issues to AP38/2019
AP48/2019	T03/55 E	Crescent Seafoods Ltd.	Identical appeal issues to AP38/2019

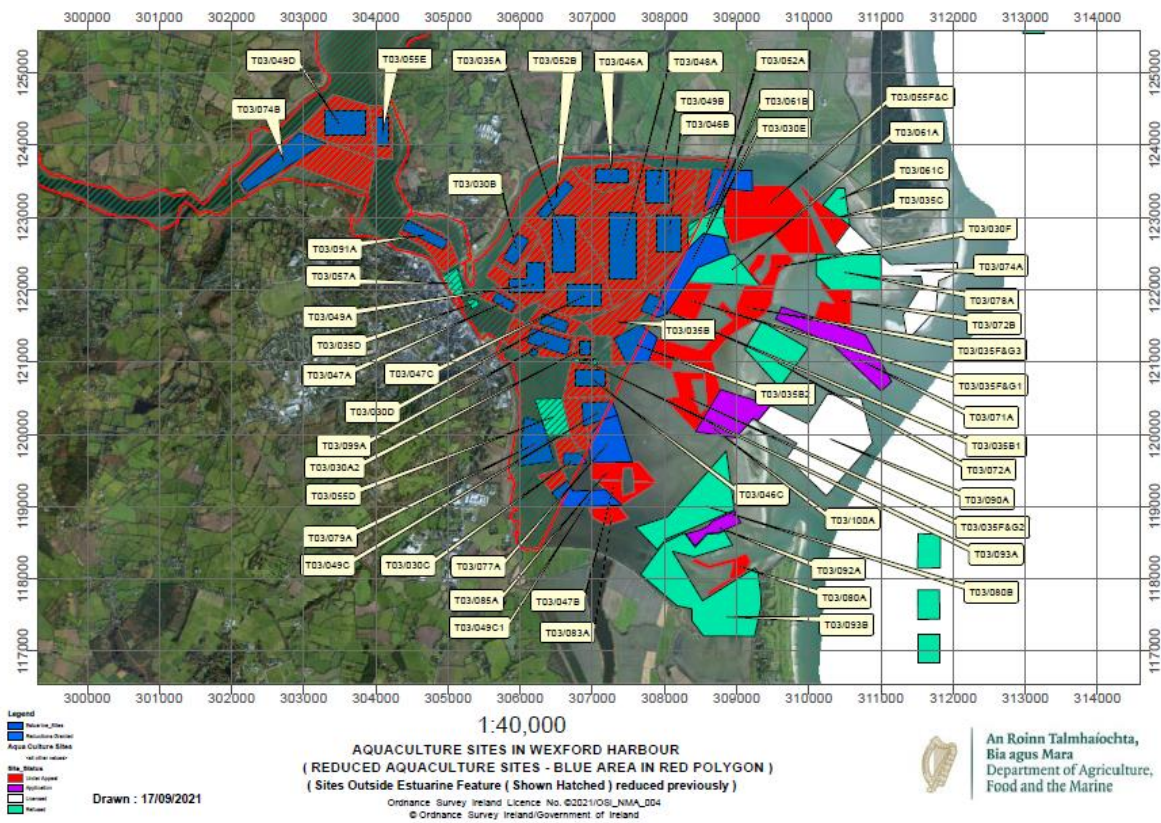


Figure 1: map provided by DAFM showing the status of mussel licensing in Wexford Harbour as of September 2021

1.5.1 Observations

An Taisce submitted observations on a number of appeals: AP34/2019, AP35/2019, 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

1.6 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.

1.7 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 appealed 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 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.

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 area of reclaimed land to the north and south created by dykes and drainage systems in the 19th 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).

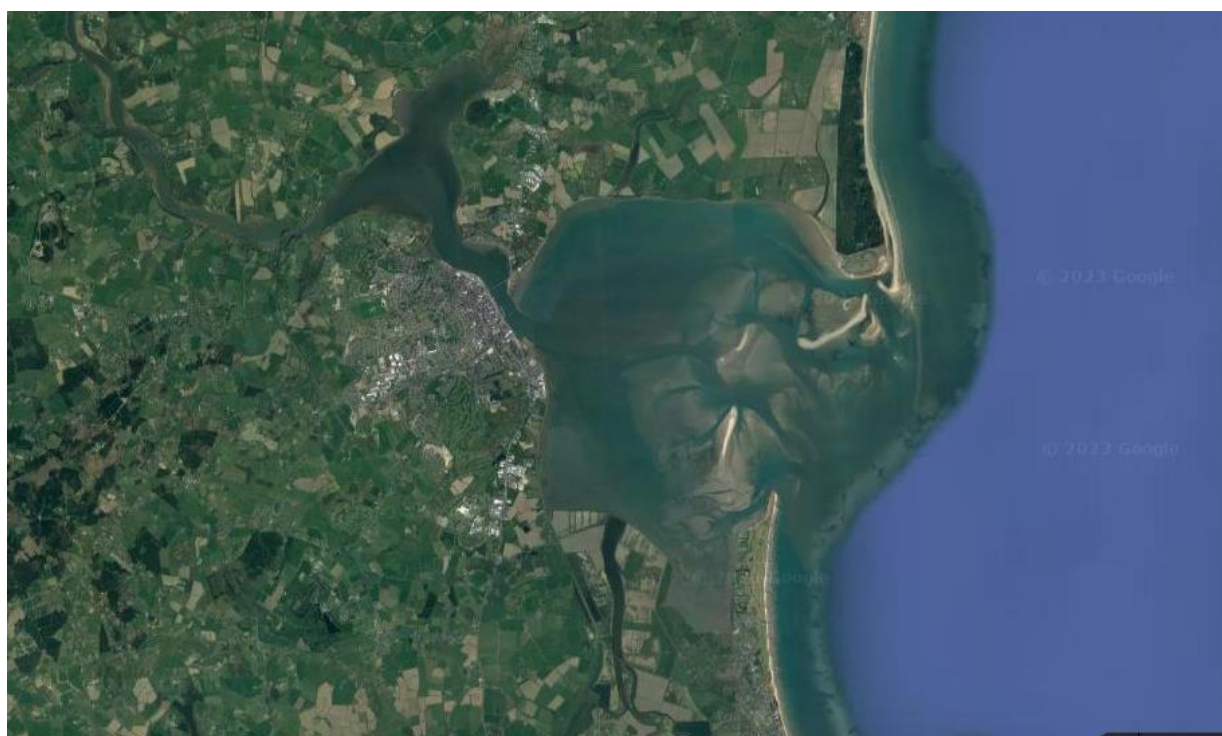


Figure 2: Map of Wexford Harbour, taken from Google Maps.

Water Quality

The EPA Water Quality Report 2022 states that “Nitrate concentrations are too high in 40% of river sites nationally and in 20% of estuarine and coastal water bodies. These elevated

levels are found mainly in the south and southeast and are too high to support good water quality in our estuaries. This is primarily attributable to intensive agricultural activities on freely draining soils in these areas. Most of the nitrogen in Irish waters comes from organic and inorganic fertilisers” and Nitrogen and phosphorous loadings to the marine environment have been generally increasing since 2013. Loads of both nutrients were higher in 2022 than in 2021, placing continued pressure on our marine water bodies.”

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, Good for Wexford Harbour and Moderate for the surrounding Coastal Area. In the 2022 EPA Water Quality Report, 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 this 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.

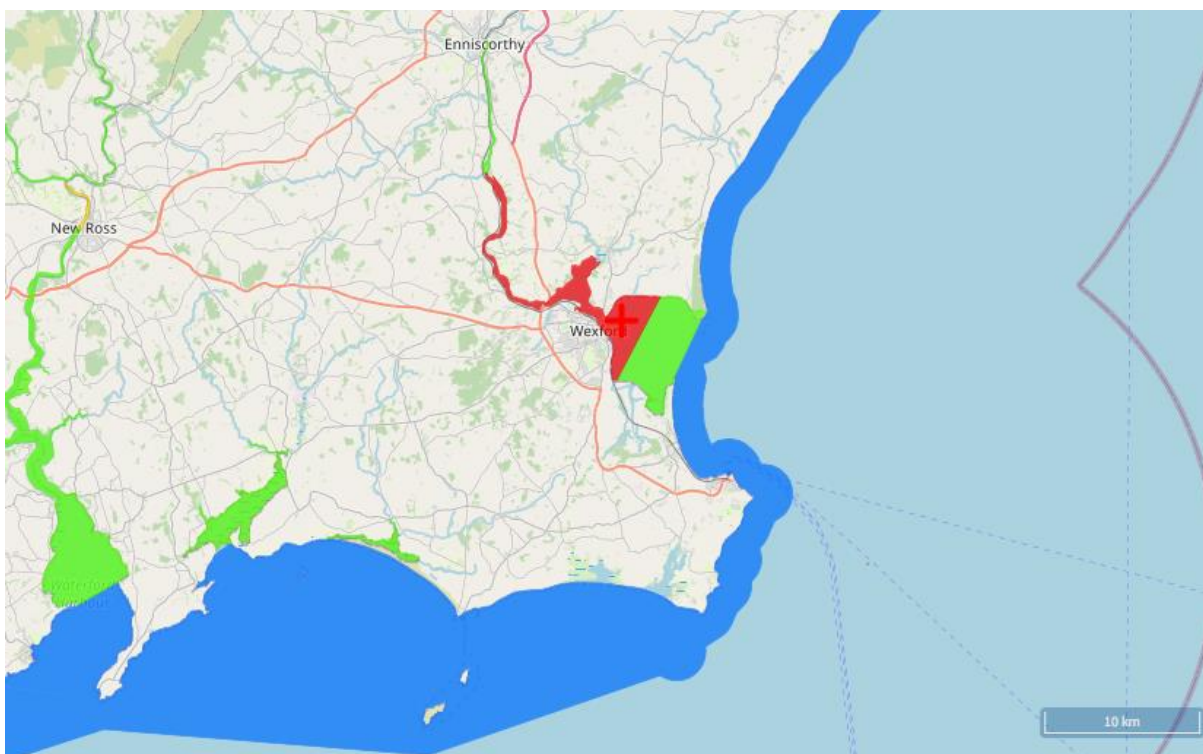


Figure 3: Transitional and Coastal Water Quality levels for Wexford Harbour and Surrounds under the Water Quality Report 2018-2020. Source EPA maps. Red = Eutrophic, Green = Intermediate and Blue = Unpolluted

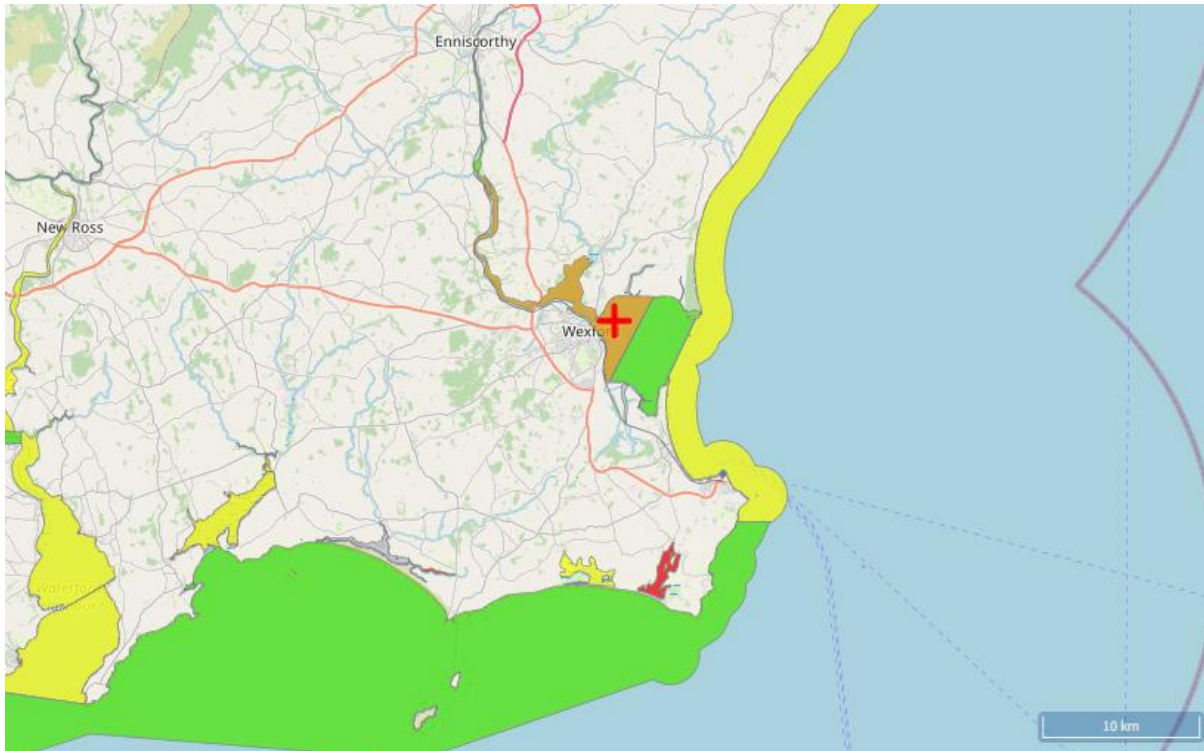


Figure 4: Transitional and Coastal WFD Water Status for Wexford Harbour and Surrounds under WFD Monitoring 2013-2018. Source EPA maps. Orange = Poor, Green = Good and Yellow = Moderate.

Population

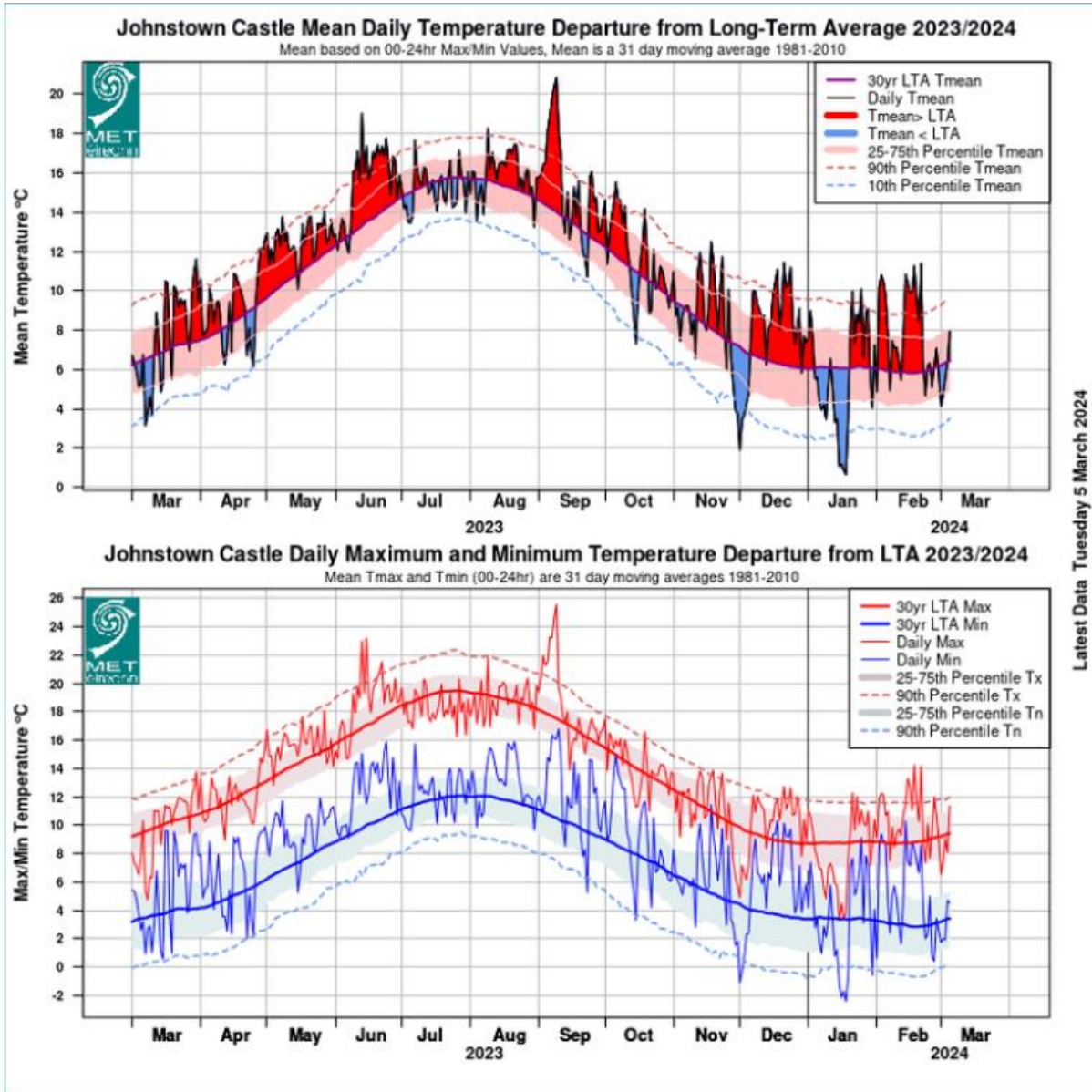
Wexford town has a population of over 20,000 according to the 2016 Census and other settlements in the area include Rosslare Strand and Harbour, which see an increase in population during the summer months. The relevant Wastewater treatment plants (WWTP) are deemed to have sufficient capacity for their populations for Wexford Town and Rosslare Harbour, but Rosslare Strand is deemed to be approaching capacity (Uisce Eireann, www.water.ie). 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.

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).

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

In Wexford Harbour, the main activity currently is bottom mussel culture, as is clear from Figures 1, 5 and 6. 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 licensed 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, as listed in Annex I and II of the Habitats Directive:

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

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 2011a Ver 1)

- 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, as listed in Annex I and II of the Habitats Directive:

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

Three constituent community complexes recorded within the qualifying interest Mudflats and sandflats not covered by seawater at low tide (1140) are listed below (NPWS 2011c):

- 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.

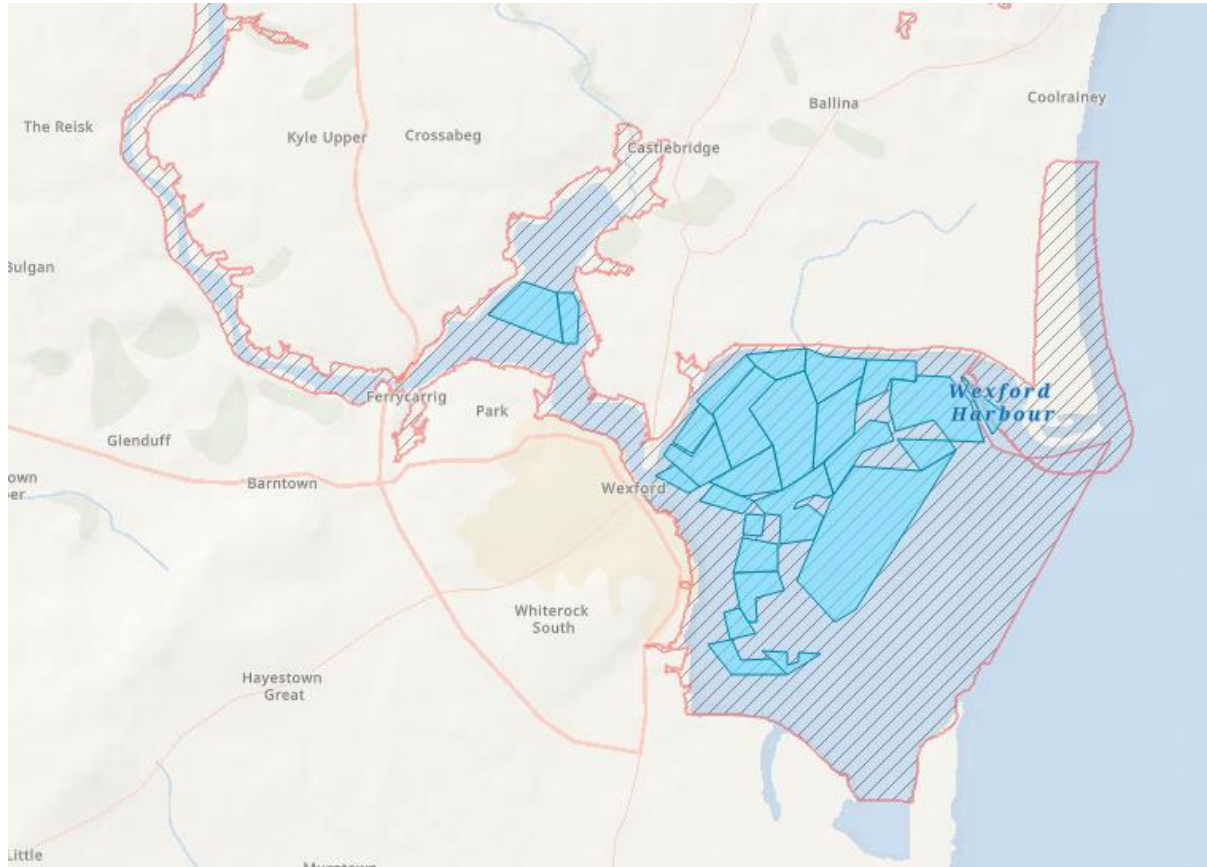


Figure 5: Location of all licensed sites in Wexford Harbour- including those under appeal (blue) with SAC areas that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer).

Special Protected Areas:

The licensed areas in Wexford Harbour which are under appeal are all within the Wexford Harbour and Slobs SPA (site code 004076) and either in or adjacent to the Raven SPA (site code 004019) 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 7.

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]

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]

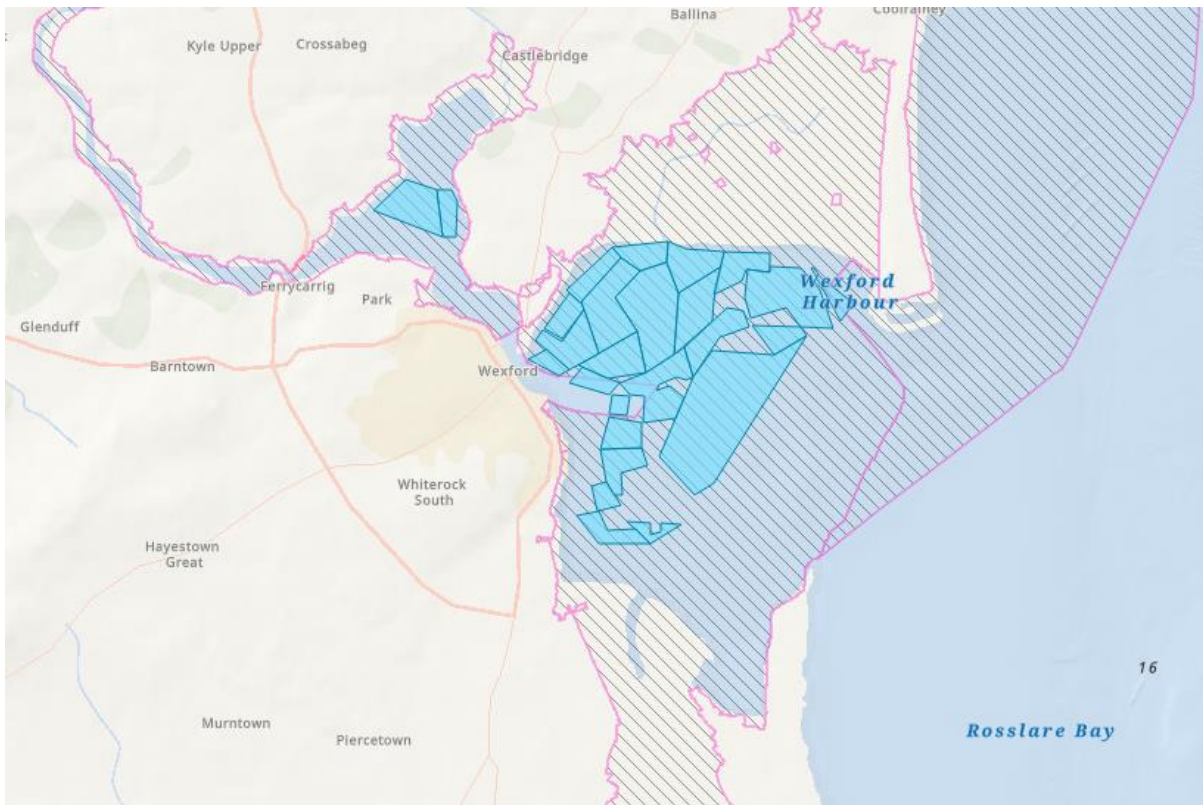


Figure 6: Location of all licensed sites in Wexford Harbour- including those under appeal (blue) with SPA areas that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer).



Figure 7: showing the 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' (NPWS, 2013a and b).

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 in the last ten years. 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) 2017-2021 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 7) which states by 2020 areas under agriculture, aquaculture and forestry are managed sustainably ensuring conservation of biodiversity.

The Wexford County Development Plan 2022-2028 came into effect on Monday, 25th 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 8.

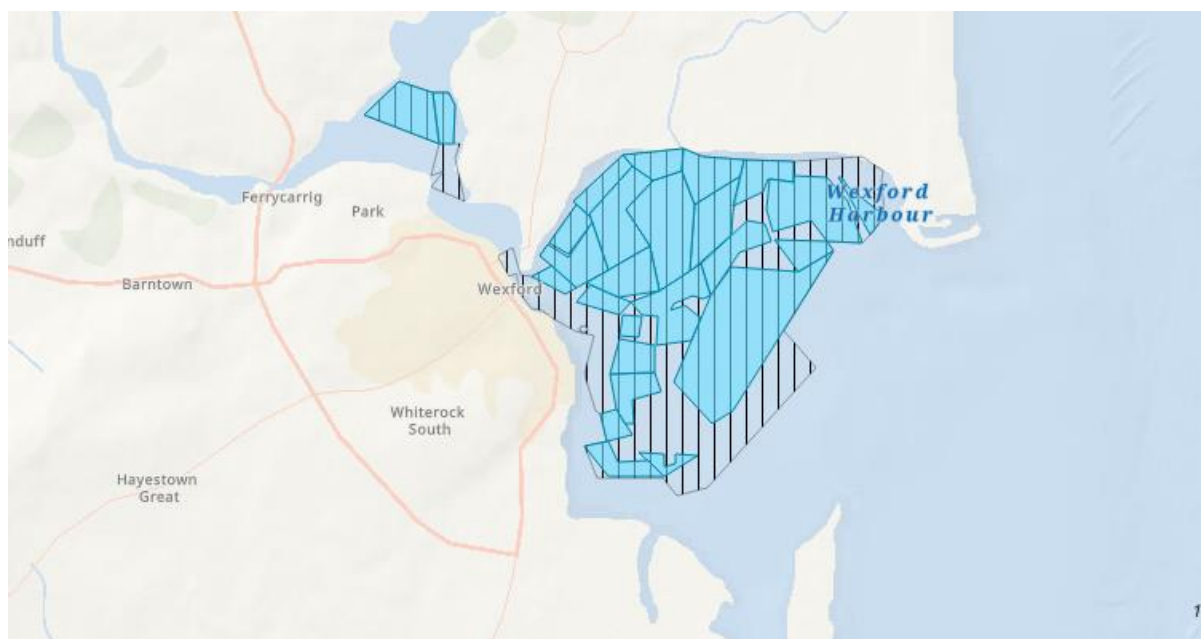


Figure 8: Location of all licensed sites in Wexford Harbour- including those under appeal (blue) with Shellfish Water Directive Areas that overlap or are immediately adjacent in black hatched lines (Source: Aquamis viewer).

Shellfish Classification

The SFPA has classified mussels produced from Wexford Harbour for 2022/2023 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 landbased features of historical importance in the immediate area of the Harbour, but outside of the area of impact of the proposed development.

A search of the WreckViewer application <https://www.archaeology.ie/underwater-archaeology/wreck-viewer> [Accessed 19/06/2023] found that there were seven recorded shipwrecks in the harbour, none of which have any further details available (Figure 9).



Figure 9: showing seven unidentified wrecks within Wexford Harbour. Source: archaeology.ie

4.0 Screening for Environmental Impact Assessment.

The Board considered the project proposed in the Application for an Aquaculture Licence under the requirements of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 and the EIA Directive (2014/52/EU). The Board determined that the project as proposed falls outside the requirements for conducting an environmental impact assessment as this type of aquaculture is not deemed “intensive”.

Therefore, the Board is satisfied that the project was not likely to have significant direct or indirect effects at the Site on the following factors:

- (a) population and human health.
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives.
- (c) land, soil, water, air and climate.
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in points (a) to (d) will not have significant effects on the environment, including the factors listed in (a) to (d) by virtue of, inter alia, its nature, size or location.

The Board has concluded that the proposed project falls outside the requirements for conducting an environmental impact assessment as this type of aquaculture is not deemed “intensive” so does not require an environmental impact assessment report under the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012.

5.0 Appropriate Assessment.

The Appropriate Assessment carried out by DAFM consisted of the “Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710), Wexford Harbour and Slobbs SPA (site code 004076) and Raven SPA (site code 004019)” produced by the Marine Institute in August 2016. Annex I to this report was the “Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)” also produced by the Marine Institute in August 2016. Annex II was entitled “Marine Institute Bird Studies Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture” produced by Adkins Consultants on behalf of the Marine institute and dated 28th July 2016. An Updated Appropriate Assessment Conclusion Statement was produced by DAFM based on these reports, but this statement is undated.

5.1 SAC AA Report Conclusions:

A full assessment was carried out on the likely interactions between aquaculture operations (as proposed) and the features “Annex 1 habitats Mudflats and sandflats not covered by seawater at low tide (1140)” and “Estuaries (1160)” in both Slaney River Valley SAC (0781) and “Mudflats and sandflats not covered by seawater at low tide (1140)” in Raven Point Nature Reserve SAC (0710). The likely effects of the aquaculture activities were considered in light of the sensitivity of the constituent communities of these Annex 1 habitats and also of

Annex 11 species, Harbour Seal (*Phoca vitulina*) and Otter (*Lutra lutra*). The report listed a number of conclusions:

- Conclusion 1: The culture/collection of wild mussel seed on longlines and rafts that might occur outside of the boundaries but are proximate to the two SACs are deemed to be non-disturbing to the conservation features of the SAC.
- Conclusion 2: By virtue of extensive spatial cover, the levels of existing and proposed culture of bottom mussel culture activities are considered disturbing to habitat feature Estuaries (1130) and Mudflats and Sandflats not Covered by Seawater at Low Tide (1140) in the Slaney River Valley SAC.
- Conclusion 3: By virtue of extensive spatial cover, the levels of existing and proposed culture of bottom mussel culture activities are considered disturbing to the community type - Estuarine muds dominated by polychaetes and crustacean community complex within the habitat feature Mudflats and Sandflats not Covered by Seawater at Low Tide (1140) in the Raven Point Nature Reserve SAC.
- Conclusion 4: The proposal to culture oysters (intertidally on trestles) is not considered disturbing to habitat feature Estuaries (1130) and Mudflats and Sandflats not Covered by Seawater at Low Tide (1140) in the Slaney River Valley SAC.
- Conclusion 5: Removal of seed resources from intertidal habitat will also result in disturbance to 1140 habitat features by destabilising the reef structure formed by mussels and reducing habitat complexity and associated biodiversity.
- Conclusion 6: The current levels of aquaculture production are considered non-disturbing to harbour seal conservation features in all areas of the SAC. It is important to note that area covered by the (subtidal) bottom mussel culture activities would appear to be considerably smaller than those represented by licensed areas, which extend into the intertidal areas. If actual production were to occur over or close to the seal haul-out areas, then a risk of disturbance to seal cannot be discounted.
- Conclusion 7: In relation to new licence applications, similar to licensed areas, there is considerable overlap with seal haul out locations and a number of new applications. If actual culture activities were to extend to intertidal/shallower areas proximate to the seal sites, then this would present a risk to seals. On the basis of distance from the seal haul out locations, the proposed oyster trestle culture sites are considered non-disturbing to seal conservation features.
- Conclusion 8: The current and proposed levels of aquaculture are considered non-disturbing to otter (*Lutra lutra*) conservation features in all areas of the SAC.

The report then went on to recommended that a range of potential mitigation factors were carefully considered when proposing management responses to the conclusions above. These features relate specifically to the fact that mussels appear to have been a historical constituent in the waterbody, that the filtration capacity of the mussels may have a beneficial impact on the eutrophication status of the bay and that the habitat provision by mussels can be beneficial to the ecological function of the system. It was their opinion that bottom mussel

culture, at current levels, does have an overall positive role in ecosystem. The addition of more mussels to the system (with new applications) may have additional benefit in terms of reducing effects of eutrophication and may further improve status in the outer parts of Wexford Harbour relative to the Lower Slaney waterbody; however, this remains to be determined/confirmed and is subject to availability of additional seed.

Other mitigating/qualifying factors that the report felt it important to clarify were:

- 1) mussel culture only occurs in deeper subtidal areas of the SAC and with one exception, it is anticipated that no culture (and disturbance from same) will occur in intertidal and shallow subtidal areas.
- 2) given the patchy nature of shellfish distribution on the seafloor, the areas where mussel culture will occur will not result in 100% cover of the seabed; however, it is expected that disturbance (dredging relating to harvest and/or maintenance) will occur over the entire area where mussels are placed, and.
- 3) 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 licensed.

5.2 SPA AA Report Conclusions

Potential impacts where the available evidence indicates a high likelihood of significant impacts occurring were highlighted in this report in regard to a number of species, including:

- Disturbance from bottom mussel-related boat activity may cause significant displacement impacts to Red-breasted Merganser. There is no site-specific data available that can be used to address these questions, and we are not aware of any comparable studies in the literature that can be used.
- There is potential for significant disturbance impacts to the Little Tern breeding colony. However, they felt these could be avoided through an appropriate adaptive management strategy.

Potential impacts where the available evidence is not sufficient to rule out significant impacts beyond reasonable scientific doubt were also highlighted:

- Bottom mussel culture impact on Greenland White-fronted Goose - NPWS have raised concerns about the potential for dredger activity close to the North Slob to cause disturbance to Greenland White-fronted Geese feeding on the North Slob. (Appendix D). Further information on the distance from the sea wall at which dredging activity causes disturbance to geese on the North Slob would be required to fully assess this potential impact.
- Bottom mussel culture impacts on Scaup, Goldeneye, Red-breasted Merganser and Great Crested Grebe as there is potential for night-time dredging to cause disturbance to nocturnal roosts of these species. Further information about the location and seasonal patterns of usage of these nocturnal roosts is required, as well as information

about the sensitivity of nocturnally roosting birds to disturbance from marine traffic, is required to fully assess this potential impact.

- Bottom mussel culture impact on intertidal mussel beds in the long term, it is possible that the seed collection method could prevent the regeneration of existing intertidal mussel beds and reduce the quality of the habitat for Oystercatcher, Knot, Curlew and Redshank. Information on the existing extent of intertidal mussel beds, their usage by these wader species, and the impact of seed collection on the mussel bed dynamics would be required to fully assess this potential impact.
- Mussel-related boat activity could cause disturbance to high tide water and tern roosts on sandbanks in the mouth of Wexford Harbour. Further information on the distribution and usage of wader and tern roost sites under various tidal conditions, and the sensitivity of sandbank roosting waders and terns to disturbance from dredging activity, in Wexford Harbour would be required to fully assess this potential impact.

The following management measures, research and information compilation were considered required to complete the SPA AA assessment:

- Record comprehensive information on all bottom mussel-related boat activity. This information would be required over a period of years to allow characterisation of typical patterns of activity, and the level of variation around these patterns.
- Research into the impact of the bottom mussel culture seed collection method on the long-term dynamics of intertidal mussel beds is required to fully assess the impact of this method on habitat quality for Oystercatcher, Knot, Curlew and Redshank in Wexford Harbour.
- In parallel to the recording of patterns of vessel activity, further, Red-breasted Merganser disturbance studies are required to determine if there is any seasonal, spatial, or other, variation in the nature of the response, and to refine the prediction of the scale of the displacement impact.
- Research into the ecology of Red-breasted Merganser in Wexford Harbour.
- Should night-time dredging be permitted, surveys of night-time roosting behaviour by Scaup, Goldeneye, Red-breasted Merganser and Great Crested Grebe would be required.
- Surveys of high-tide wader and tern roosts.
- Surveys of the use of mussel beds by Oystercatcher, Knot, Curlew and Redshank
- Little Tern research. This research would form part of an adaptive management strategy for the Little Tern population. An adaptive management strategy to protect the Little Tern breeding colony, and the post-breeding flocks of juveniles in the Hopeland area, should be prepared. The monitoring carried out as part of this strategy would help to improve knowledge about the sensitivity of Little Terns in Wexford Harbour to disturbance.

The SPA AA report does not include assessment of the potential cumulative impacts of the aquaculture activities in combination with other activities. This was because the report's authors found that a cumulative impact assessment can only be prepared when there is a reasonable level of certainty about the likely impacts arising directly from the activities being assessed, which is not the case for the present assessment. There are likely to be significant impacts arising from the cumulative impact of hunting pressures in combination with impacts from aquaculture activities. Detailed information on the scale of hunting activities in Wexford Harbour and environs were not available to the authors for consideration at the time of writing.

A report was submitted to ALAB by KRC Environmental Consultants on 1 June 2023 on the suitability of the SPA AA report as completed by Atkins. The KRC report found that it broadly agreed with the findings of the 2016 SPA AA report and that it could find no evidence that the recommended further study had been carried out to date. The KRC report goes on to make its own recommendations which are:

- A revised Appropriate Assessment be carried out (based on much more recent data to assess *in situ* and *ex situ* impacts
- Any future work to initially review the recommendations arising from the 2016 AA
- An independent programme of work commissioned with very clear objectives and resources to undertake desk, field and analytical work and that commissioning such work should have independent expert prescriptive input.
- Any new field study should take place over a period of a minimum of two, ideally three years, with fieldwork spanning the full range of months in which SCI species are present at the site
- Production of a site-based TAC model which would utilise these data collected over the field study period.

5.3 AA Conclusion Statement

The AA Conclusion Statement was prepared by DAFM and refers to the Conclusions of the SAC AA Report and offers mitigation and management measures as outlined below:

1. Benefits of mussels to the system - Mussels have been a historical constituent in the waterbody in Wexford Harbour. The filtration capacity of the mussels may have a beneficial impact on the eutrophication status of the bay and the habitat provision by mussels can be beneficial to the ecological function of the system. In summary, the view is that bottom mussel culture, at current levels, does have an overall positive role in ecosystem.
2. Estuaries - Threshold of 15% will be exceeded if all applications are licensed. However, the benefits of mussels to the system, as outlined above, are also a significant consideration in possibly allowing exceedance of the 15% threshold in the estuaries feature.

3. Remove spatial coverage over Mudflats and Sandflats -There is a clear distinction between current licence levels and current levels of activity. Mussel culture mainly occurs in deeper subtidal areas of the SAC. It is anticipated that no culture (and disturbance from same) will occur in intertidal and shallow subtidal areas. This is an important consideration, particularly in the outer parts of the water body where the qualifying feature is Mudflats and sandflats not covered by seawater at low tide (1140). On the basis of the Appropriate Assessment report findings, it is proposed to re-draw the boundaries of sites which will take bottom mussels out of inter-tidal areas. This will result in minimal, or no coverage of the qualifying feature Mudflats and sandflats not covered by seawater at low tide (1140).
4. Placing of appropriate Buffer zones around Seal haul out areas, as required. Vessel and human activity to be confined to mid-tide to high-tide periods only when seals are less likely to be hauling out.
5. Any licences issued will include a prohibition on night-time dredging
6. The use of updated and enhanced Aquaculture and Foreshore Licences containing terms and conditions which reflect the environmental protection required under EU and National law.
7. Full account will be taken of the recommendations made in the Appropriate Assessment in relation to the Little Tern Colony with regard to the licensing of affected sites.

5.4 Technical Advisor's Assessment

5.4.1 Technical Advisors Comments relating to the SAC AA Report:

- While the technical advisor generally agrees with 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, including:
- There are concerns over the lack of consideration given to in-combination effects, especially given the conclusions relating to same in the SPA AA Report and outlined in Section 5.2 above.
- Weight is given incorrectly in the technical advisor's opinion 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, something that is not actually relevant to the issue at hand, that of disturbance to the Annex 1 habitats and Annex 2 species as listed.
- The technical advisor also disagrees with 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." This point 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.

5.4.2 Technical Advisors Comments relating to the SPA AA Report:

- The technical advisor fully agrees with the findings of the KRC report and also agrees with the recommendations for further required work as listed in that report and summarised above in Section 5.2.
- The technical advisor also finds the Little Tern mitigation strategy as proposed in the Atkins report is not suitable mitigation as it involves baseline monitoring as part of the proposal. This baseline monitoring would have to occur before licences were granted, not during operations to be effective.

5.4.3 Technical Advisors Comments relating to the AA Conclusion Statement:

- The AA Conclusion Statement seems to focus on the SAC AA report conclusions and providing associated mitigation suggestions and only very briefly refers to the proposed mitigations in the SPA AA report. The proposed extra work required before the SPA AA report can be concluded is not mentioned at all.
- The Mitigation/management measures are not sufficient to rule out any potential negative impacts on the conservation objectives of the Natura 2000 sites involved as they do not prove beyond reasonable scientific doubt that an impact will not occur.
- Mitigation 1 is not a mitigation, but a statement of the effect mussels has on water quality.
- Mitigation 2 is also not a mitigation but a reasoning for exceeding established limits on disturbance to habitats
- There is no actual formal conclusion re the AA provided in the AA Conclusion Statement.

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.

6.0 Section 61 Assessment

Section 61 (a-e) of the Act outlines the matters which the licensing authority shall take account of when an application for or an appeal regarding an aquaculture licence is being considered. This section is used to assess the impact of the proposed aquaculture development under these headings, which are listed in 6.1 – 6.7 below.

6.1 Site Suitability

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

The concerns for the site as regards EIA and AA legislation are discussed in Sections 4 and 5 above. In addition to these points, Wexford Harbour is obviously 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.

Outside of the specific concerns raised in relation to Sections 4 and 5, and in relation to ecological and environmental impacts, 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. 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 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.

6.2 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 38,39 and 41-48/2019: 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 development has a non-significant impact on the possible other uses or users of the area for appeals 38,39 and 41-48/2019.

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 5 above, this was not considered further by the technical advisor at this point in time.

6.3 Statutory Status

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

The concerns for the site as regards EIA and AA legislation are discussed in Sections 4 and 5 above.

Under the Wexford County Development Plan 2022-2028, as discussed above in Section 3.3.3., the proposed development in its 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 EM01, to ensure proposed developments comply with the EIA Directive and Environmental Management Strategy Objective EM02, to ensure proposed Developments comply with the Birds and Habitats Directives (AA)

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, along with breaches of the Wexford County Development Plan.

6.4 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 current developments have a strong positive impact on the local economy. The granting of the variation licences is likely to negatively impact this, and the revocation of these licences will severely negatively impact this.

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

6.5 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 4, 5 and 6.1.

Given the current uncertainty of impacts of the proposed development, 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 operation due to the gaps in data outlined in the relevant earlier sections and Appendices 1 and 2.

6.6 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 4, 5 and 6.1.

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 the relevant earlier sections and Appendices 1 and 2.

6.7 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.

6.8 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. The granting of the variation licences is likely to negatively impact this, and the revocation of 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 the relevant earlier sections.
- 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 the relevant earlier sections.
- 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.

6.9 Confirmation re Section 50 Notices

We 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.

6.10 Section 46 and Section 47 Notices

Section 46 of the Act provides for the Board to request that a party to the appeal 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 who has made submissions or observations to the Board in relation to the appeal.

Section 46 Notices:

1. Sent to William Fry Solicitors on 18 December 2019 requesting their comments within 30 days regarding information they required to be redacted if any, leading on from statements made in their original appeal submissions and making them aware that this may impact the submission of documents from DAFM to ALAB. William Fry responded on the 30 January 2020 requesting a time extension for collating a response. This was duly granted with a new deadline of 21 February 2020 granted.

There is no response from William Fry on file, but a file request was sent to DAFM and the Minister on the 28 February 2020 without any requirement for data to be redacted. A copy of this notice is not currently available.

2. 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. Listed below are the parties who responded, and all responses are available on the ALAB website:
 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.
3. Sent to the Marine Institute and NPWS on 23 August 2023 requesting further information on the use of 15% habitat use as the limit indicating disturbance in a SAC. Responses were due by the 25 September 2023 and both parties responded. These responses are available on the ALAB website.
4. Sent to all parties on 31 January 2024, requesting their submissions and observations on the submissions made by other parties to the Section 46 notice of the 29 June, the supplemental report produced by KRC and the issues outlined in the notice itself. Responses are due by the 01 May 2024.

Copies of a sample of the various Section 46 notices are provided in Appendix 1 to this report and all notices, responses and relevant reports are available on the ALAB website.

Section 47 Notices:

A Section 47 notice was sent to BIM on 18 November 2021 requesting a copy of the “Aquaculture Profile of Wexford Harbour” referenced in both the SAC and SPA AA reports. Due to a clerical oversight, the report was not sent until a reminder request was issued to BIM on the 5 May 2022. BIM responded on the 6 May 2022 by providing the report. A copy of the Section 47 notice to BIM is available in Appendix 1 to this report and the notice and response received from BIM are available on the ALAB website.

7.0 Technical Advisor’s Evaluation of the Issues in Respect of Appeal and Submissions/Observations Received

Appeal	Appeal Issues Raised:	Technical Advisors response:
<p>AP34/2019</p> <p>Site T03/30E</p> <p>Appellant: Birdwatch Ireland</p> <p>Applicant: TL Mussels Ltd</p>	<ol style="list-style-type: none"> 1. Breach of Conservation Objectives for Wexford Harbour and Slob SPA and The Raven SPA 2. Threat to Conservation Interests of the Wexford Harbour and Slob SPA and The Raven SPA 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. 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. 5. There is a particular concern in relation to the lack of data and potential impacts to Red breasted Merganser, Little Tern and Common Scoter 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. 7. Cumulative impacts not adequately assessed under the AA assessment. 8. Mitigation plan suggested for Little Tern population not suitable or based on reliable baseline data. 	<ol style="list-style-type: none"> 1. Agree with Birdwatch’s Assessment – see comments in relation to SPA AA issues in Section 5 2. Agree, see answer to 1. 3. Agree 4. Also agree. 5. The SPA AA report and KRC report highlight particular concerns for Little Tern and Red breasted Merganser. 6. Agree 7. Agree 8. Agree

<p>AP35/2019</p> <p>Site T03/35A, B, C, F&G</p> <p>Applicant and Appellant: Wexford Mussels Ltd.</p>	<ol style="list-style-type: none"> 1. Appealing against reduction in site size granted 2. Original sites have been in use by company since 1970's and are their most productive areas. 3. Disagreement with use of 15% of habitat area within SAC as per the AA Conclusion Statement 4. Disagreement with suggestion that mussel farming by their company occurs in intertidal areas. 5. Lack of consultation with department and therefore opportunity to make suggestions for alternate areas/adjustments etc., which have been submitted as part of the appeal. 	<ol style="list-style-type: none"> 1. Suitable site sizes for mussel culture in Wexford Harbour are an issue still to be resolved in the TA's opinion due to the lack of data highlighted in the AA assessment in Section 5. Current evidence, and lack thereof, would suggest no areas should be currently licensed under the requirements of the Habitats and Birds Directives 2. The lack of consultation with applicants before sites were reduced does seem to have resulted in some commercially unviable decisions, according to the applicants. This does not take away however from the importance of the issues referred to in 1. 3. The 15% is the value used nationally as per NPWS guidance. 4. The TA would agree that bottom mussel culture by its nature does not occur in intertidal areas. 5. See answer to 2. Above
<p>AP36/2019</p> <p>Site T03/48A</p> <p>Applicant and Appellant: Noel & Sheila Scallan</p>	<ol style="list-style-type: none"> 1. The reduction in site size granted is unreasonable and disproportionate based on the grounds given by the Department. 2. There is no rational or scientific basis for taking 15 per cent coverage as a standard to invite intervention for habitats. 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. 4. The Department relies on GSI mapping for determination which was deemed not satisfactory by those carrying it out. 5. Disagreement with conclusions of AA reports. 6. The size and layout of the proposed areas render mussel farming uneconomical on these sites. 	<ol style="list-style-type: none"> 1. Suitable site sizes for mussel culture in Wexford Harbour are an issue still to be resolved in the TA's opinion due to the lack of data highlighted in the AA assessment in Section 5. Current evidence, and lack thereof, would suggest no areas should be currently licensed under the requirements of the Habitats and Birds Directives. 2. The 15% is the value used nationally as per NPWS guidance. 3. The TA would agree that bottom mussel culture by its nature does not occur in intertidal areas. 4. There is some evidence to suggest the mapping used wasn't of a sufficient quality. 5. See discussion in Section 5 6. The lack of consultation by the Department with applicants before sites were reduced does seem to have resulted in some commercially

	<p>7. Further grounds as given in the Aquafact 2019 report, a copy of which was submitted with the appeal.</p>	<p>unviable decisions, according to the applicants. This does not take away however from the importance of the issues referred to in 1.</p> <p>7. The Aquafact report does not deal with the issues raised under the Birds and Habitats Directive but is a more general report on the suitability of the site for bottom mussel culture, which while important in general terms, is not specifically related to the issue at hand re Natura 2000 sites.</p>
<p>AP37/2019 Site: T03/91A Applicant and Appellant: Noel & Sheila Scallan</p>	<ol style="list-style-type: none"> 1. The reduction in site size granted is unreasonable and disproportionate based on the grounds given by the Department. 2. There is no rational or scientific basis for taking 15 per cent coverage as a standard to invite intervention for habitats. 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. 4. The Department relies on GSI mapping for determination which was deemed not satisfactory by those carrying it out. 5. Disagreement with conclusions of AA reports. 6. The size and layout of the proposed areas render mussel farming uneconomical on these sites. 7. Further grounds as given in the Aquafact 2019 report, a copy of which was submitted with the appeal. 	<ol style="list-style-type: none"> 1. Suitable site sizes for mussel culture in Wexford Harbour are an issue still to be resolved in the TA's opinion due to the lack of data highlighted in the AA assessment in Section 5. Current evidence, and lack thereof, would suggest no areas should be currently licensed under the requirements of the Habitats and Birds Directives. 2. The 15% is the value used nationally as per NPWS guidance. 3. The TA would agree that bottom mussel culture by its nature does not occur in intertidal areas. 4. There is some evidence to suggest the mapping used wasn't of a sufficient quality. 5. See discussion in Section 5 6. The lack of consultation by the Department with applicants before sites were reduced does seem to have resulted in some commercially unviable decisions, according to the applicants. This does not take away however from the importance of the issues referred to in 1. 7. The Aquafact report does not deal with the issues raised under the Birds and Habitats Directive but is a more general report on the suitability of the site for bottom mussel culture, which while

		important in general terms, is not specifically related to the issue at hand re Natura 2000 sites.
<p>AP38/2019</p> <p>Site T03/30A2, B, C, E</p> <p>Applicant and Appellant: T.L Mussels Ltd., represented by William Fry Solicitors</p>	<ol style="list-style-type: none"> 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. 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. 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 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 	<ol style="list-style-type: none"> 1. The Minister and ALAB have to consider all relevant legislation, and while the waters are suitable for mussel culture, they cannot currently be deemed suitable under the Habitats and Birds Directive, given the lack of data available and outstanding issues raised regarding impacts on conservation objectives. 2. See answer to 1. Also, the issues relating to Natura 2000 sites deal with their conservation interests, impacts on which cannot be ruled out here. Impacts on the wider environment are considered under Section 61, EIA Directive and WFD Directive. 3. This would appear to be correct, reduced sites would logically have a negative economic impact on operators. 4. See answers to 1. And 2. Above 5. The 15% is the value used nationally as per NPWS guidance. 6. Given the lack of data about the potential impacts of the activity on the protected habitats and species here, the assumption for this assessment has to be the worst case, that is, continuous disturbance. The technical advisor is not in a position to comment on the interpretation of EU law by Ireland as raised here. 7. This is all true but see answers to 1. and 2. and discussions in Section 5 for context 8. The NPWS report is included as Appendix D of the Atkins 2016 SPA AA report which the applicants/appellants had access to. ALAB is not aware of a BIM report

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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> <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"> ● Failing to give adequate reasons for his decision, specifically why 	<p>showing a positive impact on bird species due to mussel boat activity.</p> <p>9. There seems to be some issues with the quality of the bathymetric data used by the Minister.</p> <p>10. The technical advisor disputes this, see answers to 1. and 2. above and Section 5 and 6 in particular for reasons</p> <p>11. Outside the remit of this report</p>
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	<p>a reduction in size was granted rather than the total area as applied for.</p> <ul style="list-style-type: none"> • 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. • 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. • 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. 	
<p>AP39/2019 Site T03/030/1 (site D)</p> <p>Applicant and</p>	<p>As AP38/2019 above</p>	

<p>Appellant: T.L Mussels Ltd. Represente d by William Fry Solicitors</p>		
<p>AP40/2019 Site T03/099A Applicant and Appellant: T.L Mussels Ltd. Represented by William Fry Solicitors</p>	<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. 2. Otherwise as AP38/2019 above</p>	<p>1. There seems to be some merit to the claim here. However, given the outcome of the Section 5 assessment, this was not assessed further at this time.</p>
<p>AP41/2019 Site T03/46A, B, C Applicant and Appellant: Fjord Fresh Mussels Ltd. Represented by William Fry Solicitors</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>
<p>AP42/2019 Site T03/047A, B, C Applicant and Appellant: Loch Garman Harbour Mussels Ltd. Represented by William Fry Solicitors</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>

<p>AP43/2019</p> <p>Site T03/083A</p> <p>Applicant and Appellant: Loch Garman Harbour Mussels Ltd. Represented by William Fry Solicitors</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>
<p>AP44/2019</p> <p>Site T03/085A</p> <p>Applicant and Appellant: Loch Garman Harbour Mussels Ltd. Represented by William Fry Solicitors</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>
<p>AP45/2019</p> <p>Site T03/049A, B, C, C1 & D</p> <p>Applicant and Appellant: Riverbank Mussels Ltd. Represented by William Fry Solicitors</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>
<p>AP46/2019</p> <p>Site T03/077A</p> <p>Applicant and Appellant: Riverbank Mussels Ltd.</p>	<p>As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive</p>	<p>See AP38/2019 for remaining appeals – all the same appeal issues</p>

Represented by William Fry Solicitors		
AP47/2019 Site T03/52A & B Applicant and Appellant: WD Shellfish Ltd. Represented by William Fry Solicitors	As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive	See AP38/2019 for remaining appeals – all the same appeal issues
AP48/2019 Site T03/55 E Applicant and Appellant: Crescent Seafoods Ltd. Represented by William Fry Solicitors	As AP38/2019 above - Identical appeal issues raised for AP41-48/2019 inclusive	See AP38/2019 for remaining appeals – all the same appeal issues

8.0 Oral Hearing Assessment

It is the technical advisor's opinion that an oral hearing may be required for these appeals but that this should be further considered after the submission of responses by all parties to the circulation of the Section 46 Notice currently open for submissions until the 1 May 2024.

9.0 Recommendation of Technical Advisor with Reasons and Considerations

Currently, it is not possible for me to make a final recommendation as there is a Section 46 notice open for submissions from all parties. **However, with the information before me at this time, I recommend the overturning of the Ministers Decision in relation to appeals AP34-48/2019**, encompassing 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 due

to the possibility of significant negative impacts on the conservation impacts of the relevant Natura 2000 sites as outlined in this report.

Technical Advisor: Dr Ciar O'Toole

Date: 21/03/2024

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- Department of Housing, Local Government and Heritage (2018) River Basin Management Plan 2018 - 2021
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- Office of the Planning Regulator (2021) Practice Note 01: Appropriate Assessment Screening for Development Management. Dublin 2021.

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- NPWS (2023b) Slaney River Valley SAC (000781): Conservation Objectives supporting document – marine habitats and species. Department Arts, Heritage and the Gaeltacht. Version 1 (August 2011)17pp.

Websites consulted

1. <https://www.met.ie/climate/available-data/monthly-data>
2. <https://www.marine.ie/Home/site-area/data-services/interactive-maps/irelands-marine-atlas>
3. www.epamaps.ie
4. <https://data.cso.ie/product/COAC>
5. <http://census.cso.ie/agrimap/>
6. <https://www.sfpa.ie/What-We-Do/Molluscan-Shellfish/Classified-Areas>
7. <https://www.archaeology.ie/>
8. <https://www.npws.ie>
9. <https://www.biodiversity.ie>
10. <https://www.cso.ie/en/releasesandpublications>

Appendices

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 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 who has made submissions or observations to the Board in relation to the appeal.

Section 46 Notices:

1. Sent to William Fry Solicitors on 18 December 2019:

A copy is not currently available

2. Sent to all parties 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: AP34/2019
Site Ref: T03/030E

Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to grant (with variations) an Aquaculture Licence to T.L. Mussels Ltd. on site ref: T03/030E for the bottom cultivation of mussels on a site on the foreshore at 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)

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—

(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. Phone: (057)8631912

Yours sincerely,

Margaret Carton
Secretary to the Board

3. Sent to the Marine Institute and NPWS on 23 August 2023:

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



FAO: Mr Micheal Gillooly
Marine Institute
Rinville
Oranmore
Co Galway

Email: mick.gillooly@marine.ie

23 August 2023

Our Ref: AP34/2019
Site Ref: T03/030E

Re: Appeal by Bird Watch Ireland against the decision by the Minister for Agriculture, Food and the Marine to grant with variation an Aquaculture Licence to T.L. Mussels Ltd. for authorisation for the bottom cultivation of mussels on site ref. T03/030E on the foreshore at Wexford Harbour, Co. Wexford

Dear Mr Gillooly

We refer to the above Appeal received by the Aquaculture Licences Appeals Board ("the Board") on 9 October 2019 and to the Summary Appropriate Assessment Report and associated Annexes prepared by the Marine Institute dated August 2016 ("the AA Report") in respect of Aquaculture Activities in Wexford Harbour including the proposed activity, the subject of this Appeal.

The AA Report and further details of the nature and extent of the proposed aquaculture activity the subject of the Appeal can be found in the "DAFM file" section at:

<https://alab.ie/activeappeals/appealsyearsreceived/appealsreceivedin2019/ap342019/#d.en.187162>

The AA Report was considered by the Board and it was found that insufficient evidence was given in this report to support the decision taken that a value of greater than 15% habitat use for this type of development is indicative of disturbance for this habitat type in this SAC.

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.

Therefore, in accordance with the provisions of section 46(1) of the Fisheries (Amendment) Act 1997 and Regulation 4 of the Aquaculture Appeals (EIA) Regulations 2012 (as amended), ALAB HEREBY REQUESTS you to make any submissions or observations you have in relation to the matters referred to in this letter.

The Board would be grateful if, in particular, the Marine Institute would confirm whether it holds any data or information on this definition of a disturbance level for coastal marine habitats within Natura sites, and if so, if this information could be provided to the Board.

The Board also notes that previous scientific advice from the NPWS, which the Marine Institute advised on, was in the context of the CJEU judgement C418/04 (“the Birds Case”) and that this was dealt with in a document entitled “A Roadmap towards the Management of Fisheries and Aquaculture Activities in Natura 2000 sites in Ireland” (“the Roadmap report”) referenced in both the 2019 and 2022 NPWS updates to the European Commission relating to the judgement in the Birds Case: “A Programme of measures by Ireland to ensure full compliance with the Judgment of the Court of Justice of the European Union”, but not available publicly. The Board therefore requests a copy of this “Roadmap” report if it is in your possession, along with any other relevant submissions or observations.

Such submissions or observations must be received by ALAB not later than **25 September 2023**.

As noted above, the AA Report addressed a number of aquaculture activities within Wexford Harbour by way of a single report. The Minister issued fifteen (15) decisions for Wexford Harbour, the subject of the AA Report, all of which have been appealed to ALAB (Appeal Refs. AP34-48/2019) including the decision to grant a licence for the above Appeal AP34/2019.

The Board is accordingly issuing similar Section 46 requests to you in the other Appeals but would accept either individual submissions and observations on each appeal or a single composite response to all requests. The Board is also issuing Section 46 requests to the NPWS requesting any information in relation to these matters they may have on file.

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.

Finally, please note that hard copies of the Appropriate Assessment Report prepared by the Marine Institute dated August 2016 are available on request by contacting the undersigned by letter, email or phone - The Secretary, Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co Laois. R32 DTW5, Email: info@alab.ie telephone number: 0578631912

Yours Sincerely

Margaret Carton
Secretary to the Board

4. Sent to all parties on 31 January 2024:

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

January 2024

Our Refs: AP44/2019 (S46 01.2024)
Site Refs: T03/085A

Appeal against the decision of the Minister for Agriculture, Food and the Marine in relation to an Aquaculture Licence to Loch Garman Harbour Mussels Ltd. for the bottom cultivation of mussels on the foreshore on site ref T03/085A at Wexford Harbour.

Dear Minister

We refer to the above appeal and to your submission dated 21 September 2023 in response to ALAB's Section 46 request dated 29 June 2023.

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

7. Submissions of the Marine Institute, both dated 19 September 2023 (received 20 September 2023 - 2x no.)
8. Submission of Wexford Mussels Ltd dated 25 September 2023.
9. Submission of the NPWS dated 26 September 2023.
10. Submission of An Taisce dated 29 September 2023.
11. 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.

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 5 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, or by following the links set out in the schedule to this letter.

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 **1st 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: **AP44/2019 (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. Phone: (057) 8631912.

Yours sincerely

Margaret Carton
Secretary to the Board

Section 47 Notices:

A Section 47 notice was sent to BIM on 18 November 2021:

An Bord Achomharc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



Bord Iascaigh Mhara
Crofton Road
Dun Laoghaire
Co Dublin

For the attention of the CEO jim.otoole@bim.ie

18 November 2021

Our Refs: AP34-48/2019

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;

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to refuse to grant (with variations) Licences to bottom cultivate mussels at sites on the foreshore at Wexford Harbour, Co. Wexford

Dear Sir/Madam,

I refer to Appeals received by Aquaculture Licences Appeals Board against the decisions of the Minister for Agriculture, Food and the Marine being Appeal References AP34-48/2019.

Pursuant to Section 47(1)(a) of the Fisheries (Amendment) Act, 1997, as amended, ("the Act"), where the Board is of the opinion that any document, particulars or other information is or are necessary for the purposes of enabling the Board to determine the Appeal, it may serve a notice on a party requiring that party to submit to the Board such documents, particulars or other information as are specified in the Notice.

Having considered the appeals and the information provided to it, the Board has determined that further documents are necessary for the purposes of enabling the Board to determine the Appeals.

The Board requires you to provide a copy of the “Aquaculture Profile of Wexford Harbour”, prepared by BIM in approximately 2013 or 2014 and authored by Brian O’Loan, which was submitted to the Marine Institute for use in their Appropriate Assessment of Aquaculture in Wexford Harbour, and referred to in the “Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)”, published by the Marine Institute in August 2016.

In accordance with section 47 (1) (a) of the Act, the Board requires this information within **30 days** of receipt of this letter. Please note that if the documents, particulars or other information specified above are not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

Please also note that a person who refuses or fails to comply with a requirement under section 47 (1)(a) shall be guilty of an offence.

Yours sincerely



Antoinette Conroy
Secretary to the Board