

NOTICE OF APPEAL UNDER SECTION 40(1) OF  
FISHERIES (AMENDMENT) ACT 1997 (NO. 23)



**Appeal Form**

**Please note that this form will only be accepted by REGISTERED POST  
or handed in to the ALAB offices**

Name of Appellant (block letters)	DONEGAL OCEANDEEP OYSTERS		
Address of Appellant	ROSSYLONGAN, DONEGAL TOWN		
Phone:		Email:	
Mobile:		Fax:	

**Fees**

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

**Subject Matter of the Appeal**

THE SUBJECT MATTER OF THIS APPEAL IS MADE AGAINST DECISION TO REFUSE T12/397,A,B,C FOR LOUGHRAS MOR BAY, COUNTY DONEGAL.  
THE REASONS GIVEN BY THE DEPARTMENT ARE GENERAL IN NATURE WITH NO SPECIFIC EVIDENCE GIVEN IN RELATION TO ANY OF AREAS UNDER APPLICATION. THE ENGINEER'S REPORT WAS NOT MADE AVAILABLE. THE REASONS GIVEN ARE NOT SUPPORTED IN THE APPROPRIATE ASSESSMENT (000197) OR BY ANY OF THE SUBMISSIONS BY ANY OF THE STATUTORY CONSULTEES, THE COMPETENT AUTHORITIES IN THIS REGARD. THE MINISTER'S DETERMINATION IS CONTRARY TO THE DEPARTMENT'S OWN MARINE POLICY, A CORE OBJECTIVE OF WHICH IS TO TRY AND DEVELOP ECONOMIC WEALTH FROM THE SEA. OYSTER FARMING REPRESENTS THE MOST ENVIRONMENTALLY FRIENDLY METHOD OF SUSTAINABLE SEAFOOD PRODUCTION TO DELIVER ON THIS OBJECTIVE. THE APPLICATION REPRESENTS AN AREA IDENTICAL IN NATURE, FORSHORE LOCATION, EXPOSURE AND CONTAINS EXACTLY THE SAME NATURAL CHARACTERISTICS OF ALL OYSTER FARMS CURRENTLY LICENCED AND OPERATING SUCCESSFULLY IN OTHER BAYS.

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

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THE DETERMINATION REFERS TO UNSUITABLE PARTS OF THE APPLICATION BUT GAVE NO CONSIDERATION TO IDENTIFYING THE SUITABLE AREAS (PARTICULARLY IN 397B AND 397 C). AN ALTERNATIVE ACCESS SOLUTION IS PROVIDED. THERE IS ALSO THE OPTION OF USING A BOAT TO SERVICE ANY POTENTIAL OYSTER FARMING ACTIVITY. VARIANT LICENCES ARE GRANTED BY THE DEPARTMENT ELSEWHERE USING THIS APPROACH.

Site Reference Number:-

T12/397A,397B,397C

(as allocated by the Department of Agriculture, Food and the Marine)

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

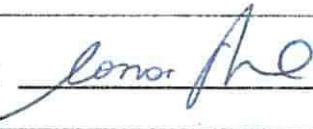
THE APPELLANT'S INTEREST IN THE OUTCOME OF THIS APPEAL IS FIRST AND FOREMOST TO TRY AND SUSTAIN CURRENT JOBS AND LIVLIHOODS BY HAVING A MULTI SITE APPROACH TO MITIGATE AGAINST THE IMPACT OF HARMFUL ALGAL BLOOMS AND MORTALITY. THE IMPACT OF HAB'S ON SHELLFISH FARMING IS NOW WELL DOCUMENTED BY THE MARINE INSTITUTE. A SUCCESSFUL APPEAL IDENTIFYING A REDUCED AREA FOR FARMING ON THESE SITES WOULD AFFORD THE COMPANY THE OPPORTUNITY TO DO THIS AND TO EXPAND IN A SECURE MANNER .

A SUCCESSFUL APPEAL WOULD ALSO ALLOW THE COMPANY GUARANTEE CONTINUITY OF SUPPLY WHICH IS CRITICAL IN LAUNCHING AND SUSTAINING ANY VALUE ADDED BRAND FOR GLOBAL MARKETS. THIS IS THE KEY NATIONAL SEAFOOD DEVELOPMENT POLICY OF BOTH BIM AND BORD BIA UNDER THE ORIGIN GREEN PROGRAM . THIS IS THE AIM OF THE NEXT GENERATION OF THE COMPANY WHICH ARE COMPLETING THEIR RELEVANT THIRD LEVEL EDUCATION AND WILL BE ENTERING THE BUSINESS FROM 2020 ONWARDS.

Outline the grounds of appeal (and, if necessary, on additional page(s) give full grounds of the appeal and the reasons, considerations and arguments on which they are based):

PLEASE SEE ATTACHED DOCUMENT.

Signed by appellant:



Date:

8th November 2019

**Please note that this form will only be accepted by REGISTERED POST  
or handed in to the ALAB offices**

**Fees must be received by the closing date for receipt of appeals**

This notice should be completed under each heading and duly signed by the appellant and be accompanied by such documents, particulars or information relating to the appeal as the appellant considers necessary or appropriate and specifies in the Notice.

DATA PROTECTION – the data collected for this purpose will be held by ALAB only as long as there is a business need to do so and may include publication on the ALAB website

### Extracts from Act

**40.—(1)** A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.

(2) A notice of appeal shall be served—

(a) by sending it by **registered post** to the Board,

(b) by **leaving it at the office of the Board**, during normal office hours, with a person who is apparently an employee of the Board, or

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

SUBMISSION REGARDING REFUSAL TO GRANT LICENCES T12/397A,397B,397C TO DONEGAL  
OCENADEEP OYSTERS LTD IN LOUGHRAS MOR BAY, COUNTY DONEGAL

**Background**

Donegal Oceandeeep Oysters Ltd is a family owned small company located in Donegal Town with over thirty year's experience in producing shellfish. The company made applications in Loughras Mor in June 2009 before it was designated an Special Area of Conservation (SAC). It was subsequently included in an expansion of the Natura network and therefore required an Appropriate Assessment. This was the main factor in the delay of over a decade on application progress and determination . The sites are typical of Donegal estuaries with a 4-5m tidal range, exposed sandflats at low water and benefiting from pristine Atlantic seawater exchange. Indeed, they exhibit all the natural characteristics of other bays in Donegal where oyster farming is successfully practiced.

These applications are a crucial part of our strategy to mitigate against the risk posed by Harmful Algal Blooms which are becoming more frequent with Increasing sea temperature and nitrification of our estuarine waters. The only way to do this is a muti-site approach going forward. The company has invested in a new state of the art infrastructure to grade and dispatch oysters. The company has identified an access option with another applicant (T12/405A) who is the largest land owner directly adjoining the sites. The surrounding community is already familiar with the nature of oyster farming as it has been located in Loughras Beag for thirty years with no negative impact or any other activity displaced. Loughras Mor is geographically close to existing operations of the applicant in Donegal Bay and can be easily assimilated into well established routes to market.

The Ministerial determination listed thirteen reasons for refusal. The reasons were very general in nature and did not identify specific areas of the applications or indeed which site they applied to. In order to better inform this appeal, the applicant requested specific information regarding the reasons and in particular the Engineer's report but was informed by the Department that they would be unable to provide same. This refusal restricted our ability to submit a very detailed appeal and we respectfully request that ALAB provide us with same at the earliest opportunity so that we can adduce the required information to inform your deliberations.

Fundamentally it remains that none of the reasons presented are supported by any of the findings of the Appropriate Assessment for West of Ardara Maas Road SAC (000197) or by many of the submissions by the relevant statutory consultees who are the competent authorities in relation to many of the issues raised in the determinations.

Nonetheless as much information as possible is provided below to demonstrate that oyster farming can exist harmoniously with all other users by targeting the most suitable sites within each application areas.

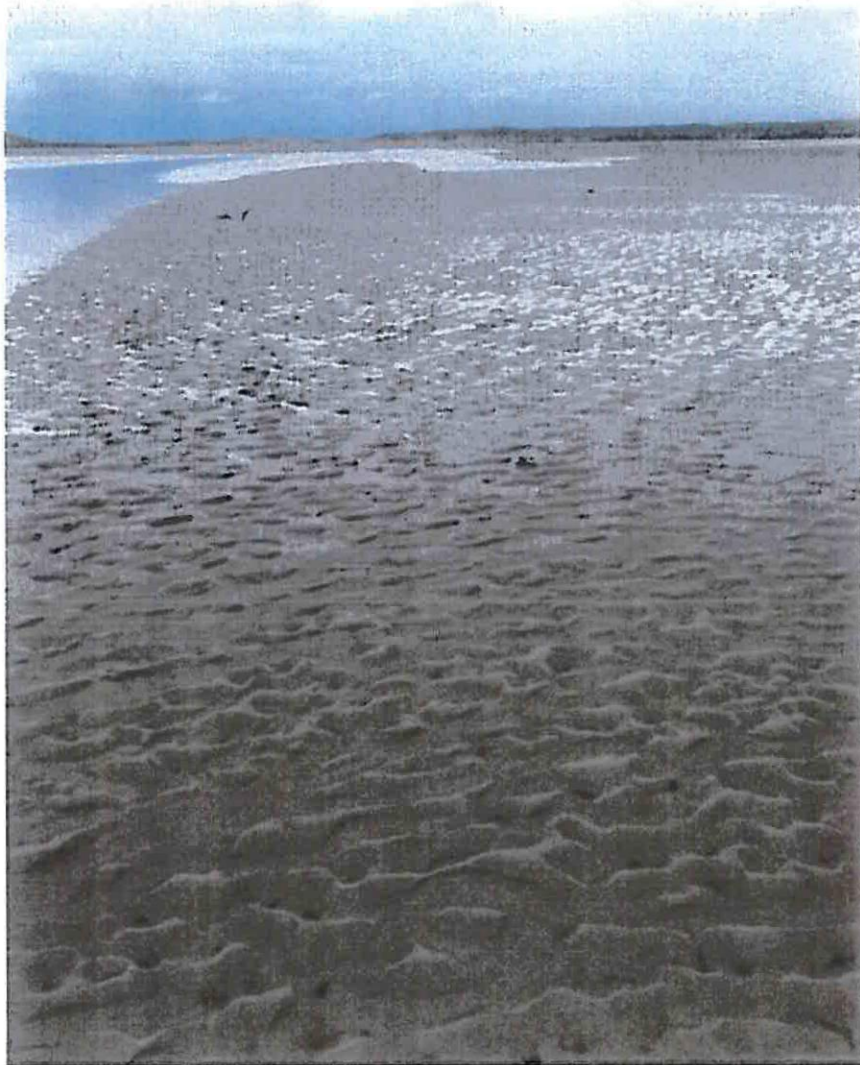


## 1. Oyster Growth/Site Locations

The proposed sites 397 B and 397 C contain perfectly suitable areas for trestle and bag deployment especially on the lower parts beside the channel. There is stable, hard substrate here encompassing >50% of both blocks from Low Water Spring Tide upwards (see photo re substrate).

These areas have exactly the same exposure profile as all the farms already successfully producing oysters in the neighbouring bay Loughras Beag. In fact both Lougras Mor and Loughras Beag are two inlets of the same bay. Loughras Beag, by it's name is the smaller of the two but already utilises larger areas of foreshore pro rata for oyster farming than is being proposed in Loughras Mor. New licences were approved in Loughras Beag in 2018 . Google Maps provide excellent aerial imagery which shows existing trestle position in Loughras Beag relative to proposed Loughras Mor sites to support this position.

We acknowledge that Site 397A contains mostly higher ground with some parts unsuitable for oyster growth and it is assumed that these are the areas referred to in relation to oyster growth in the Department's refusal letter. It must be remembered that these sites were chosen over ten years ago in 2009. The applicant does not understand how the suitable areas of sites 397B, 397C were not identified given the direct similarity in height and composition of sites currently being farmed in Loughras Beag . Please see photo below containing hard, stable substrate typical of Sites 397 B and 397 C.



### **Water Quality and Shellfish Monitory**

2. Shellfish are being farmed safely in many other bays the same distance from similarly designed treatment works and associated discharge pipes (Donegal Bay, Dunloe Bay, Lough Swilly, Westport, Cromane and Dungarvan to name but a few). The discharge pipe in question here is currently covered by a sand bank at south corner of T12/397B and therefore could not be discharging continuously at this point. The most recent EPA Discharge Audit report in May 2019 confirms stable water quality and compliance under the discharge licence conditions set out for the Ardara WWTP.  
Shellfish farms are also monitored monthly for Faecal Coliform and weekly for biotoxin under the Classification Directive. The Minister should look solely at the facts at the granting of the licence within the constraints of the 1997 Act and Regulations and limited to the

criteria contained therein. In the event that there was to be subsequent issues for whatever reason relating to food safety from shellfish produced pursuant to the licence then this matter can be addressed by the SFPA, which is the appropriate body to determine at that stage whether or not there is a risk to the public. A profile of the site could be established quickly within 6 months by the SFPA as is the standard practice for all new sites.

We further note that the SFAP and the FSAI who are the competent authorities in this regard to the microbiological status of shellfish destined for human consumption did not raise the issue as part of the statutory consultation process. We assume that this is because of the nature of the sewage treatment infrastructure already in place and high levels of dispersion. The position is further supported by the most comprehensive scientific analysis of the site, the Appropriate Assessment, which did not consider the hydrology of the bay 'closed' in nature with significant flushing noted in relation to potential larval dispersion of shellfish.

Based on this information we respectfully suggest that refusal on the basis of 'close proximity' to a sewage outfall is not supported by any evidence.

Nitrification of our bays is providing perfect conditions for Harmful Algal Blooms (HABS) events which are becoming more frequent around our coast. These are devastating not just the shellfish populations but also many other benthic species which are key in maintaining a healthy estuary. It makes no sense to designate an area under the Natura 2000 framework for key species and habitat protection, invest significant resources to complete a detailed appropriate assessment and go against its conclusions by refusing a sustainable seafood production activity which will have no detrimental environmental impact.

### **Visual Impact**

3. There are conflicting statements regarding this topic in the determinations which reflects the subjective nature of visual impact. The impacts of our proposed operation are considered low to moderate yet it also refers to views being potentially affected by the Wild Atlantic Way. In reality the "Wild Atlantic Way follows the route of the R251 and the N56 through this area and a 'discovery point' as Glengesh Valley offers dramatic views of the sea and coastline over this seascape unit"(Seascape Charter Assessment of County Donegal, DCC, 2016). The applications under appeal are 1.2km from any point on the R251 or N56 and will not be visible from the discovery point at Glengesh which has elevated views over Loughras Beag Bay rather than Loughras Mor.

In line with the findings of your advisor in relation to the visual impact of oyster trestles in TraighBeagaBay(<http://alab.ie/media/alab/content/boarddeterminations/2017/scheduleofdocuments/ap711/AP7112017/TrawbeagaBayLandscape&VisualTechnicalAdvisorReport211118.pdf>) it is unsustainable to assign equally high sensitivity to the entire Atlantic Way, which is 2,500km in length and gives access to a vast range of environments, working from landscapes and seascapes. The Donegal County Council assessment of this seascape unit already lists aquaculture as a key use and the overall experience of this area afforded by the Atlantic Way would not be significantly adversely affected by the development.

In reality it would be virtually impossible to see any trestles deployed on lower to mid parts of any application 397B,397C from the Wild Atlantic Way or many other closer perspectives even while exposed at low tide as they would be fully absorbed by the surrounding rocky foreshore. Oyster farms are fully covered by water for 80% of daylight time with no floating structures involved. This ensures the industry is entirely invisible to any potential tourist traversing the Wild Atlantic Way at most times on their journey.

#### **Salmon Net Draft Fishery and Salmonid Migration**

4.

All commercial drift net fisheries and the majority of draft net fisheries have ceased as the numbers of salmon returning to all our rivers are still in serious decline and are now at critical biological recovery levels. It is highly unlikely that this type of activity will ever be allowed to recommence especially in an SAC (000197) which has *Salmo Salar* listed as one of its qualifying species under Annex II. From an Environmental & Sustainability perspective, It makes far more sense to take this opportunity to replace this tradition with an entirely renewable and sustainable source of seafood. If this position was to change sometime in the future oyster farming can be simply removed with the area left exactly as it was found.

It is not possible to place trestles in moving water channels as they would bury and disappear very quickly. It is also interesting to note that Inland Fisheries made no negative submissions in this regard as they are aware after decades of experience that this industry does not seek to locate itself in river based channels .

Further, the findings of the appropriate assessment study in relation to the interactions of proposed aquaculture activity and Annex II species including *Salmo salar*, found that:

*'given the location of the structures and the low level of activity proposed it is concluded that the activities would be non-disturbing to the Annex II species found in the Ardara/Mass Road SAC (00197)'.*

Once again this begs the question why we engage a statutory agency (Inland Fisheries) in a public process and appoint the Marine Institute to complete a rigorous scientific process (AA) then set aside their findings regarding salmo salar over, presumably references to potential salmon migration in the local Engineer's report .

#### **5. Access by Boat**

The applicants propose to use a specially designed oyster boat to access any potential sites within 397C or 397B. They already have a suitable boat in place and are experienced in this area with several licences in Donegal Bay already operated in this manner (please see photograph). There is no need to use any local piers in the bay for this type activity as the boat has a 0.5m draft fully loaded.



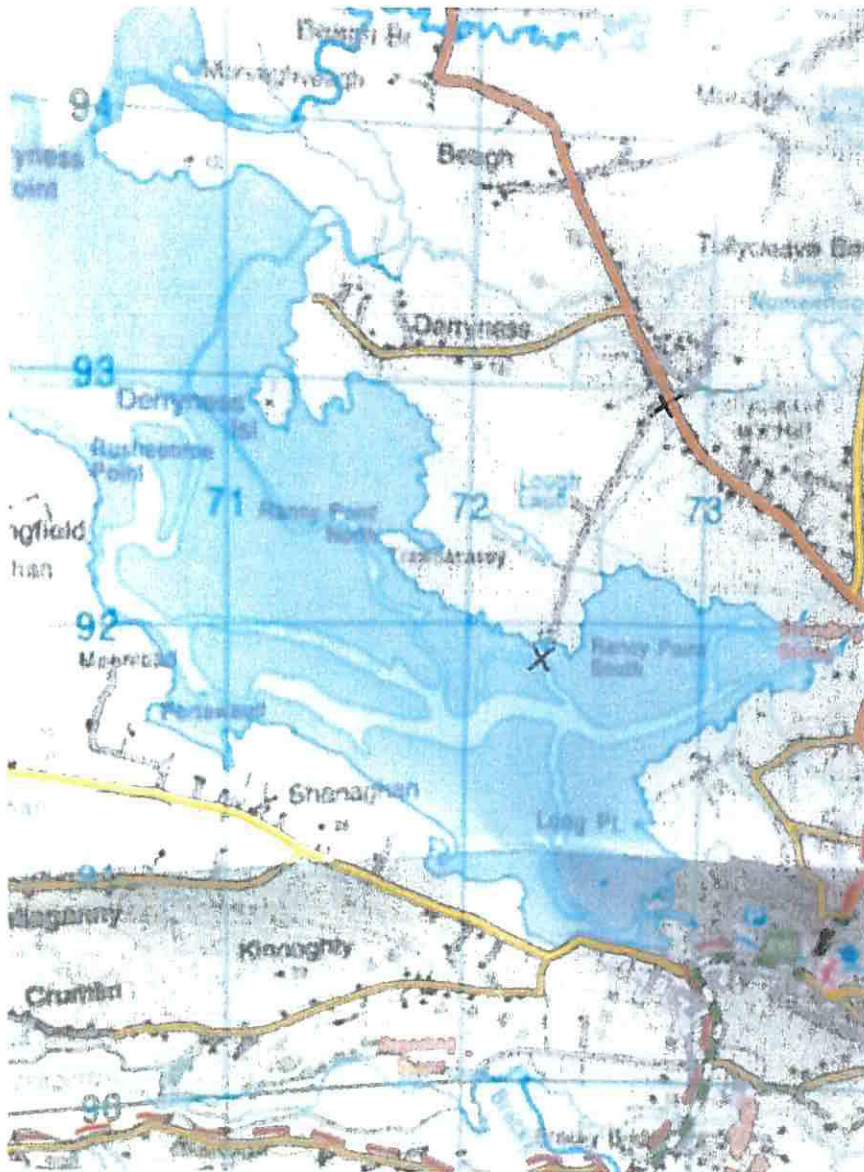


The issue raised about potentially impeding the channel which gives access to St Johns Pier is a further misconception. Oyster farming does not exist anywhere in a channel that would impede access to a commercial pier. We again note that the MSO and the CIL who are the competent authorities in this regard, did not raise this issue as part of the statutory consultation process.

## 6. Public Road Access

Public access will not be hindered in any way . The public access route L7773 at Derryness via block 397A will **not** be required with an alternative access route on the Eastern side identified marked on the map below. This access already has the benefit of having agricultural infrastructure in situ where the road ends at the shore. It is owned by a family also seeking a licence adjacent to Site 397B. It will easily accommodate any activities associated with oyster farming.

### Alternative Access Route at Ranny Point South



## 7. Morphology

The Appropriate Assessment made no such findings at the existing scale of applications. The applicant can reduce the scale of the site especially at block 397A if morphological concerns persist after your analysis.

## 8. Recreation

There will be absolutely no impact on recreational activities or access to the shore by oyster farming activity in the application areas. The sites are located well to the East in the bay which has a total area 1,500 hectares. Local recreational activity and some other commercial activities (horse-riding school and cattle farming access to land) take place almost exclusively at the Western end of Loughras Mor using the public road L7773 as access. Tramore Strand and Rosbeg are the busiest tourist areas during the Summer and are located 6-7km to the North West at the mouth of Loughras Mor Bay.

## 9. Designation

Shellfish Designation within Shellfish Growing Waters Area only occurred after shellfish farming was already established in bays throughout the country. It is not a pre-requisite for licencing with a proposed site classified under Annex II of EU Regulation 854/2004 and therefore not a barrier to entry into the industry.

Designation could occur in Loughras Mor with a straightforward inclusion of any site in the Classification sampling program by the SFPA and could be completed in a number of months. It takes three years to grow oysters to market size. The site is not surrounded by any intensive agriculture, has a fully compliant treatment plant in situ and therefore will most likely fluctuate between an A and B classification like all production areas in county Donegal.

## Conclusion

I do not know what issues are referred to in this statement:

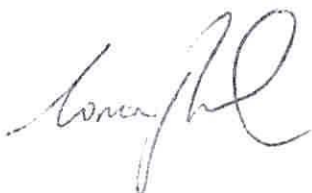
*'taking account of the issues raised during the public and statutory consultation process'*

There are now many misconceptions in the public domain about oyster farming that trigger countless identical submissions which just seek to clog up the licencing process. These are sustained by well organised social media campaigns and have appeared in a number of recent objection campaigns around the county. A public process never attracts positive contributors therefore it is very easy to use misinformation to get signatures and give the impression an entire community is opposed to something. We cannot allow aggressive Nimbyism to masquerade as scientific fact or environmental concern which stifles meaningful debate. Time and time again the content of these

claims in public submissions have shown to be at complete variance with the experiences on the ground. At some point the process must reject such inaccurate and sensationalist views on oyster farming as completely unfounded and we cannot keep revisiting them perpetually with every application . In this regard, the generalisation of the above statement is worrying as this type of approach will never ensure a meaningful evolution in our public process.

After thirty years of industry experience your Board now have the benefit of looking at the facts on shellfish farming which are clearly evident all around our coastline. It is a resounding economic success in our most rural locations devastated by the decline in traditional inshore fishing. It is fully sustainable and environmentally important in meeting all our challenges ahead. Other countries are already actively incentivising their shellfish industries to expand their production immediately. It is fully supported by scientific fact and has the benefit of a rigorous licencing system which is actively regulated to ensure full compliance by all users. It is subjected to a full public process again every ten years.

When all this is considered, it is incomprehensible that a resource over 1,500 hectares cannot accommodate a vibrant shellfish industry on as little as 2-3% of its area. This company represents one of the first oyster farms to establish in Ireland utilising a resource where it's true value has still yet to be fully realised. There is huge interest in this resource from outside sources and this company has been waiting patiently for over ten years for progress on this application. The licensing system must recognise this critical stage in our national industry and support a local indigenous company now in realising it's full potential. I would respectfully request that, given the critical reasons outlined in this submission any additional technical assessment would include a visit to the applicant's existing operations and infrastructure to ascertain if he has the capacity to deliver the same in Loughras Mor.



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