

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)	PAT MORAN		
Address of Appellant			
Phone:		Email:	
Mobile:		Fax:	

Fees

Fees must be received by the closing date for receipt of appeals	Amount	Tick
Appeal by licence applicant	€380.92	
Appeal by any other individual or organisation	€152.37	
Request for an Oral Hearing * (fee payable in addition to appeal fee)	€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

REF - T06/386A.

NOTICE OF MINISTERIAL DECISION TO REFUSE TO GRANT AN
AQUACULTURE LICENCE AND FORESHORE LICENCE.



Extracts from Act

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

(2) A notice of appeal shall be served—

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

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

(c) by such other means as may be prescribed.

(3) The Board shall not consider an appeal notice of which is received by it later than the expiration of the period referred to in subsection (1)

41.—(1) For an appeal under *section 40* to be valid, the notice of appeal shall—

(a) be in writing,

(b) state the name and address of the appellant,

(c) state the subject matter of the appeal,

(d) state the appellant's particular interest in the outcome of the appeal,

(e) state in full the grounds of the appeal and the reasons, considerations and arguments on which they are based, and

(f) **be accompanied by such fee**, if any, as may be payable in respect of such an appeal in accordance with regulations under *section 63*, and

shall be accompanied by such documents, particulars or other information relating to the appeal as the appellant considers necessary or appropriate.

Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T06/386A.
Appellant's particular interest in the outcome of the appeal:	
<p>To REQUEST MY LICENCE REFUSAL DECISION BE OVERTURNED.</p>	
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):	
<p>5 PAGE LETTER ATTACHED.</p>	
Signed by appellant: <u>Pat Moran</u> Date: <u>7-11-2019.</u>	
<p align="center">Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices</p>	
<p align="center">Fees must be received by the closing date for receipt of appeals</p>	

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

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

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

Pat Moran

07/11/19

Your Ref: T06/386A

**REFUSAL OF AQUACULTURE LICENCE FOR THE CULTIVATION OF PACIFIC OYSTERS
USING BAGS AND TRESTLES ON SITE T06/386A ON THE FORESHORE IN BUNACLUGGA
BAY, SHANNON ESTUARY, Co KERRY**

Dear Sir/Madam

I would like to appeal against the decision of the minister.

Appropriate Assessment Conclusion Statement

"Intertidal oyster trestle culture is considered non-disturbing to the feature mudflats and sandflats not covered by sea water at low tide."

"the development of intertidal/ aquaculture sites in the Ballylongford / Bunaclugga area may cause moderate displacement to the Ringed Plover this area holds a relatively high proportion of the total SPA Ringed Plover population, however the birds may be widely spread across the full extent of intertidal habitat within the area."

After making the points above, I believe the Appropriate Assessment Conclusion Statement lacks balance and fairness in its conclusion on my application.

"The combined aquaculture activities overlap with 1.33% of the habitat feature mudflats and sandflats not covered at low tide.

My site application makes up a tiny fraction of the 1.33% but is seen as having the greatest impact on the Ringed Plover even though "the birds may be widely spread across the full extent of the intertidal habitat within the area."

- The Appropriate Assessment has determined that there are approximately at least 8500 Ha of intertidal mudflats and sandflats not covered by seawater at low tide (1140) Annex I habitat mapped by NPWS in the SPA. To put my application of 11.02 Ha into context this represents 0.13% of that important intertidal area which is miniscule in comparison.
- Indeed the intertidal area may even be larger than this as the report indicates that it was beyond the scope of the assessment to accurately measure this. The NPWS assessment is most likely based on very old out of date admiralty maps.

- Conveniently the SPA assessment attempts to whittle down all of this huge intertidal area into discrete pockets called 'AQUA's which has the effect of magnifying the size of aquaculture in comparison. By this logic one could shrink down the intertidal area to match exactly the aquaculture sites so as to generate a 100% overlap (it's the same logic and principle that is being used in this report only taken a bit further). The reality is that the SPA acts as one whole system (that's why it was designated in such a manner and not designated as discrete areas separated by large areas useless to birds). Thus the attempt to reduce the SPA to 'AQUA's is entirely inappropriate and is not a proper scientific approach but a tool of convenience to hurry along decisions.

- The bird data sources used for the assessment are as follows: -
 - *Bird usage counts carried out in 2000-2002 by NPWS.*
 - *Irish Wetland Bird Survey (I-WeBS) counts, 1994/95-2012/13.*
 - *NPWS Water bird Survey Programme (WSP) 2010/11 counts.*
The descriptions of waterbird distribution within the River Shannon and River Fergus Estuaries SPA in the SPA Conservation Objectives Supporting Document (NPWS, 2012c), and other reviews of waterbird distribution and waterbird count coverage in the River Shannon and River Fergus Estuaries SPA (Natura, 2012; Lewis et al., 2016).
 - *Data collected during the 2011 trestle study (Gittings and O'Donoghue, 2012, 2016b), including unpublished data not presented in these publications.*
 - *General observations made during site visits by TG in October and November 2010 (for the trestle study) and in February and March 2017.*

Having read the SPA and SAC assessment I wouldn't have much faith in the data used due to the lack of bird counts, lack of bird counters, the scientific qualifications of the counters (IWEBS data is gathered by 'volunteers'), the objectivity of the counters, the narrow focus of much of the work (many areas within the SPA not even looked at) and the number of man hours spent on the ground in recent times (not way back a decade ago when the NPWS was setting conservation objectives for the area). This has very important consequences for me as an applicant because based on inadequate bird data it has been determined in this Appropriate Assessment that 99% of all Ringed Plover occur in the Lower Shannon Estuary (Table 5.3 of the report) and of that 55% are located in the Ballylongford/Bunaclogga 'AQUA' as determined back in 2011 even when an 'AQUA' hadn't even been conceived of.

The 'trestle study' of 2011 is a very narrow assessment over a very limited number of days of interactions of certain bird species and trestles in which a vague statistical approach is used to predict the behavior of those birds in response to trestles viz negative or positive causing displacement or not. This study cannot and should not be applied to different geographic areas under

different conditions (time of year, hydrographic, benthic, physical environment, different interactions with different wildlife profiles in differing locations). It is a 'one size fits all' approach to Appropriately Assessing an SPA and should have no place in determining my application in the Bunaclogga area. The lack of bird data is even admitted to in this assessment in that no confidence can be given to population trends (Attribute 1) and the lack of on-site up to date thorough surveying at the site where I have applied rules out any confidence in forecasting Attribute 2 impacts. Indeed the assessment makes no attempt to quantify any possible displacement impact but opts for the 'qualitative' option.

-In previous assessments (e.g., Gittings and O'Donoghue, 2014) we have used detailed quantitative analyses to assess potential displacement impacts. However, in the present assessment we considered that the quality of the available data was not sufficient to support quantitative analysis. This was due to the poor quality of the marine community types mapping supplied by NPWS, the very limited amount of data on waterbird distribution within the River Shannon and River Fergus Estuaries SPA, and the limitations of the scope of the work for this assessment which precluded detailed site surveys. Therefore, for this assessment, we have qualitatively assessed the potential displacement impacts...'

This qualitative 'make it up as you go approach is incredibly taken even further-

-'Instead we have taken a substantial displacement impact in one AQUA, or a combination of moderate displacement impacts across more than one AQUA, as being equivalent to exceeding the threshold of a 5% displacement level.' Is this standard practice? Is this even scientific?

It is interesting to note in the species notes for Ringed Plover on page 51 of the Supporting Document for the Conservation Objectives for this SPA that

-'Across the survey programme, the proportions of Ringed Plover recorded foraging ranged from 97% to 100%. Combining data for intertidal, supratidal and subtidal habitats (the latter where birds had their feet in water), Ringed Plovers foraged across a total of 19 subsites overall.'

Even with only 4 low tide counts spread out over two years it was evident the Ringed Plover are not restricted to the Bunaclogga area. The description of Ringed Plover goes on-

-'Indeed a substantial proportion of Ringed Plovers occur on non-estuarine coasts, the species exhibiting a degree of plasticity in habitat choice and being found in habitats such as shingle shores, saltmarsh and short grassland as well as artificial habitats'

This raises the prospect that on the total four occasions when the counters were in the SPA counting that these birds could have been foraging in places where the counters didn't even have their binoculars on. How anyone could put any confidence in the bird data and bird usage of areas within this SPA based on the huge inadequacies in field monitoring in this huge SPA with restricted visual opportunities and the inordinate numbers of counters that would be required is beyond comprehension. Add in a particularly harsh winter in 2010/2011 which is discussed in the Supporting Document for the SPA Conservation objectives

-The cold weather that occurred between December 2010 and February 2011 is likely to have affected waterbird distribution and numbers across sites (see Crowe & Boland, 2011 for a review)

and you are left with an incredibly weak starting position to appropriately assess my application in the first instance.

This supporting document couldn't even put a conservation condition on Ringed Plover (*undetermined*) and the guestimate of a 50% decline in their numbers in the SPA back in 2011 was made using a type 2 trend analysis which has a high degree of caution applied to it (page 16 and 17 (Table 4.2) of the supporting document) which in layman's terms means that it wasn't worth the paper that it was written on.

The supporting document also estimates an average foraging density of 0.02 Ringed plover per Ha across the subsites where it was located. At this level my site potentially could impact on 0.2204 of a Ringed Plover. This is shocking.

My site application is within the Ballylongford classified production area. There was a previous site west of my application this along with other sites and site areas in the Bunaclogga area have not been applied for. The intertidal area for trestle and bag oyster cultivation in the classified area, even were my application to be included would be smaller than what previously existed.

Unfortunately the Appropriate Assessment SPA documents does not discuss the decline in native species that led to the development of non native species (oyster cultivation) and their place now in the coastal waters of Ireland.

Aside the non native negative there are serious positives to go with oyster cultivation such as : nitrogen and phosphorus removal, increased biodiversity associated with provision of increased structural habitat. Brent Geese avail of green algae growing on top of bags especially when they arrive tired early in the overwintering season. Indeed widgeon may even do the same. Oyster farming is very carbon efficient if not carbon neutral with shells and meat sinking carbon. Oysters are one of Irelands most desirable, iconic and indigenous products and should be supported.

I only use triploid oysters in Waterford estuary my intention would be to use Kerry as a separate entity that could supply oysters to Waterford in times of mortality events. I would see movement of oysters from Waterford to Kerry as environmentally irresponsible given the mortality rate in Waterford estuary. I believe oysters put into Kerry should be triploids and come from a hatchery that should alay one of the main concerns that this assessment has raised, which is the risk of settlement of diploid pacific oysters in the estuary.

The reason why I applied for a site in Kerry was not to extend the business but to protect it in time of oyster mortality event as we had this year in Waterford estuary when 60%-70% of my stock was wiped out. Also I chose Bunaclugga bay in Kerry as I believe the area could produce an oyster as close as possible in shape to the oysters from Waterford estuary. The oysters grown here are for the top market specials which are sold all over the world. To produce these top quality oysters over the years the business has been the biggest employer in the once small fishing village of Cheekpoint,

I would never appeal the refusal decision if I thought the site either on its own or in combination with other sites in the area would have a serious impact on the Ringed Plover or any other species. I know from first hand Salmon and Eels and their habitat are an example of land planning consequences that cannot be reversed for two species on the brink of extinction.

I respectfully ask the appeals board to overturn the decision to refuse my licence. Should the appeals board decide to cut my licence application for 11.02 hectares in half, this amount of ground could still be very important if only for the growing and holding of hatchery seed for twelve months to my business in times of mortality events in Waterford.

Yours sincerely

Pat Moran

A handwritten signature in blue ink that reads "Pat Moran". The signature is written in a cursive style and is underlined with a single horizontal line.