

Ohara, Mary (Alab)

Subject: Non-party submission on Appeals AP1/1/217 to AP4/2017

From: Alab, Info
Sent: 16 February 2017 10:25
To: 'Odhran Stockman'
Cc: Mary Ohara (Alab)
Subject: RE: Non-party submission on Appeals AP1/1/217 to AP4/2017

Dear Mr Stockman

I wish to acknowledge receipt of your email.

I will bring it to the attention of the Board as soon as possible.

Regards

Mary O'Hara
Secretary to the Board
Aquaculture Licences Appeals Board
Kilminchy Court
Portlaoise
Co Laois

From: Odhran Stockman [<mailto:odhran.stockman@ntlworld.com>]
Sent: 14 February 2017 18:26
To: Alab, Info
Subject: Non-party submission on Appeals AP1/1/217 to AP4/2017

In accordance with section 45 of the Fisheries (Amendment) Act 1997 I make the following submissions, as a non-party, in support of the appeals brought by Coiste Timpeallachta an Ghaoith, Carrickfinn Trust Company Ltd and Anraí Ó Domhnaill in respect of licence sites T12/410A&B, T12/419A,B&C, T12/430A,B&C, and T12/438A&B. I have not had sight of the specific submissions made by the appellants in those appeals. To the extent that any submission I make appears to contradict any submission advanced by an appellant, I defer to the appellant's submission.

It is my understanding that section 7 of the Fisheries (Amendment) Act 1997 (the Act) permits licensing where it is in the public interest. It is further my understanding that the Appeals Board stands in the shoes of the first instance decision maker by virtue of section 20 of the Act. Accordingly the role of the Appeals Board is not one of reviewing the Minister's decision but one of exercising an inquisitorial function and arriving at an independent decision on the merits of each appeal as to whether the grant of a licence is in the public interest.

My interest in the appeals

I am an Irish national who lives and works in Belfast. My father, now aged 84, bought and renovated a small house in Rann na Mónadh in the 1970's due to his interest in the Irish language. Myself and my family members have spent considerable periods of time there each year over five decades and we have strong connections to the area. The proposed oyster farms are a few hundred yards away and some will be in sight of the house.

My perspective is that of a visitor, as opposed to a permanent resident, albeit that of a visitor with 40+ years connection to the area. However, when addressing the question of the public interest in balance in the particular appeals, I submit that it is also important to consider the perspective of visitors and tourists and our contribution to the economy and life of the community.

I make submissions under three headings:

- A) The lack of public consultation and the lack of public interest in procedural terms
- B) The balance of public interest on the merits of the licensing applications
- C) The balance of public interest in terms of the lawfulness of aspects of the licensing of the particular site T12/410B

A. The lack of consultation evident in the appealed decisions is in itself contrary to the public interest

The public interest demands open and transparent government which people feel part of. Cynicism has entered the public perception of politics in Ireland because of the corrupt actions of certain elected representatives. This has led to a distrust of public decision making. Even in the absence of corruption, alienation results from decisions which have significant implications for people's lives being taken in ways that give them no real say in the matter. This has destabilising consequences. The making of decisions without the involvement of people who are affected by them is in itself contrary to the public interest.

I was shocked that approval had been given for development of a large area of oyster farms in the vicinity of my father's house. This major decision was made without any knowledge on the part of my family. I understand that an advertisement was placed in August 2016 in a local newspaper - the Donegal Democrat - and that a notice was displayed in a local Garda station. However, newspapers are a declining medium, and people who do not live permanently in the county are unlikely to have encountered either notice. Such notices cannot be accepted as representing formal notice to anybody in the Internet age. I learned of the licensing decisions through social media.

The County Donegal Development Plan 2012-18 shows that, between 2000 and 2010, planning permission was granted for holiday homes in almost 1,000 instances in the Glenties Electoral area, which includes Gweedore Bay. This indicates that at least 1,000 individuals or families established links to that part of the county in that decade alone. This is a small section of a broader group who have holiday homes from earlier decades. While I do not suggest that all are directly affected by the decisions in issue in these appeals, it is nevertheless clear that there is a significant group of people - just as I was - potentially affected by the appealed decisions but unaware of the decisions under appeal.

I believe that many permanent residents of Donegal, let alone owners of holiday homes, missed the communication of the relevant consultation. I am personally angered at the inadequate consultation about an industrial scale development a matter of metres from our home. I am equally outraged by the disregard of the interests of the local community as a whole.

The failure to communicate the prospective licensing decisions to the people affected by them taints any decision purportedly made in the public interest and renders the decision contrary to section 7 on procedural grounds alone.

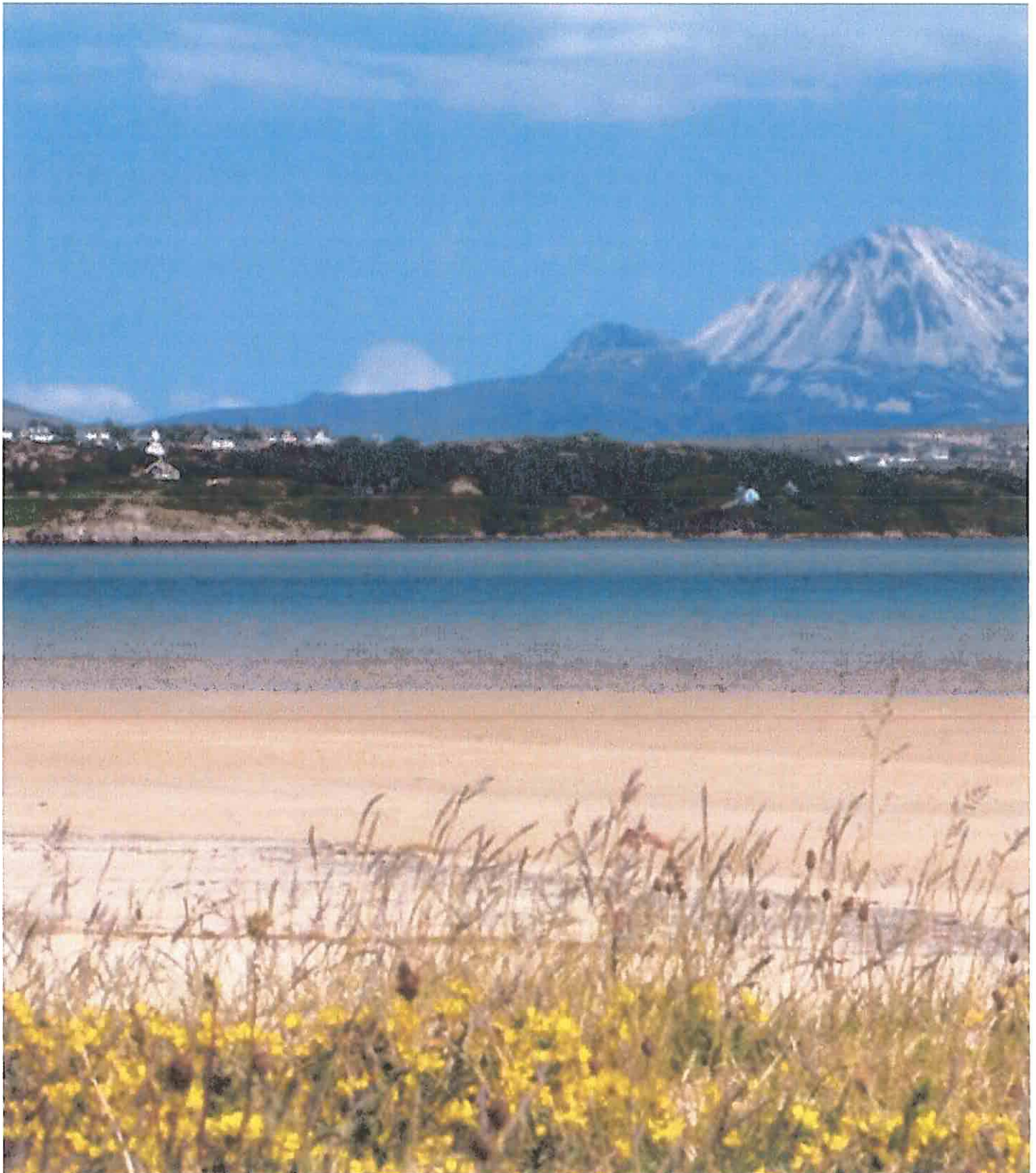
B. The grant of licences is not in the public interest on the merits

Donegal County Council states in the County Donegal Development Plan 2012-18, page 85, that:

The Donegal countryside is a unique resource. It is a recreational resource and a considerable tourist asset. The landscape also relates to quality of life and 'sense of identity' and 'sense of place' for residents of Donegal. It contains landscapes of considerable quality and amenity, is significant in terms of nature conservation and biodiversity by providing habitats for wildlife, flora and fauna; and incorporates indications of our cultural heritage. It is vital that in accommodating new development, care is taken to ensure that it integrates successfully and does not result in detriment to the character of the rural area, potentially devaluing or destroying the valuable resource which the landscape represents.

While stated in the context of housing development, this principle applies equally to any development which has the potential to destroy the valuable resource which the Donegal landscape represents.

I believe that the reason for the strong emotions evoked by the licensing decisions can be understood better by considering the image below. This shows a view of part of the licence sites viewed from Braade strand looking east towards the Gaoth Dobhair inlet.



This is one of the first sights to greet those visitors arriving by air to Carrickinn airport. It is also immediately visible from the road down to the various popular beaches at Carrickfinn or Ros Scáite, including the Carrickfinn strand blue flag beach. While there is currently oyster farming on an artisanal scale in the area, which has a modest effect on the inherent beauty of the landscape, the scale of the newly licensed aquaculture activity is grossly disproportionate and will entirely alter the character of a popular tourist area.

The granting of licences is a short-sighted decision giving priority to particular private business interests over local quality of life, the natural beauty of the Rannafast waters and the tourism potential of the area. As one of the regular visitors to the area who contribute to the local economy, I am only too aware of the chilling effect this will have on tourism.

In order to address the decline in tourism to the west of Ireland evident in the years to 2010, the relevant national authorities devised the Wild Atlantic Way strategy. The operational plan for the Wild Atlantic Way states:

1. Tourism is a critical component of the economic health of the West of Ireland with the accommodation and hospitality sectors a key driver of employment. Indirectly, tourism supports key service sectors including retail, transport and food producers. It is also a sector that delivers substantial social and community benefits, particularly given the fact that most tourism businesses are micro-enterprises that are embedded in local communities.

The estimate volume of tourism jobs in the counties making up the route of the Wild Atlantic Way is 72,000. This dwarfs the scale of employment in the proposed aquaculture schemes. Crucially, however, it has the potential for a trickle-down effect into the local economy which is not evident from aquaculture.

Figures from Fáilte (November 2016) show that Donegal had 289,000 overseas visitors in 2015 generating a revenue of 83 million Euros. In the same year it had 314,000 Irish residents making the trip to Donegal, generating a revenue of 75.7 million Euros.

I have not had sight of the projected revenues to the entrepreneurs who will operate on the licensed sites and the resultant corporation tax revenue to the State. I have not seen detailed evidence of the additional employment which may result. However, any projected revenue and employment must be carefully assessed against the negative effect on the tourism industry. It seems utterly inconsistent that one arm of the State has invested financially and energetically in creating the concept of the Wild Atlantic Way in order to attract tourism to the county, while another branch of the State undermines that initiative. This not in the public interest.

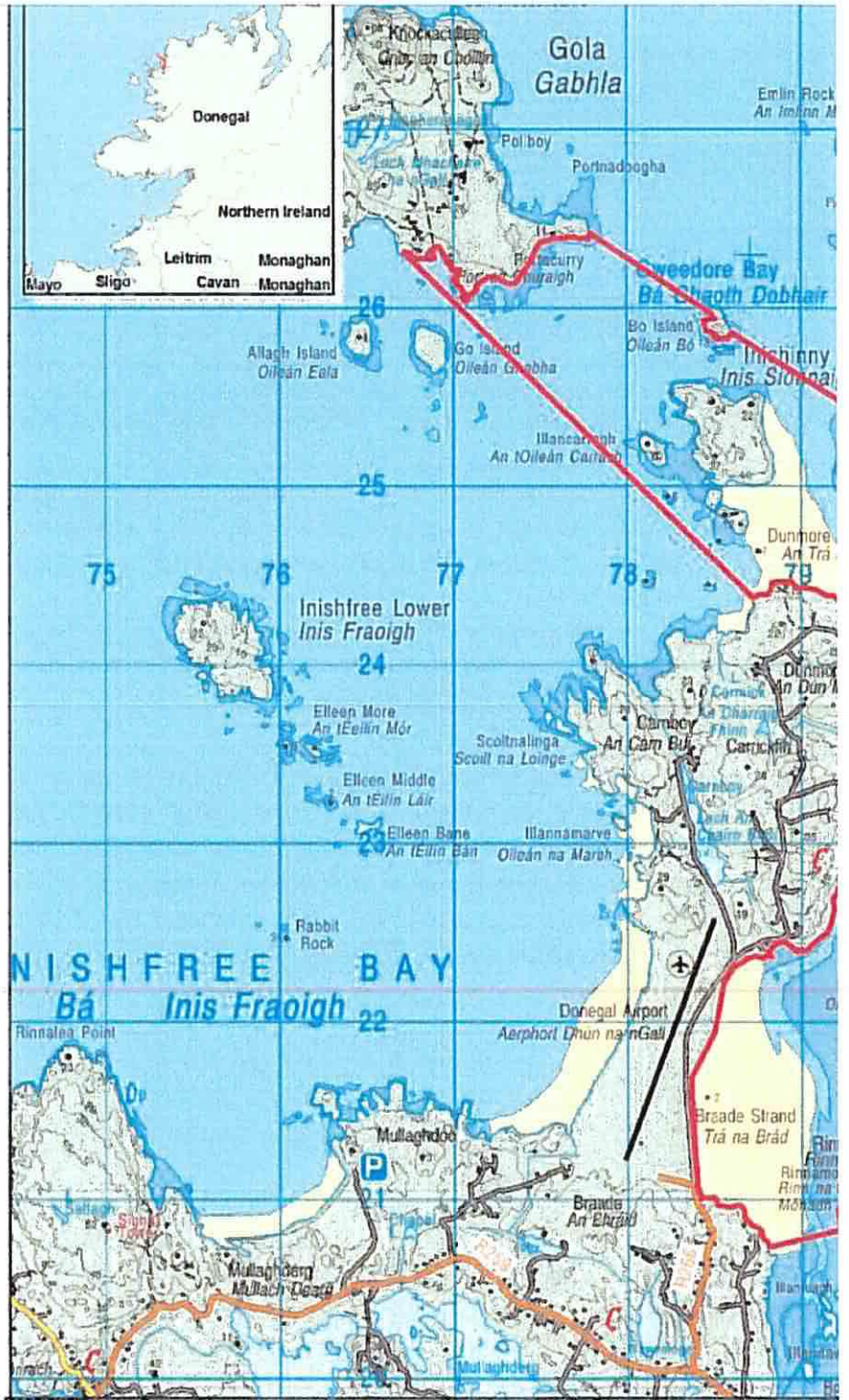
I am aware that the directors of one of the licensed companies, Celtic Kerber Ltd, appear to be French. While French people have every right to carry on business in Ireland under the laws of the European Union, it would equally seem evident that granting aquaculture licences in a case where revenues will prospectively leave the State is not in the public interest.

It is also valid to respect the inherent value of the landscape and to reflect that the greater public interest is met by simply preserving the landscape. The Gaeltacht area attracts many visitors who are interested in the language and cultural heritage of Ireland. An expression used by the late Seán Bán Mac Grianna, in his poem *Faoiside an tSeanbháid*, vilifying a destructive act by a past visitor to the area, is apt to the present situation. The Braade Strand is "mar earra ag stroillire" from the perspective of the licence applicants. I do not impugn the character of any of the applicants, but submit that they view the licensed area as a commodity rather than a place of beauty. Such a short term perspective is not in the broader public interest.

C) Lawfulness of decision to licence T12/410B or any site outside designated shellfish waters

Following the proceedings of *Commission v Ireland (Case 148/05)* in the European Court of Justice (ECJ), the designation of shellfish waters was extended by the Minister for the Environment, Heritage and Local Government in 2009 to include Gweedore Bay. By Schedule 1 to SI No.55 of 2009, the precise location of the designated shellfish waters in Gweedore Bay corresponds with the area enclosed by the red line map no.26 in the Book of Record Maps certified by the Minister for the purpose of the Regulations.

The map below illustrates the designated shellfish waters.



General Characteristics Map	
Designated Shellfish Area	No. 26 - Gweedore Bay, County Donegal
Area of Designated Shellfish Area	5.76 km ²
Area of Catchment	236.58 km ²

It can be seen that the red line runs across from Braade strand to the tip of Rann na Mónadh. I believe that the grant of the licence in T12/410B extends to an area which is outside the designated shellfish waters.

The purpose of Directive 79/923/EEC on the quality required of shellfish waters - and by extension the purpose of the current Water Framework Directive which re-enacts it - as has been held by the ECJ, is to protect human health through the monitoring of the quality of waters which support, or could support,

shellfish 'directly edible by man'. In those circumstances, the Court has held, it is particularly important that directives are transposed by measures whose mandatory nature is undeniable (Commission v Ireland).

I understand that the Sea Fisheries Protection Authority categorises the waters within the blue lines shown in the map below as a live bivalve mollusc classified production area. However, that categorisation appears to be independent of the classification of shellfish waters in domestic legislation and as required by EU law. I also understand that the licensed area which includes that part of T12/410B which lies outside designated shellfish waters is considered by the Minister to be sufficiently proximate to the relevant sampling point to be included within the designated area.



Regardless of that, the fact remains that the designation of shellfish waters does not correspond to the licensed area. There is therefore no mandatory testing of shellfish waters within that area which is compliant with the requirements of EU law. The licensing of that part of T12/410B which falls outside the designated shellfish waters is therefore, I believe, unlawful.

It is not in the public interest to have human health endangered by aquaculture in an area which is outside the zone where monitoring is mandatory. It is not in the public interest for a licensing decision to be made which is contrary to Ireland's obligations under EU law.

Conclusions

The procedure adopted in public consultation has been contrary to the public interest as they have ignored a large group of temporary residents who have not been consulted.

The grant of licences undermines the government's own tourism strategy and the policy of Donegal County Council.

The grant of any licence outside designated shellfish waters arguably breaches the State's obligations under EU law and is therefore not in the public interest.

For these reasons, I would ask for the appeals to be allowed.

Odhrán Stockman

