

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



AP1-4/2017 and AP6/2017

Braade Strand

Section 47 request to NPWS

dated 3 September 2018



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



National Parks and Wildlife Service  
7 Ely Place  
Dublin 2

3 September 2018

Our reference: AP1-4/2017 and AP6/2017

**Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to the conditions/grant of Aquaculture and Foreshore Licences to Mr Thierry Gillaudeau, Bourcefranc Le Chapus, France & Mr Desmond Moore, Ballymagroarthy, Ballintra, Co. Donegal (T12/410); Celtic Kerber Ltd., 20 Radharc na Mara Strandhill, Co. Sligo (T12/419); Mr John Boyle, Ballymanus, Kincasslagh, Co. Donegal (T12/430); Mr Garry Boyle, Ballymanus, Kincasslagh, Co. Donegal (T12/438) and Mr Brendan Boyle, Ballymanus, Kincasslagh, Co. Donegal (T12/461) for the cultivation of Pacific Oyster (*Crassostrea gigas*) at Braade Strand, Gweedore Bay, Co. Donegal.**

To whom it concerns

The Minister for Agriculture, Food and the Marine has granted Aquaculture and Foreshore licences for the cultivation of Pacific Oyster (*Crassostrea gigas*) at Braade Strand, Gweedore Bay, Co. Donegal. These include both new licences and renewals of existing licences.

Subsequently, a number of appeals were lodged under the provisions of Section 40(1) of the Fisheries (Amendment) Act 1997 ("the Act"). The Appellants raised a wide range of issues as grounds for their appeal which have been duly considered by the Board's Technical Advisors. The result of their evaluations have indicated that there may be issues of concern relating to the Appropriate Assessment screening process, in particular in relation to some of the bird Species of Conservation Interest (SCI) within nearby SPAs.

The following documents are attached for your information:

1. Report prepared by Dr Tom Gittings dated 13 February 2018  
<http://www.alab.ie/media/alab/content/boarddeterminations/2018/ReportAssessmentWildBirds160418.pdf> ;
2. Section 47 Notice dated 27 February 2018 from ALAB to Marine Institute  
<http://www.alab.ie/media/alab/content/boarddeterminations/2018/Section47NoticeMarineInstitute160418.pdf> ; and
3. Marine Institute response dated 28 March 2018 to Section 47 Notice  
<http://www.alab.ie/media/alab/content/boarddeterminations/2018/ResponseMarineInstituteSec47Notice160418.pdf>



Arising from the foregoing documents ALAB is of the opinion that further information is necessary for the purposes of enabling the Board determine these Appeals.

Pursuant to Section 47(1) (a) of the Fisheries (Amendment) Act, 1997, 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 determine the Appeal it may serve a notice on a party.

In accordance with the provisions of section 47(1) (a) of the Act, the Board requires the following information from NPWS:

ALAB notes that NPWS is the responsible authority for *Natura* site designation and species protection and is thus a Competent Authority in respect of marine conservation matters. To enable the Board finalise its consideration of whether the Appropriate Assessment screening undertaken, insofar as it relates to birds, is adequate, the Board requires NPWS to address the following points:

1. The independent bird assessment dated 13 February 2018 undertaken by Dr Gittings has concluded that Gweedore Bay constitutes a potentially important foraging area for the Common Gull SCIs of the West Donegal Islands SPA and Inishbofin, Inishdooley and Inishbeg SPAs and for the Lesser Black-backed Gull breeding colony in the Inishbofin, Inishdooley and Inishbeg SPA and that it is therefore not possible to rule out, beyond reasonable scientific doubt, that the licenced oyster farming activity will cause significant negative impacts on the conservation status of these species. Please provide your observations on this assessment, giving details as to the reasons for your conclusions.

2. It also concludes that the EIA and AA screening has been inadequate. The implication from this is that a Stage 2 Appropriate Assessment of the potential impact on the Common Gull SCIs of the West Donegal Islands SPA and Inishbofin, Inishdooley and Inishbeg SPAs and for the Lesser Black-backed Gull breeding colony in the Inishbofin, Inishdooley and Inishbeg SPA may be required, perhaps requiring targeted survey work to establish the importance of the upper intertidal area of inner Gweedore Bay to these species. Please provide your observations on this assessment, giving details as to the reasons for your conclusions.

3. It is noted that the response of the Marine Institute to ALAB's section 47 request refers to the guidance area of 15km cited in "*Appropriate Assessment of Plans and Projects in Ireland – Guidance from Planning Authorities*" (2009) . The ALAB Board notes that this Guidance, concerning the determination of sites which should be included in the examination of sites that may be affected, states that the approach to screening should take account of the following:

*"Natura 2000 sites that are more than 15km from the plan or project area depending on the likely impacts of the plan or project, and the sensitivities of the ecological receptors, bearing in mind the precautionary principle. In the case of sites with water dependent habitats or species, and a plan or project that could affect water quality or quantity, for example, it may be necessary to consider the full extent of the upstream and/or downstream catchment".*

Please indicate whether, for this project, and taking a precautionary approach, NPWS considers that the SCIs identified above, given the project envisaged, may have direct, indirect or cumulative effects on the SCIs and provide details as to the reasons for your conclusions.

4. If, having considered and assessed the foregoing, the opinion of NPWS is that the Appropriate Assessment Screening conducted was inadequate, please outline whether any mitigation measures could be implemented which would obviate the requirement to carry out a Stage 2 Appropriate

Assessment such as, for example, leaving a particular part or parts of the intertidal area of the Upper Gweedore Bay free of licenced oyster farming activity and thus available for foraging, thereby countering any potential negative impacts on the conservation status of these species. If such measures could be implemented, please detail the relevant measures.

In accordance with section 47 (1) (a) of the Act, the Board requires this information **within 28 days** of receipt of this letter.

Please note that if the documents, particulars or other information specified above is 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 subsection (1)(a) shall be guilty of an offence.

We await hearing from you.

Yours sincerely

*Mary O'Hara*

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Mary O'Hara  
Secretary to the Board



## OHara, Mary

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**From:** Manager Dau <Manager.Dau@chg.gov.ie>  
**Sent:** 08 October 2018 12:20  
**To:** Ohara, Mary (Alab)  
**Subject:** RE: Section 47 request to NPWS - Braade Strand Co Donegal

Hi Mary,

I acknowledge the receipt of the appeal.

Kind regards,

**Connor Rooney**  
Clerical Officer

**An Roinn Cultúir, Oidhreachta agus Gaeltachta**  
Department of Culture, Heritage and the Gaeltacht

**Aonad na nIarratas ar Fhorbairt**  
Development Applications Unit

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**From:** Ohara, Mary (Alab) [<mailto:Mary.Ohara@alab.ie>]  
**Sent:** 05 October 2018 10:11  
**To:** Manager Dau  
**Subject:** Section 47 request to NPWS - Braade Strand Co Donegal

To whom it concerns

I have attached an amended letter due to the original letter not being received by you.

Regards

Mary

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**From:** Ohara, Mary (Alab)  
**Sent:** 02 October 2018 14:12  
**To:** 'manager.dau@chg.gov.ie'  
**Subject:** Section 47 request to NPWS - Braade Strand Co Donegal

To whom it concerns

Please see attached letter which issued on 3 September 2018 for your attention. I seem to have had the incorrect email address.

If you have any queries please contact me.



Regards

Mary

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**From:** Ohara, Mary (Alab)  
**Sent:** 03 September 2018 12:06  
**To:** 'manager.dau@ahg.gov.ie'  
**Subject:** Section 47 request to NPWS - Braade Strand Co Donegal

To whom it concerns

Please see attached letter for your attention.

If you have any queries please contact me.

Regards

Mary

**Mary O'Hara**  
*Secretary*

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

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

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Tá an t-eolas sa ríomhphost seo faoi rún, chomh maith le gach comhad atá ceangailte leis, agus i gcomhair úsáid an duine nó an chórais a bhfuil sé dírithe air amháin. Má fhaigheann tú an ríomhphost seo trí bhotún, cuir scéal chugainn ag [webmaster@ahg.gov.ie](mailto:webmaster@ahg.gov.ie). Tá an ríomhphost seo arna sheiceáil ag scanóir víreas agus dealramh air go bhfuil sé glan.

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Is faoi rún agus chun úsáide an té nó an aonán atá luaite leis, a sheoltar an ríomhphost seo agus aon comhad atá nasctha leis. Má bhfuair tú an ríomhphost seo trí earráid, déan teagmháil le bhainisteoir an chórais.

Deimhnítear leis an bhfo-nóta seo freisin go bhfuil an teachtaireacht ríomhphoist seo scuabtha le bogearraí frithvíorais chun víorais ríomhaire a aimsiú.