

605



AQUACULTURE - LICENSING UNDER
FISHERIES (AMENDMENT) ACT 1997 as amended
and
FORESHORE ACT 1933 as amended

*Application Form for an Aquaculture and Foreshore Licence for
a single specific site.*

*If a Licence is required for more than one site a separate
application form must be completed for each site.*

Important Note

Section 4 of the Fisheries and Foreshore (Amendment) Act, 1998 (No. 54 of 1998) prohibits any person making an application for an Aquaculture Licence from commencing aquaculture operations until duly licensed under the Fisheries (Amendment) Act, 1997 (No. 23 of 1997), and provides that a breach of that prohibition will cause the application to fail.

A copy of an Environmental Impact Statement and Natura Impact Statement should be enclosed, if required, with all new, review and renewal applications. See Guidance Notes Section 3.

Aquaculture & Foreshore Management Division,
Department of Agriculture, Food and the Marine,
National Seafood Centre,
Clonakilty, Co. Cork
Telephone: (023) 8859500
Fax: (023) 8821782

Revised 2014

AQUACULTURE AND FORESHORE LICENCE APPLICATION FORM, for purposes of FISHERIES (AMENDMENT) ACT, 1997 and FORESHORE ACT, 1933

NB: The accompanying Guidance Notes should be read before completing this form.

Note: Details provided in Parts 1 and 2 will be made available for public inspection. Details provided in Parts 3 and 4 and any other information supplied will not be released except as may be required by law, including the Freedom of Information Act 1997 as amended.

USE BLOCK CAPITALS IN BLACK INK PLEASE

For Office Use	
Application Ref. No.	761405
Date of Receipt (Dept. Stamp)	10 JUL 2014

(Stamp: AQUACULTURE & FISHERIES DIVISION, DEPT. OF AGRICULTURE, FISHERIES & FOOD)

Type of Applicant (tick one)	
Sole Trader	<input checked="" type="checkbox"/>
Partnership	<input type="checkbox"/>
Company	<input type="checkbox"/>
Co-Operative	<input type="checkbox"/>
Other	Please specify- <input type="checkbox"/>

PART 1: PRELIMINARY DETAILS

Applicant's Name(s):	
1.	John J Reilly
Address:	Cromane Lower Killorglin Co. Kerry
2.	
Address:	
3.	
Address:	
4.	
Address:	

PART 1: PRELIMINARY DETAILS

Contact in case of enquiries (if different from above)	
Contact Name	
Organisation Name (if applicable)	
Address	

TYPE OF APPLICATION – please indicate relevant type of application	
This Application Form is valid for each type of application - <i>See Guidance Note 3.1</i>	
(i) Aquaculture Licence	<input checked="" type="checkbox"/>
(ii) Trial Licence	<input type="checkbox"/>
(iii) Foreshore Licence, if Marine Based	<input type="checkbox"/>
(iv) Review of Aquaculture Licence	<input type="checkbox"/>
(v) Renewal of Aquaculture Licence	<input type="checkbox"/>

TYPE OF AQUACULTURE

See Guidance Note 3.2

Indicate the relevant type of application with a tick.

(i) MARINE-BASED

- | | | |
|--|-------------------------------------|--------------------------|
| Finfish | <input type="checkbox"/> | Go to Parts 2.1 and 2.1A |
| Shellfish <i>Subtidal</i> | <input type="checkbox"/> | Go to Parts 2.2 and 2.2A |
| <i>Intertidal</i> | <input checked="" type="checkbox"/> | Go to Parts 2.2 and 2.2A |
| Seaweed/Aquatic Plants/Aquatic Fish Food | <input type="checkbox"/> | Go to Parts 2.3 and 2.3A |

(ii) LAND-BASED

- | | | | | |
|----------------|--------------------------|-------------------|--------------------------|--------------------------|
| Finfish | <input type="checkbox"/> | Shellfish | <input type="checkbox"/> | Go to Parts 2.4 and 2.4A |
| Aquatic Plants | <input type="checkbox"/> | Aquatic Fish Food | <input type="checkbox"/> | Go to Parts 2.4 and 2.4A |

- (iii) TRIAL LICENCE** Go to appropriate Parts as above and to Part 2.5.

2.2 MARINE-BASED SHELLFISH AQUACULTURE

When filling out this section refer also to 2.2A and Guidance Note 3.3 for information on Conditions and Documents required with this application type

Proposed Site Location

- (i) Bay: Cstlemaine Harbour
- (ii) County: Kerry
- (iii) OS Map No: KY46 & KY56
- (iv) Co-ordinates of Site: (please specify coordinate reference system used e.g. Irish Grid (IG) or Irish Transverse Mercator (ITM) or Latitude/Longitude [in which case specify whether ETRS89 or WG84 etc.]
(72700, 98550) (72895, 98550) (72896, 98294)
(72696, 98294) (72696, 98335) (72602, 98317)
(72554, 98245) Irish Grid
- (v) Size of Site (hectares): 6.30

(vi) Species (common and scientific name) and whether native or non-native species: (see Guidance Notes 3.3.1)

Crassostrea gigas, c.gigas pacific oysters, non-native

(vii) Whether production will be sub-tidal or inter-tidal?
intertidal

(viii) Please supply details of (a) source of seed e.g. wild hatchery and location and (b) means of collection and introduction to culture.

(a) france naissan seed (b) shellfish growers of Ireland collect in France and deliver to Ireland

NB Importation of seed into the State or movement of seed within the State requires notification to the Marine Institute as per the Fish Health Authorisation Regulations - See Guidance Notes Section 6

(ix) Method of culture (rope, trestles - intensive; bottom - extensive; other)
trestles - intensive

(x) Proposed number of lines/ropes/trestles as per site layout drawing
As per site layout drawing & depending on ground conditions

(xi) Proposed Production Tonnage:

Year 1	20	Year 2	20	Year 3	20	Year 4	20	Year 5	20
--------	----	--------	----	--------	----	--------	----	--------	----

(xii) (a) Please outline the reasons for site selection:

solid level ground for supporting trestles and working on

(b) If using trestles please outline the physical characteristics of the site which make it suitable for using trestles

solid level ground

(xiii) Is it intended that the product is for direct human consumption or half grown? Please specify

direct human consumption

(xiv) How will the visual impact issues of the flotation devices for the proposed application be addressed?

No flotation devices being used

(xv) Is the site located in Designated Shellfish Waters Area? (Refer to Guidance Note 3.3.2)

Yes

No

If yes give details.

Cstlemaine Harbour

If no outline the reasons why you believe the site suitable for the proposed aquaculture, notwithstanding its location outside Designated Shellfish Waters Area?

(xvi) Has the area been classified under Food Safety Legislation? (For Bivalve Molluscs) What is the current classification of the area for the proposed species applied for?

Yes - Class B

(xvii) Is the site located in/adjacent to a sensitive area e.g. SPA (Special Protection Area) or SAC (Special Area of Conservation) i.e. a Natura 2000 site? (Refer to Guidance Note 3.3.1- Natura 2000 sites)

Yes

(xviii) Are there known sources of pollution in the vicinity e.g. sewage outfall? Yes / No

If yes please give full details.

(xix) Methods used to harvest the shellfish and details of any subsequent processing of shellfish

Transported by boat to shore and transported to France

(xx) Describe any proposed purification facilities to be used:

None

(xxi) What are the main predators of the species to be cultivated?

Birds

(xxii) Describe the method(s) which will be used to control them

None

See Part 2.2A for details of documentation to be included with this application type

**2.2A DOCUMENTATION REQUIRED FOR MARINE-BASED SHELLFISH
AQUACULTURE**

(to be included separately with a Licence Application for a new site or for a renewal or review of an existing Licence)

1. **An appropriate Ordnance Survey Map (recommendation is a map to the Scale of 1:10,000/1:10,560, i.e. equivalent to a six inch map). Note: The proposed access route to the site from the public road across tidal foreshore must also be shown on the map.**
2. **Scale drawing of the structures to be used and the layout of the farm.**
The proposed site drawings must illustrate all site structures above and below the water including mooring blocks. (recommended scales normally 1:100 for structures and 1:200 for layout) (See Guidance Note 3.3.2)
3. **The prescribed application fee (See Guidance Note Section 4)**
4. **If the applicant is a limited Company within the meaning of the Companies Act 1963, as amended, the Certificate of Incorporation and Memorandum and Articles of Association**
5. **If the applicant is a Co-operative, the Certificate of Incorporation and Rules of the Co-operative Society**
6. **Environmental Impact Statement (if required) in certain cases- See Guidance Notes Section 3.3.1**
7. **Alien Species dossier (where required) – See Guidance Notes Section 3.3.1**

NOW COMPLETE PARTS 2.6, 3, 4 AND 5 PLEASE

**2.6 Employment, Qualifications, Experience, etc
TO BE FILLED IN BY ALL AQUACULTURE APPLICANTS**

(i) Please provide details of experience/qualifications of the applicant and any key personnel which are relevant to the aquaculture now proposed:

14 years experience growing oysters

Certificate of proficiency in personal survival techniques on board a ship

Radio Operators short range

(ii) If a new application please provide details of projected employment creation during first four years of the proposed aquaculture project:

(iii) In the case of a renewal please provide current and future details:

Two full time employed each year

One/two part time employed increasing as demand requires

FULLTIME JOBS

Year 1:	2	Year 2:	2	Year 3:	2	Year 4:	2
---------	---	---------	---	---------	---	---------	---

PART TIME JOBS

Year 1:	1	Year 2:	2	Year 3:	3	Year 4:	4
---------	---	---------	---	---------	---	---------	---

PART 5: APPLICATION DOCUMENTATION

The following documents are enclosed with this application:

NB: Refer to Guidance Note Section 3.3 – Guidance on Application Documentation

No.	DOCUMENTATION	YES	NO	N/A
1	An appropriate Ordnance Survey Map (recommendation is a map to the scale of 1:10,000/10:10,560, i.e., equivalent to a six inch map)	✓		
2	Scale drawing of the structures to be used and the layout of the farm (recommended scales normally 1:100 for structures and 1:200 for layout)	✓		
3	The prescribed application fee	✓		
4	Environmental Impact Statement (EIS), if required			✓
4a	Natura Impact Statement (NIS), if required			✓
5	Water Quality Analysis Report, if appropriate			✓
6	Decision of Planning Authority under the Planning Acts, if required			✓
7	Copy of Licence under Section 4 of the Local Government (Water Pollution) Act, 1977 – Effluent Discharge, if required			✓
8	If the applicant is a limited Company within the meaning of the Companies Act 1963, as amended, a copy of the Certificate of Incorporation and Memorandum and Articles of Association.			✓
9	If the applicant is a Co-operative, a copy of the Certificate of Incorporation and Rules of the Co-operative Society			✓
10	Integrated Pest Management Plan, if required			✓
11	Alien Species documentation, if required.			✓

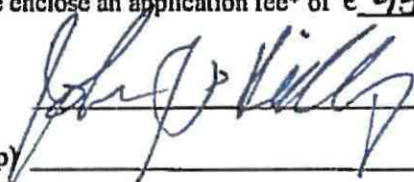
PART 5: DECLARATION AND SIGNING

NB: Refer to Guidance Note Section 3.5 and Section 4 - Guidance on Declaration and Signing and Annual Aquaculture and Foreshore Licence Fees

If this is a renewal/review have you met all licence conditions of the existing aquaculture licence? If applicable, explain why you have not complied with all conditions:

I/We hereby declare the information provided in Parts 1, 2, 3 and 4 above to be true to the best of my/our knowledge. I/We enclose an application fee* of € 95.23 with this application.

Signature(s) of Applicant(s):
(Please state capacity of persons signing on behalf of a Company/Co-op)



Date: 03/04/2014

NB All persons named on this licence application must sign and date this application form. Only the existing licence holder(s) can apply for the renewal/review of an Aquaculture Licence.

*Preferred method of payment is by cheque or bank draft. The fee should be made payable to the Department of Agriculture, Food and the Marine.

Refer to Guidance Note Section 4 - Guidance on Aquaculture and Foreshore Licence Fees

The application form should be forwarded, with the required documents and application fee, to:

**Aquaculture Licensing
Aquaculture & Foreshore Management Division
Department of Agriculture, Food and the Marine
National Seafood Centre
Clonakilty
Co. Cork**

1 NO. SITE AT CASTLEMAINE HARBOUR CO.KERRY

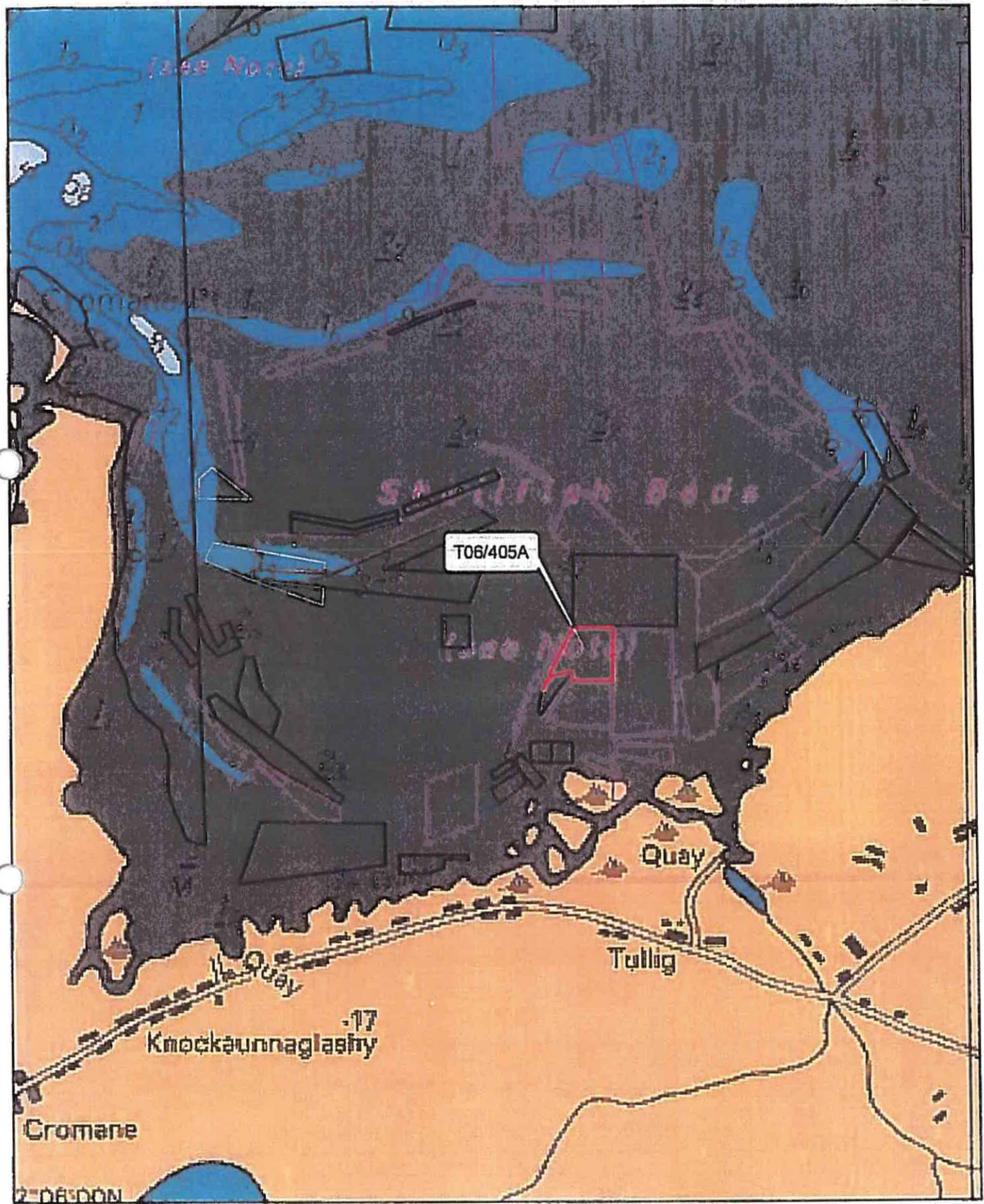
Co-ordinates & Area

Site T06/405A (6.3 Ha)

The area seaward of the high water mark and enclosed by a line drawn from Irish National Grid Reference point

072700, 098550 to Irish National Grid Reference point
072895, 098550 to Irish National Grid Reference point
072896, 098294 to Irish National Grid Reference point
072696, 098294 to Irish National Grid Reference point
072699, 098335 to Irish National Grid Reference point
072603, 098318 to Irish National Grid Reference point
072554, 098245 to the first mentioned point.





Aqua Culture Sites
 <all other values>

Site_Status

[Red outline]	Application
[Grey outline]	Lapsed
[Black outline]	Licensed
[White outline]	Refused
[Dashed outline]	Renewal
[Dotted outline]	Revoked
[Thin black outline]	Surrendered

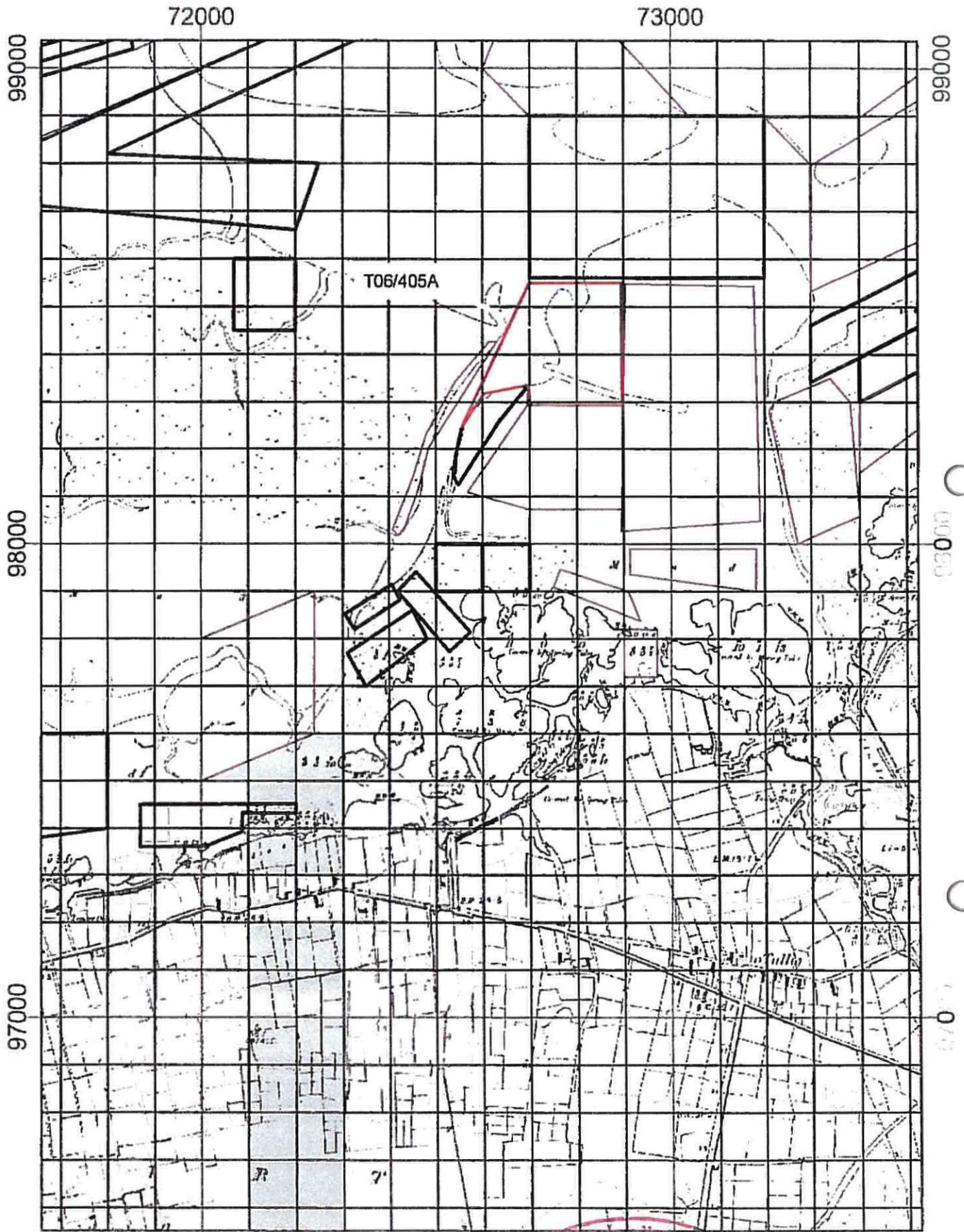
1:24,000

Part of Admiralty Chart No 2789-1
 Not to be used for Navigation

Sites highlighted in red denotes Application



Department of
**Agriculture,
 Food and the Marine**
 Talmhaíochta,
 Bia agus Mara



1:10,560



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Department of
**Agriculture,
 Food and the Marine**
 Talmhaíochta,
 Bia agus Mara

Sites highlighted in red represent...

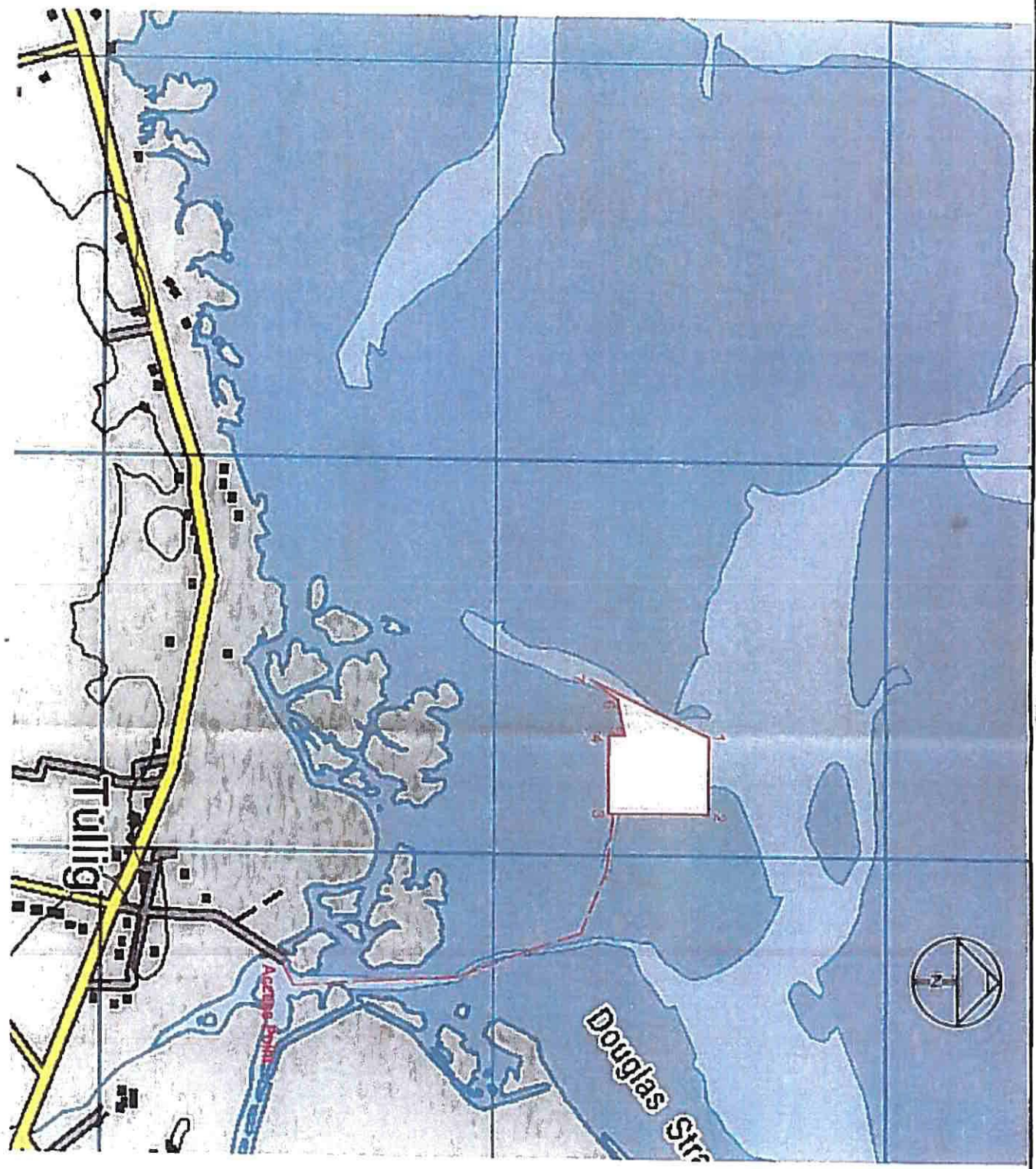
761405

GENERAL NOTES

All dimensions are in millimetres, unless noted otherwise.
 Site Area = 6.30 hectares

Site Co-Ordinates in Irish Grid

	Eastng	Northng
1.	72700	98550
2.	72895	98550
3.	72896	98294
4.	72896	98294
5.	72696	98335
6.	72602	98317
7.	72554	98245



Rev	Date	Description	Drawn By	App'd
A	04.08.2014	Issued for information		

Project
 Aquaculture Licence Application -
 Castlemaine Harbour

Client
 John Joe Reilly

Drawing Title
 Site Location

HELEN GRIFFIN
 087 1275500
 hgriffin@rwc.ie

Civil & Structural Consulting Engineer
 16 Hunters Wood
 Tralee
 Co. Kerry

Scale	1:10,000	Proj. No.	0510-1001-A
Drawn	DVY 10/08/2014		
Checked	HG 04/08/2014		
Approved	HG 04/08/2014		

GENERAL NOTES

All dimensions are in millimetres, unless noted otherwise.
 Site Area = 6.30 hectares

Site Co-Ordinates in Irish Grid	
Easting	Northing
1. 72700	99550
2. 72895	99550
3. 72895	99294
4. 72696	99294
5. 72695	99335
6. 72602	98317
7. 72534	98245

Rev	Date	Description	BY	APP
A	04.08.2014	Issued for information	DVY	HIG

Project
 Aquaculture Licence Application -
 Castlemaine Harbour

Client
 John Joe Reilly

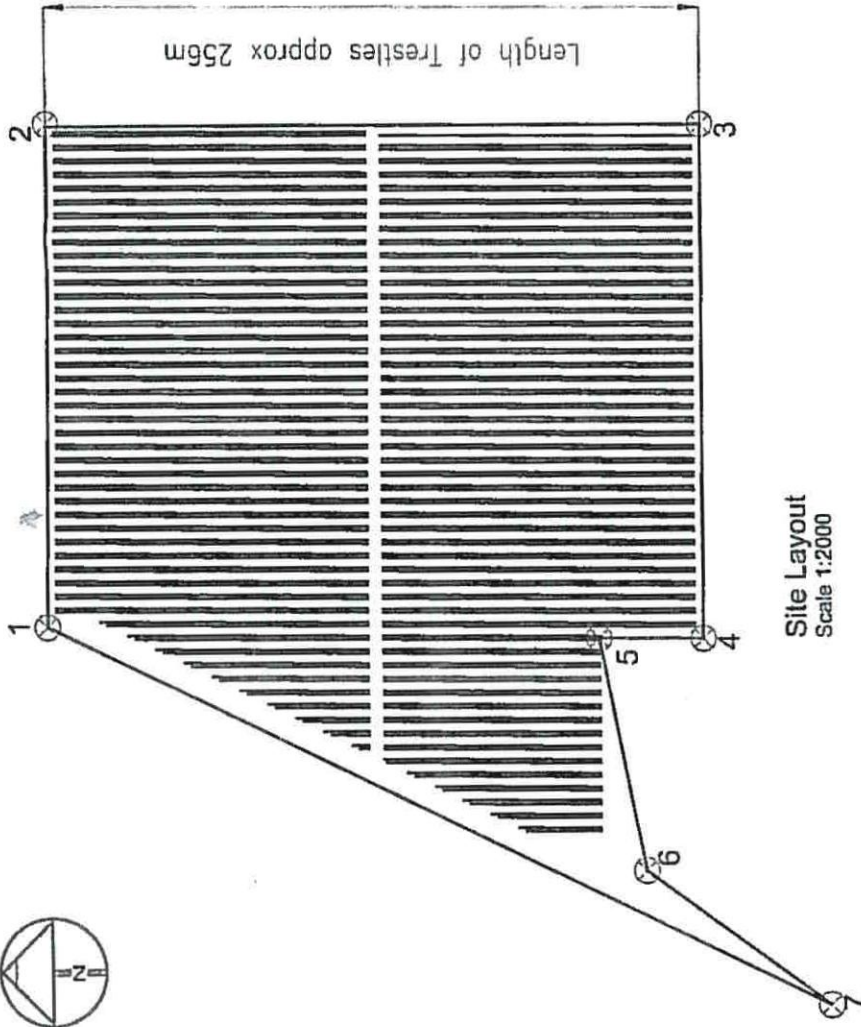
Drawing Title
 Site Layout

HELEN GRIFFIN
 687 1275600
 hgriffin@jywe.ie

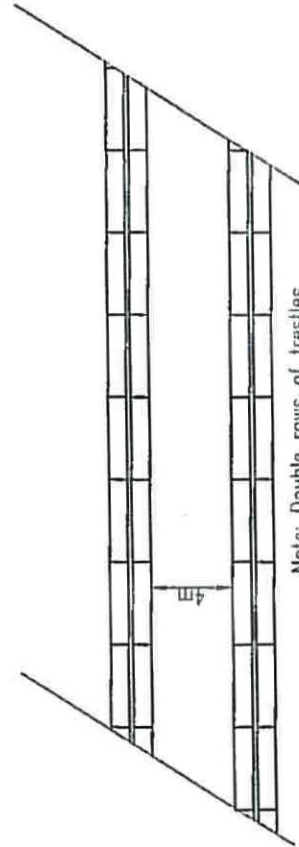
Civil & Structural Consulting Engineer
 16 Hunters Wood,
 Tralee
 Co. Kerry

Scale	As Shown	Drawn	Checked	Approved	Date
		DVY	HIG		04.05.2014
					04.05.2014
					04.08.2014

Dwg. No.
 0510 -1002 - A



Site Layout
 Scale 1:2000



Note: Double rows of trestles

Typical Trestle Layout
 Scale 1:250



Cromane Lower
Killorglin,
Co. Kerry.

Tob/405A

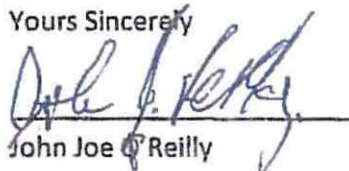
Oisin O'Kelly
Aquaculture and Foreshore Management Division
Department of Agriculture, Food and the Marine
Clogheen,
Clonakilty
CO. Cork.

Dear Oisin

I wish to make the following points in relation to your letter of the 16/07/18 about my Aquaculture Application.

1. I note that objections received have generally targeted all applications indiscriminately, on broad environmental grounds. The need for applicants to be able to earn a sustainable livelihood is unfortunately generally overlooked.
2. The Marine Institute letter of the 09/07/18 in relation to my application states on the one hand that "Significant impacts on the general environment are not considered likely", yet goes on to indicate that, based on the Department's draft AA conclusion, Marine Institute is of the view that a license should not be granted. This is to say the least inconsistent and circular thinking.
3. As indicated in our letter sent in June to the Minister, the Department must in our view take a balanced approach to the progressing of such applications, rather than a blanket refusal based on insufficient evidence (as acknowledged in the Department's own draft conclusion). We have suggested an alternative, practical approach, and await a substantive response from the Minister/Department.

Yours Sincerely


John Joe O'Reilly

01/08/2018

Submission AGR 00664-18: Recommendation to Refuse Aquaculture and Foreshore Licences for one site T06/405A

TO: Minister
STATUS: Completed
PURPOSE: For Decision

AUTHOR: OKelly, Oisin
OWNER: OKelly, Oisin
REVIEWERS: OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Ball, Siobhan
Smith, Ann

DIVISION: Coastal Zone Management
DECISION BY:

Final comment

Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out.

Action required

Ministerial determination on Aquaculture/Foreshore Licensing Application (T06/405A).

Executive summary

The Minister's determination is requested in relation to an application for an Aquaculture Licence from Mr. John Reilly, Cromane Lower, Killorglin, Co. Kerry.

The application is for the cultivation of Pacific Oysters using bags and trestles at Site T06/405A (6.3 ha), on the foreshore, in Castlemaine Harbour, Co. Kerry.

A submission in respect of the application for the Foreshore Licence is also set out for the Minister's consideration.

It is recommended that the Minister determines that the application for Aquaculture and Foreshore Licences **be refused** for the reasons set out in the 'Detailed Information' section below (*essentially, the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. The proposed increase in the spatial area arising from the new licence applications would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New oyster licence applications cannot be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Natura 2000 sites*).

Detailed information

Recommendation to Refuse an Aquaculture Licence application (T06/405A)

DECISION SOUGHT

The Minister's determination is requested please, in relation to an application for an Aquaculture Licence from Mr. John Reilly, Cromane Lower, Killorglin, Co. Kerry, for a site in Castlemaine Harbour, Co. Kerry.

Also attached is a submission in respect of the accompanying Foreshore Licence for the Minister's consideration.

BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Aquaculture Submission), and the submission underneath (Foreshore Submission), which refer to the same site.

The Aquaculture Licence defines the activity that is permitted on a particular site and the Foreshore Licence allows for the occupation of that particular area of foreshore. The continuing validity of each licence is contingent on the other licence remaining in force.

APPLICATION FOR AN AQUACULTURE LICENCE

An application for an Aquaculture Licence has been received from the applicant referred to above (in conjunction with an application for a Foreshore Licence), for the cultivation of Pacific Oysters using bags and trestles, in relation to a site on the foreshore in Castlemaine Harbour, Co. Kerry (ref. T06/405A - 6.3 ha).

LEGISLATION

Section 7 of the Fisheries (Amendment) Act 1997 provides that the Licensing Authority (i.e. Minister, delegated officer or, on appeal, the Aquaculture Licence Appeals Board) may, if satisfied that it is in the public interest to do so, license a person to engage in aquaculture.

Article 6 (3) of the Habitats Directive provides that *"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon ... shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives ... the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned ..."*

CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, statutory consultees, and it was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

Technical Consultation

Marine Engineering Division (MED):

The site is located near Tullig Quay on the southern shore of Castlemaine Harbour. It is approximately 1 km outside the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry and within Castlemaine Harbour SAC and SPA.

The proposed site is to be situated inside the Single Unified Marking Scheme (SUMS) for the harbour.

The site is not in an area that is likely to be highly visible to many people. Population density in the area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon.

MED does not recommend licensing this site as the Department's Conclusion Statement, which has been informed by the Appropriate Assessments, has concluded that this new application should not be licensed.

Marine Survey Office (MSO):

This office has no objection to this application from a navigational viewpoint provided the following conditions are complied with:

The south west salient should be removed from the site boundary and the gross rhomboid shape should constitute the site. This is for ease of marking.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following marks: four posts, projecting two meters above sea level at highest astronomical tide, and with a topmark of a diagonal St. Andrews cross, painted yellow, of the appropriate standard of construction, and these should be erected at the four extreme points of the development.

The developer should consult with the Aquaculture Initiative, Quality and Environmental Officers (local CLAMS) for additional advice on the marking requirements and standards.

No excess trestles should be stored on the site. Unused equipment should be removed from the site and stored at a suitable location above the high water mark. The responsibility for safely marking the site lies entirely with the developer.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T06/405 for the cultivation of Pacific oysters would have no negative impact on local sea fishing operations.

Statutory Consultation

Regulation 10 of the Aquaculture (Licence Application) Regulations, 1998, requires certain statutory bodies to be notified of an Aquaculture Licence application.

Comments were received within the statutory consultation period from the following Statutory Bodies:

An Taisce:

An Taisce noted: "The Harbour is of major ecological importance and contains a range of coastal habitats of excellent quality, including many that are listed on Annex I of the E.U. Habitats Directive. It is a very important site for passage and wintering waterfowl. There are a number of birds of international and national importance in this site."

On reviewing the documentation provided with the application, An Taisce submit, in agreement with the AA report conclusions, that the aquaculture licence application (Ref: T06/405A) should not proceed.

Marine Institute:

Site T06/405A is located within Castlemaine Harbour SAC (Site Code 000343) and the Castlemaine Harbour SPA (Site Code 004029). We note the findings of the Appropriate Assessment reports, and the Department's Draft Appropriate Assessment Conclusion Statement, in regard to the impacts of the proposed aquaculture activity on the Conservation Objectives of the Castlemaine Harbour SAC and Castlemaine Harbour SPA. On the basis of the Appropriate Assessment Conclusion Statement the Marine Institute is of the view that an aquaculture licence at this site should not be granted.

Commissioner of Irish Lights:

CIL has no objection to the application. In the event of any licence being issued CIL has listed conditions for inclusion.

Irish Water

Irish Water noted application T06/405A is not wholly within designated shellfish waters.

Irish Water also stated that the Department may wish to consider the proximity of wastewater discharges to the proposed aquaculture development as this application is within 10 km of a primary discharge point. However, further consideration of this matter is not required as this application is recommended for refusal.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in "The Kerryman" on June 13th, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of four weeks from the date of publication of the notice in the newspaper.

There were eight submissions received during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

Five submissions consisted of objections to all oyster farming in Castlemaine Harbour on the grounds that the local environment and habitat would be damaged; the natural beauty of the area should be preserved for present and future generations; and aquaculture activities would have a detrimental effect on tourism. A concern about the impact of landowners in the area and their livestock was also referred to in one submission.

An existing licensee in Castlemaine Harbour provided a submission objecting to new applications on the basis of potential damage to the ecosystem in Castlemaine Harbour; the need to preserve wildlife and bird species; current overfishing in the harbour; lack of nutrients in the water to accommodate all potential new licensed sites; and the overall quantity and scale of the new licence applications.

A submission received was signed by six licence applicants requesting that the Department consider their livelihoods in making a determination, and the potential boost to employment in the area arising from the granting of licences. They requested that applications be processed in a phased manner with the older applications considered in advance of, and separately from, subsequent applications.

A submission was received from a group named "Save This Beach" which objected to aquaculture licensing in Castlemaine Harbour. It objected on the basis that (1) it believes there was a lack of compliance with the Aarhus Convention for public participation; (2) it believes the Department waived the EIA screening process; (3) it has concerns for the adverse impact on the Environment in the event of the licences being granted; (4) it believes licensing of aquaculture would contravene the Kerry County

Council Development Plan and (5) it believes aquaculture licensing in Castlemaine Harbour is economically unviable.

In relation to the latter submission, Point 1 is not relevant as the Department did engage in the public consultation process as required under legislation. Point 2 is not relevant as the applicant has applied for a licence to engage in 'extensive' aquaculture, i.e. where there is no external supply of feed or medicine, and this type of culture depends entirely on natural processes for production and supply of feed. Accordingly, the Department does not apply the EIA screening process in the case of 'extensive' aquaculture. The other issues raised (points 3, 4 and 5) are moot points as it is recommended that this application for an aquaculture licence is refused.

Applicant response to observations made during the consultation process

The applicant made three major points.

First, he feels that the objections targeted all applications indiscriminately on broad environmental grounds and the need for applicants to be able to earn a sustainable livelihood is generally overlooked.

He notes the Marine Institute letter of 9th July 2018, which, in relation to his application states "*Significant impacts on the general environment are not considered likely*" However it is subsequently indicated that, based on the Department's draft AA conclusion, the Marine Institute is of the view that a licence should not be granted. The applicant states this is inconsistent and circular thinking.

This applicant was one of the six applicants that signed a submission made under public consultation in relation to all applications. In his view the Department must take a balanced approach to the progressing of such applications, rather than a blanket refusal based on insufficient evidence.

CRITERIA IN MAKING LICENSING DECISIONS

The Licensing Authority, in considering an application, is required by statute to take account, as appropriate, of the following points and to also be satisfied that it is in the public interest to license a person to engage in aquaculture:

a) the suitability of the place or waters

The findings of the Appropriate Assessment of aquaculture activities in Castlemaine Harbour found that from a Natura 2000 perspective the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. The proposed increase in the spatial area arising from the new licence applications, including T06/405A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New oyster licence applications, including T06/405A, cannot be authorised as it is not possible to measure the magnitude of the impact of individual licences which could adversely affect the integrity of the Natura 2000 sites.

b) other beneficial uses of the waters concerned

Public access to recreational and other activities can be accommodated by this project.

c) the particular statutory status of the waters

(i) Natura 2000

The sites are located within the Castlemaine Harbour SAC (Site Code: 000343) and the Castlemaine Harbour SPA (Site Code: 004029). An Article 6 Appropriate Assessment has been carried out in relation to aquaculture activities in this SAC and SPA. The Appropriate Assessment (AA) found that:

Licensing of the new sites, including T06/405A, for aquaculture in Castlemaine Harbour may result in the following adverse effects:

- *interrupting the progress towards achieving the Conservation Objectives of the SPA for those species in long term population decline;*
- *disrupt those factors that help to maintain the favourable conditions of the SPA (i.e. spatial extent of functional habitat);*
- *interfere with the distribution and density of SCIs that are the indicators of the favourable condition of the SPA (i.e. caused by displacement);*
- *cause changes to the vital defining aspects (i.e. undisturbed foraging areas and an absence of obstructions to sight lines) that determine how the site functions as a supporting habitat for water birds;*
- *reduce the area of key habitats;*
- *result in disturbance that could affect population size or density or the balance between key species;*
- *result in habitat fragmentation;*
- *noise/visual disturbance for all intertidal SCIs and Cormorant; and*
- *the displacement for all intertidal foraging SCIs except Greenshank and Redshank.*

The access routes used in intertidal areas, by virtue of persistent compaction of the sedimentary habitats, are considered disturbing. The Licensing Authority's Conclusion Statement outlines how it is proposed to determine applications for aquaculture, including T06/405A, in compliance with the EU Birds and Habitats Directives.

(ii) Shellfish Waters

The site is approximately 1 km outside Shellfish Designated Waters.

d) the likely effects on the economy of the area

Aquaculture has the potential to provide a range of benefits to the local community.

Fáilte Ireland did not provide observations on the potential impacts on tourism however concerns have been raised by members of the public in their submissions, regarding the potential negative effect on local businesses and tourism caused by the visual impact of aquaculture infrastructure.

e) the likely ecological effects on wild fisheries, natural habitats, flora and fauna

No significant issues arose regarding wild fisheries.

The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed at (c) (i) above.

f) the effect on the environment generally

The potential ecological impacts of aquaculture activities on natural habitats, flora and fauna are addressed at (c) (i) above.

The site is not in an area that is likely to be highly visible to many people.

Significant impacts on the general environment are not considered likely.

RECOMMENDATION

It is recommended that the Minister: **refuses the granting** of the Aquaculture Licence sought.

The reasons for the recommendation are:

The findings of the Appropriate Assessment of aquaculture in the Castlemaine Harbour Natura sites were examined by the Department and its scientific/technical advisors. It was concluded that the risk of significant disturbance from the proposed aquaculture activities cannot be discounted. In addition, the proposed increase in the spatial area arising from new licence applications, including T06/405A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. Approval of this aquaculture licence is not recommended as it would be in contravention of the EU Birds and Habitats Directives.

REASONS FOR DECISION

The Minister for Agriculture, Food and the Marine is required to give public notice of both the licensing determination and the reasons for it. To accommodate this it is proposed to publish the following determination on the Department's website in relation to this site, subject to the Minister approving the above recommendation:

"Determination of Aquaculture/Foreshore Licensing application – T06/405A

Mr. John Reilly has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles at a site, T06/405A (6.3 ha), on the foreshore in Castlemaine Harbour, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that it is **not in the public interest** to grant Aquaculture/Foreshore Licences for this site. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to **refuse** the licences sought: -

a) The site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and Special Protection Area (SPA) Natura 2000 sites. A Natura Appropriate Assessment (AA) was carried out in 2011 in relation to existing aquaculture activity and new applications on hand at that time in the SAC and SPA. Licensing determinations were made in conformity with 'Natura' requirements. Recently, in 2018, a further Article 6 assessment has been carried out in relation to aquaculture applications received subsequent to the completion of the original AA (this includes this site). An Appropriate Assessment Conclusion Statement has been

produced in relation to this recent AA (available on the Department's website). This document outlines how the proposed aquaculture activities in Castlemaine Harbour SAC and SPA, including this site, are being managed so as not to significantly or adversely affect the integrity of the SAC and SPA.

b) Taking account of the recommendations from the Appropriate Assessment process, the proposed aquaculture activities are not consistent with the Conservation Objectives for the SPA and could result in significant disturbances to key bird species and reductions in their density and functional foraging habitat area.

c) The potential increase in the spatial area arising from new aquaculture activities (including this site) could cause seston depletion and impact negatively on the carrying capacity of Castlemaine Harbour.

d) The potential risks from licensing the proposed aquaculture activities, including this site, on the integrity of the Natura 2000 sites cannot be discounted."

Recommendation to refuse a Foreshore Licence Application (T06/405A)

DECISION SOUGHT

The Minister's determination is requested please, in relation to an application for a Foreshore Licence from Mr. John Reilly, Cromane Lower, Killorglin, Co. Kerry, for a site Castlemaine Harbour, Co. Kerry, on which it is proposed to conduct aquaculture.

BACKGROUND

Marine aquaculture operations require separate Aquaculture and Foreshore Licences and Ministerial approval is required in respect of this submission (Foreshore Submission) and the submission above (Aquaculture Submission), which refer to the same site.

The Foreshore Licence allows for the occupation of the particular area of foreshore while the Aquaculture Licence defines the activity that is permitted in this area. The continuing validity of each licence is contingent on the other licence remaining in force.

APPLICATION FOR A FORESHORE LICENCE

An application for a Foreshore Licence has been received from the applicant referred to above (in conjunction with an Aquaculture Licence application), relating to the occupation of the foreshore associated with the Aquaculture Licence application (T06/405A), at a site (6.3 ha) in Castlemaine Harbour, Co. Kerry.

LEGISLATION

Section 3 of the Foreshore Act, 1933, gives power to the Minister to license the use of foreshore if he is of the opinion that it is in the public interest to do so.

CONSULTATION AND PUBLIC COMMENT

The application was sent to the Department's technical experts, and it was also publicly advertised in a composite public notice covering both aquaculture and foreshore elements.

This application was also sent to the Department of Housing, Planning and Local Government (DHPLG) in accordance with subsection (1B) of Section 3 of the Foreshore Act, 1933, which requires consultation between the Minister for Agriculture, Food and the Marine and the Minister for Housing, Planning and Local Government. Whilst aquaculture legislation requires certain statutory bodies to be notified of an aquaculture application, no other statutory bodies are prescribed consultees under Fisheries related foreshore legislation.

Department of Housing, Planning and Local Government (DHPLG)

No submission was received from DHPLG, therefore there are no comments on water quality or from a foreshore perspective.

Technical Consultation

Marine Engineering Division (MED):

The site is located near Tullig Quay on the southern shore of Castlemaine Harbour. It is approximately 1 km outside the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry and within Castlemaine Harbour SAC and SPA.

The proposed site is to be situated inside the Single Unified Marking Scheme (SUMS) for the harbour.

The site is not in an area that is likely to be highly visible to many people. Population density in the area is low and trestles will only be visible at times of low tide. There are no features of high landscape or scenic value that will be impacted upon.

MED does not recommend licensing this site as the Department's Conclusion Statement, which has been informed by the Appropriate Assessments, has concluded that this new application should not be licensed.

Marine Survey Office (MSO):

This office has no objection to this application from a navigational viewpoint provided the following conditions are complied with:

The south west salient should be removed from the site boundary and the gross rhomboid shape should constitute the site. This is for ease of marking.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following marks: four posts, projecting two meters above sea level at highest astronomical tide, and with a topmark of a diagonal St. Andrews cross, painted yellow, of the appropriate standard of construction, and these should be erected at the four extreme points of the development.

The developer should consult with the Aquaculture Initiative, Quality and Environmental Officers (local CLAMS) for additional advice on the marking requirements and standards.

No excess trestles should be stored on the site. Unused equipment should be removed from the site and stored at a suitable location above the high water mark. The responsibility for safely marking the site lies entirely with the developer.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T06/405 for the cultivation of pacific oysters would have no negative impact on local sea fishing operations.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in "The Kerryman" on June 13th, 2018. The application and supporting documentation were available for inspection at Killorglin and Killarney Garda Stations for a period of four weeks from the date of publication of the notice in the newspaper.

There were eight submissions received during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

Five submissions consisted of objections to all oyster farming in Castlemaine Harbour on the grounds that the local environment and habitat would be damaged; the natural beauty of the area should be preserved for present and future generations; and aquaculture activities would have a detrimental effect on tourism. A concern about the impact of landowners in the area and their livestock was also referred to in one submission.

An existing licensee in Castlemaine Harbour provided a submission objecting to new applications on the basis of potential damage to the ecosystem in Castlemaine Harbour; the need to preserve wildlife and bird species; current overfishing in the harbour; lack of nutrients in the water to accommodate all potential new licensed sites; and the overall quantity and scale of the new licence applications.

A submission received was signed by six licence applicants requesting that the Department consider their livelihoods in making a determination, and the potential boost to employment in the area arising from the granting of licences. They requested that applications be processed in a phased manner with the older applications considered in advance of, and separately from, subsequent applications.

A submission was received from a group named "Save This Beach" which objected to aquaculture licensing in Castlemaine Harbour. It objected on the basis that (1) it believes there was a lack of compliance with the Aarhus Convention for public participation; (2) it believes the Department waived the EIA screening process; (3) it has concerns for the adverse impact on the Environment in the event of the licences being granted; (4) it believes licensing of aquaculture would contravene the Kerry County Council Development Plan and (5) it believes aquaculture licensing in Castlemaine Harbour is economically unviable.

In relation to the latter submission, Point 1 is not relevant as the Department did engage in the public consultation process as required under legislation. Point 2 is not relevant as the applicant has applied for a licence to engage in 'extensive' aquaculture, i.e. where there is no external supply of feed or medicine, and this type of culture depends entirely on natural processes for production

and supply of feed. Accordingly, the Department does not apply the EIA screening process in the case of 'extensive' aquaculture. The other issues raised (points 3, 4 and 5) are moot points as it is recommended that this application for an aquaculture licence is refused.

Applicant response to observations made during the consultation process

The applicant made three major points.

First, he feels that the objections targeted all applications indiscriminately on broad environmental grounds and the need for applicants to be able to earn a sustainable livelihood is generally overlooked.

He notes the Marine Institute letter of 9th July 2018, which, in relation to his application states "*Significant impacts on the general environment are not considered likely*" However it is subsequently indicated that, based on the Department's draft AA conclusion, the Marine Institute is of the view that a licence should not be granted. The applicant states this is inconsistent and circular thinking.

This applicant was one of the six applicants that signed a submission made under public consultation in relation to all applications. In his view the Department must take a balanced approach to the progressing of such applications, rather than a blanket refusal based on insufficient evidence.

CRITERIA IN MAKING LICENSING DECISIONS

The Minister, in considering an application for a Foreshore Licence, may, if satisfied that it is in the public interest to do so, grant such a licence.

Section 82 of the Fisheries (Amendment) Act, 1997 stipulates that the Minister, in considering an application for a licence under the Foreshore Acts, which is sought in connection with the carrying on of aquaculture pursuant to an Aquaculture Licence, shall have regard to any decision of the Licensing Authority in relation to the Aquaculture Licence.

RECOMMENDATION

It is recommended that the Minister, taking account of the decision on the related aquaculture licence application:

refuses the granting of a Foreshore Licence to Mr. John Reilly, Cromane Lower, Killorglin, Co. Kerry, in respect of a site (ref. T06/405A) located in Castlemaine Harbour, Co. Kerry.

The reason for the recommendation is that, taking account of the recommendations of the Appropriate Assessment, the proposed aquaculture activity at these sites, including T06/405A, is not consistent with the Conservation Objectives for the relevant Natura sites. In particular, the proposed increase in the spatial area arising from the new licence applications, including T06/405A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. In addition, it is not possible to measure the magnitude of the impact of individual licences, including T06/405A, and how the integrity of the Natura 2000 sites might be adversely affected.

Thus, the licensing of aquaculture activity at these sites, including T06/405A, would be in contravention of Article 6(3) of the Habitats Directive.

Related submissions

There are no related submissions.

Comments

OShea, Nicole - 28/09/2018 12:17

Recommended to refuse an Aquaculture and Foreshore Licence for one site T06/405A.

Farrell, Brendan - 28/09/2018 15:28

Recommended that Licence application T06/405A is refused by the Minister for the reasons set out in this submission.

Quinlan, John - 01/10/2018 11:58

Refusal is recommended in this case please.

Beamish, Cecil - 01/10/2018 12:51

Recommended that the Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out in the submission.

Smith, Ann - 05/10/2018 09:57

Approved for submission to Minister. 05/10/2018 A.S.

Lennox, Graham - 05/10/2018 10:52

Minister determines that the application for Aquaculture and Foreshore Licences be refused for the reasons set out.

User details

INVOLVED: OKelly, Oisin
OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Ball, Siobhan
eSub Ministers Office
eSub Minister

READ RECEIPT: BTSSP-SC
OKelly, Oisin
OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Ball, Siobhan
Smith, Ann
Lennox, Graham



An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine



sent by registered post

John Reilly
Cromane Lower
Killorglin
Co. Kerry

COPY

Ref: T06/405A & T06/465A

5th October 2018

**FISHERIES (AMENDMENT) ACT, 1997 (NO.23)
NOTICE OF MINISTERIAL DECISION TO REFUSE TO GRANT AN AQUACULTURE
LICENCE AND FORESHORE LICENCE.**

Dear Mr. Reilly,

I wish to inform you that the Minister For Agriculture, Food and the Marine has refused your application for Aquaculture Licences and Foreshore Licences, for the cultivation of Pacific Oysters using bags and trestles on sites no. T06/405A and T06/465A. (see attached information note). I enclose a copy of the public notice of the decision which the Department has arranged to have published in "The Kerryman".

Any person aggrieved by the decision may, in accordance with Section 41 of the Fisheries (Amendment) Act 1997, appeal against it in writing to the Aquaculture Licences Appeals Board. This appeal must be lodged within one month beginning on the date of the publication of the decision.

In addition, a person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

Yours Sincerely,

Oisín O'Kelly
Aquaculture and Foreshore Management Division

**S.12 (3) OF THE FISHERIES (AMENDMENT) ACT, 1997(NO.23)
INFORMATION NOTE TO APPLICANT FOR THE PURPOSE OF REGULATION 18 OF
THE AQUACULTURE (LICENCE APPLICATION) REGULATIONS 1998**

REFERENCE NO: T06/405A

APPLICANT: John Reilly

**AQUACULTURE TO WHICH
DECISION RELATES:** Cultivation of Pacific Oysters using bags and trestles
on site T06/405A on the foreshore in Castlemaine
Harbour, Co Kerry.

NATURE OF DECISION: Refusal of Licence.

DATE OF DECISION: 5th October 2018

REASON FOR REFUSAL:

The Minister for Agriculture, Food and the Marine has determined that it is not in the public interest to grant Aquaculture/Foreshore Licences for this site. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to refuse the licences sought: -

- a) The site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and Special Protection Area (SPA) Natura 2000 sites. A Natura Appropriate Assessment (AA) was carried out in 2011 in relation to existing aquaculture activity and new applications on hand at that time in the SAC and SPA. Licensing determinations were made in conformity with 'Natura' requirements. Recently, in 2018, a further Article 6 assessment has been carried out in relation to aquaculture applications received subsequent to the completion of the original AA (this includes this site). An Appropriate Assessment Conclusion Statement has been produced in relation to this recent AA (available on the Department's website). This document outlines how the proposed aquaculture activities in Castlemaine Harbour SAC and SPA, including this site, are being managed so as not to significantly or adversely affect the integrity of the SAC and SPA.
- b) Taking account of the recommendations from the Appropriate Assessment process, the proposed aquaculture activities are not consistent with the Conservation Objectives for the SPA and could result in significant disturbances to key bird species and reductions in their density and functional foraging habitat area.
- c) The potential increase in the spatial area arising from new aquaculture activities (including this site) could cause seston depletion and impact negatively on the carrying capacity of Castlemaine Harbour.
- d) The potential risks from licensing the proposed aquaculture activities, including this site, on the integrity of the Natura 2000 sites cannot be discounted.

**S.12 (3) OF THE FISHERIES (AMENDMENT) ACT, 1997(NO.23)
INFORMATION NOTE TO APPLICANT FOR THE PURPOSE OF REGULATION 18 OF
THE AQUACULTURE (LICENCE APPLICATION) REGULATIONS 1998**

REFERENCE NO: T06/465A

APPLICANT: John Reilly

**AQUACULTURE TO WHICH
DECISION RELATES:** Cultivation of Pacific Oysters using bags and trestles
on site T06/465A on the foreshore in Castlemaine
Harbour, Co Kerry.

NATURE OF DECISION: Refusal of Licence.

DATE OF DECISION: 5th October 2018

REASON FOR REFUSAL:

The Minister for Agriculture, Food and the Marine has determined that it is not in the public interest to grant Aquaculture/Foreshore Licences for this site. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to refuse the licences sought: -

- a) The site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and Special Protection Area (SPA) Natura 2000 sites. A Natura Appropriate Assessment (AA) was carried out in 2011 in relation to existing aquaculture activity and new applications on hand at that time in the SAC and SPA. Licensing determinations were made in conformity with 'Natura' requirements. Recently, in 2018, a further Article 6 assessment has been carried out in relation to aquaculture applications received subsequent to the completion of the original AA (this includes this site). An Appropriate Assessment Conclusion Statement has been produced in relation to this recent AA (available on the Department's website). This document outlines how the proposed aquaculture activities in Castlemaine Harbour SAC and SPA, including this site, are being managed so as not to significantly or adversely affect the integrity of the SAC and SPA.
- b) Taking account of the recommendations from the Appropriate Assessment process, the proposed aquaculture activities are not consistent with the Conservation Objectives for the SPA and could result in significant disturbances to key bird species and reductions in their density and functional foraging habitat area.
- c) The potential increase in the spatial area arising from new aquaculture activities (including this site) could cause seston depletion and impact negatively on the carrying capacity of Castlemaine Harbour.
- d) The potential risks from licensing the proposed aquaculture activities, including this site, on the integrity of the Natura 2000 sites cannot be discounted.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
T06/465A	John Reilly	Castlemaine Harbour	Pacific Oysters – Bag & Trestle
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The reasons for this decision are set out on the Department's website at:

<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/kerry/>

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co. Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail info@alab.ie or website at <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

