

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 June 2016



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. T6/466

Date of Receipt (Dept. Stamp)



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.	<u>GERARD O REILLY</u>
Address:	<u>CRONANE LOWER KILLORSLIN CO KERRY</u>
2.	
Address:	
3.	
Address:	
4.	
Address:	

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

PART 1: PRELIMINARY DETAILS

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**

- | | |
|--------------------------|---|
| <input type="checkbox"/> | 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: EASTLEWADD DINGLE BAY - Carragh River
- (ii) County: KERRY
- (iii) OS Map No: _____
- (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.]
See ATTACHED
- (v) Size of Site (hectares): Approx 6 Ha

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

C. gigas

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

Inter-tidal

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

Seed from hatcheries

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) Bag & Trestle

(x) Proposed number of lines/ropes/trestles as per site layout drawing

(xi) Proposed Production Tonnage:

Year 1	<u>0T</u>	Year 2	<u>45</u>	Year 3	<u>45</u>	Year 4	<u>45</u>	Year 5	<u>45</u>
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(xii) (a) Please outline the reasons for site selection:

SITE AVAILABLE AND HAVING
DIFFICULTY WITH MOVING SAND ON
OTHER SITES

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

GROUND SOLID

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

HUMAN CONSUMPTION

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

N/A

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

Yes No

If yes give details.

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

Close to the sea

(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?

Class B Oysters

(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.

no

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

Harvest by boat

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

NONE

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

None

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

N/A

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

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
1a	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)			
1b	The proposed access route to the site from the public road across tidal foreshore must also be shown			
2a	Scale drawing of the structures to be used (recommended scale normally 1:100 for structures).			
2b	Scale drawing of farm layout (recommended scale normally 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:

NA

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 and that I am over 18 years of age. I/We enclose an application fee* of € _____ with this application.

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

Seamus O'Reilly

Date: 20/10/2016

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

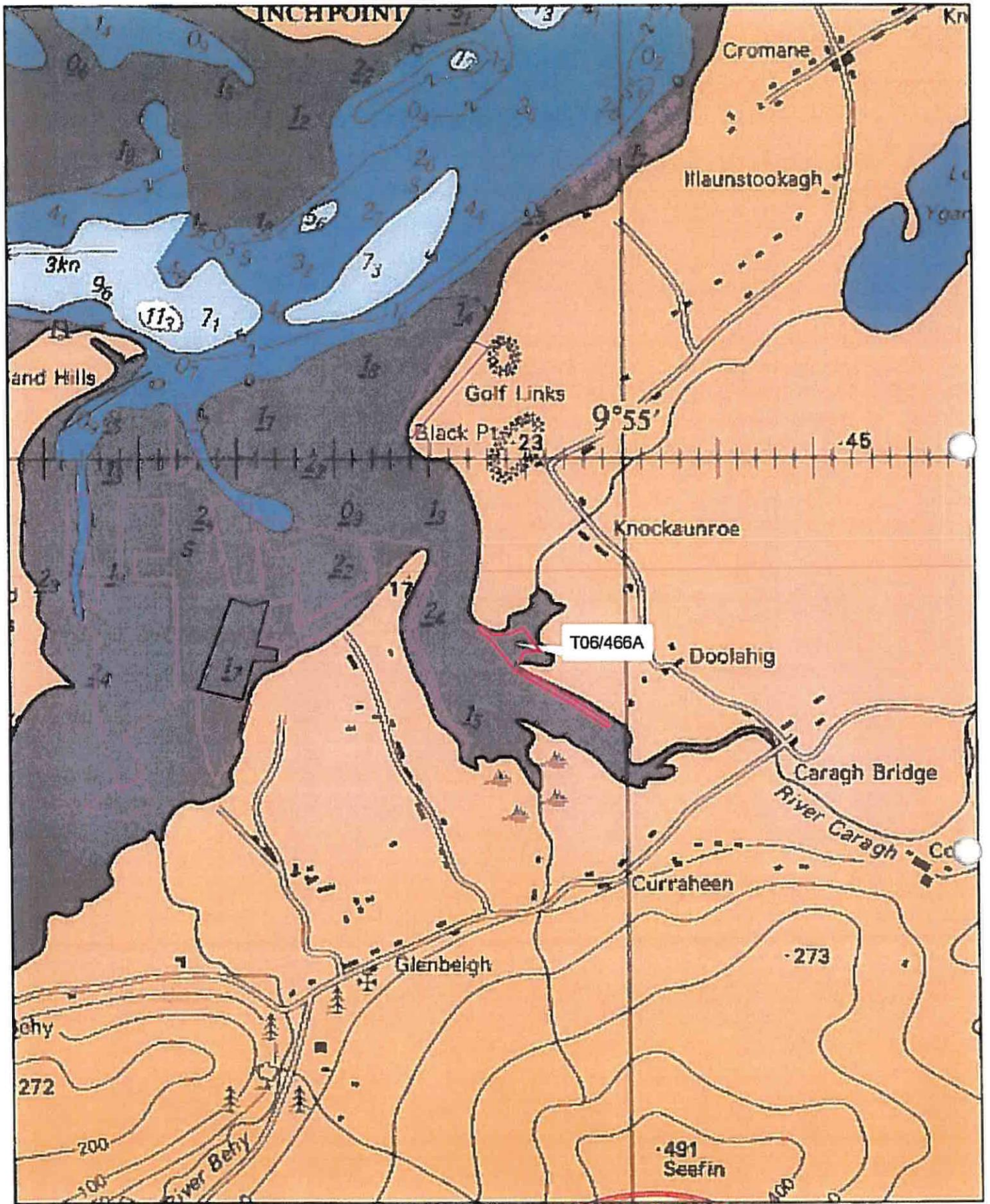
Co-ordinates & Area

Site T06/466A (6.216 Ha)

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

067750, 093104 to Irish National Grid Reference point
067826, 093044 to Irish National Grid Reference point
067920, 093054 to Irish National Grid Reference point
068013, 093095 to Irish National Grid Reference point
068116, 092955 to Irish National Grid Reference point
068013, 092943 to Irish National Grid Reference point
067980, 092854 to Irish National Grid Reference point
068321, 092662 to Irish National Grid Reference point
068550, 092513 to Irish National Grid Reference point
068532, 092488 to Irish National Grid Reference point
068309, 092631 to Irish National Grid Reference point
067963, 092827 to Irish National Grid Reference point
067810, 093018 to Irish National Grid Reference point
067731, 093077 to the first mentioned point.





Aqua Culture Sites
(all other values)

Site Status

	Application
	Lapsed
	Refused
	Revoked

1:30,000

Aquaculture & Foreshore Management Division
 22 DEC 2016
 Dept. of Agriculture, Food & the Marine

Sites highlighted in red denotes Application
 Part of Admiralty Chart No =2789-0
 Not to be used for Navigation

Department of
**Agriculture,
 Food and the Marine**
 An tSeirbhís
Talmhaíochta,

68000

69000

94000

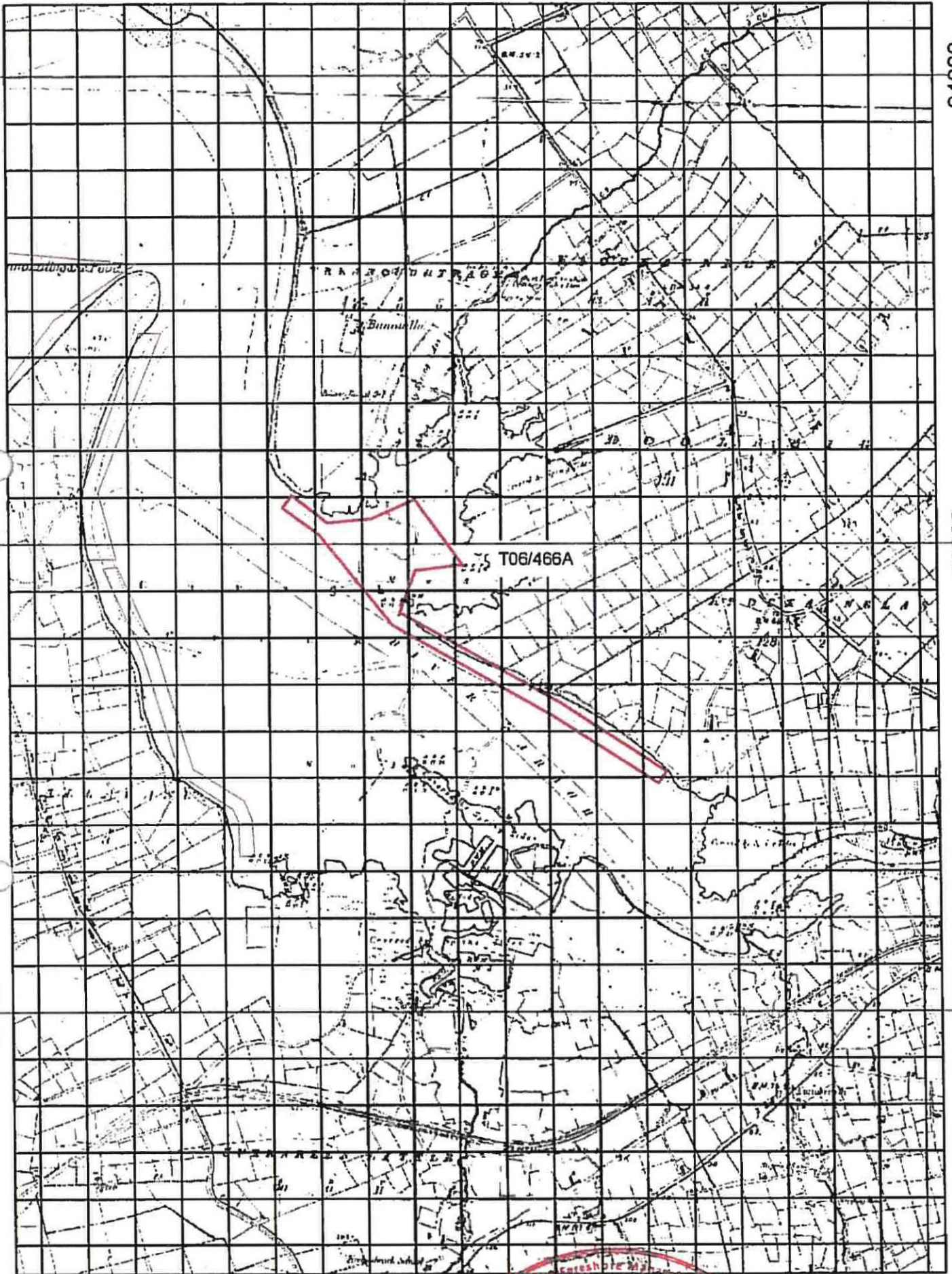
94000






93000

93000

92000

92000



- Aqua Culture Sites**
 (all other values)
- Site_Status**
-  Application
 -  Lapsed
 -  Licensed
 -  Revoked
 -  Surrendered

68000

1:10,560

69000

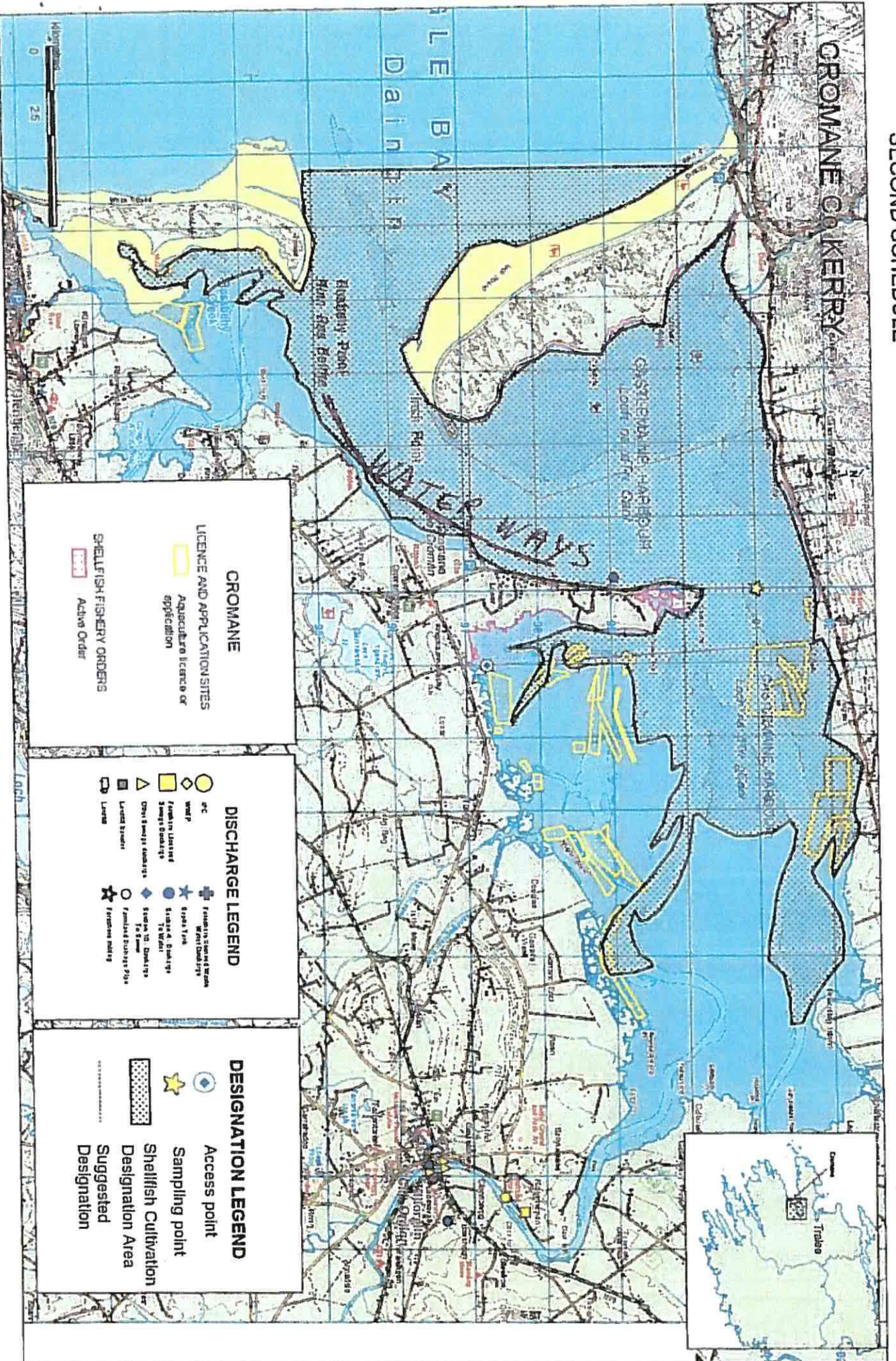
Sites highlighted in red denotes Application

Ordnance Survey Ireland Licence No. EN.0076413



Department of
**Agriculture,
 Food and the Marine**
 An tAire
Talmhaíochta,

T6/466.



CROMANE
 LICENCE AND APPLICATION SITES
 Aquaculture licence or application
 SHELLFISH FISHERY ORDERS
 Active Order

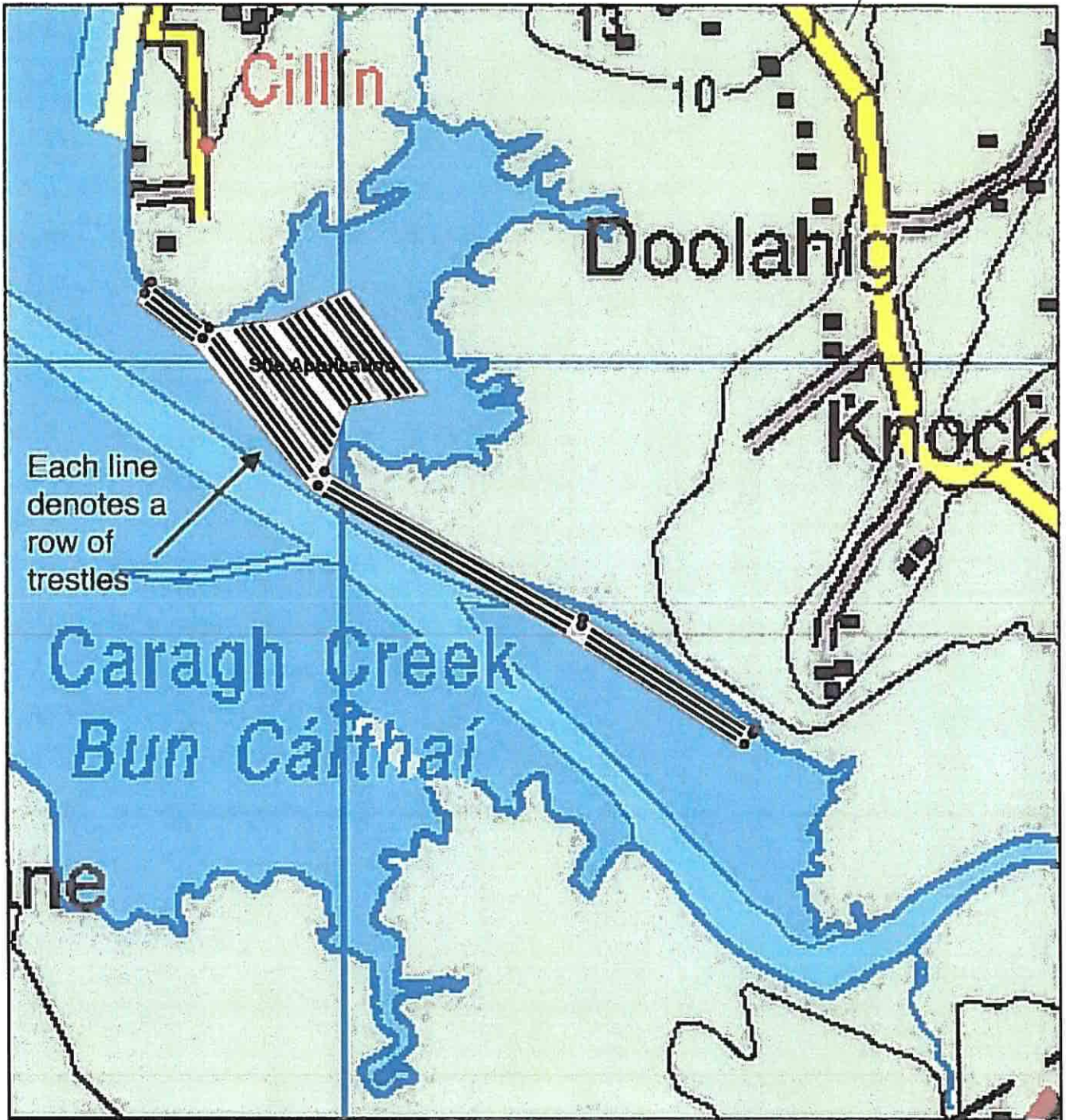
DISCHARGE LEGEND

- etc
- water
- Freshwater discharges
- △ Other discharges
- Landfill transfer
- Landfill
- + Freshwater discharges
- + Sewerage
- + Stormwater
- + Stormwater
- Freshwater discharges
- Freshwater discharges
- Freshwater discharges

DESIGNATION LEGEND

- Access point
- ★ Sampling point
- Shellfish Cultivation Designation Area
- Suggested Designation

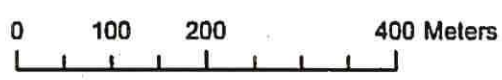
T6/466.



Coordinates Irish Grid



Gerard O Reilly
Carragh River
Oct 2016

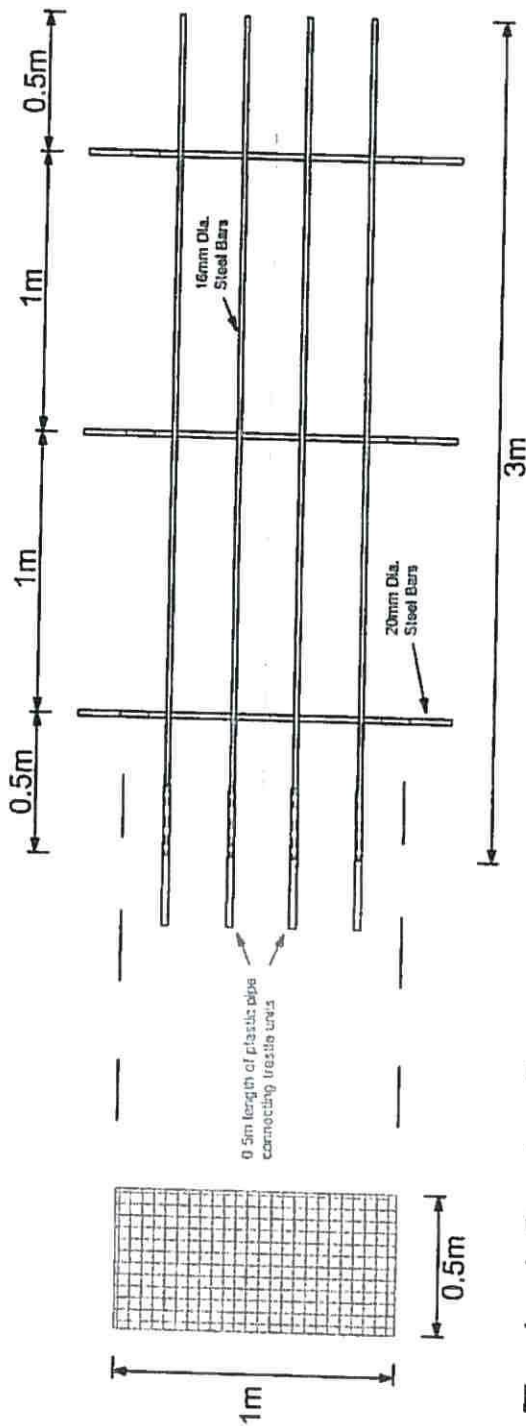
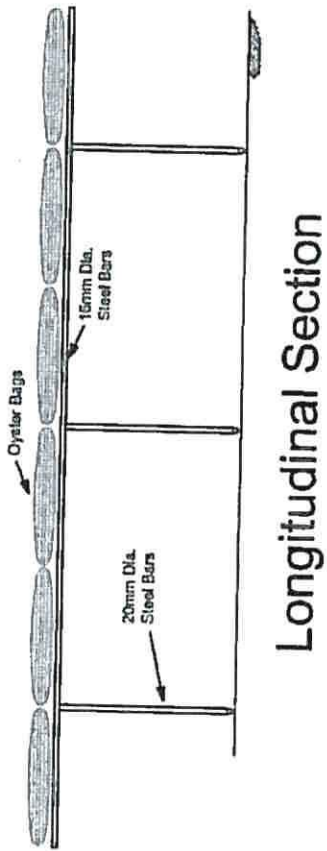
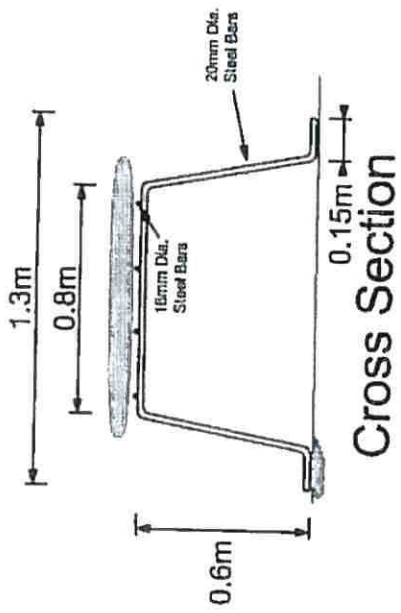


X	Y
67750	93104
67826	93044
67920	93054
68013	93095
68116	92955
68013	92943
67980	92854
68321	92662
68550	92513
68532	92488
68309	92631
67963	92827
67810	93018
67731	93077

Edited by
Stephen O'Reilly B. Eng.

Size 6 Ha

Stephen O'Reilly



Submission AGR 00701-18: Recommendation to refuse Aquaculture and Foreshore Licences for one site T06/466A

TO: Minister
STATUS: Completed
PURPOSE: For Decision

AUTHOR: Naughton, Maria
OWNER: Naughton, Maria
REVIEWERS: OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
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 (T06/466A).

Executive summary

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

The application is for the cultivation of Pacific Oysters using bags and trestles at Site T06/466A (6.216 ha), on the foreshore, in Caragh Creek, 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

The Minister's determination is requested please, in relation to an application for an Aquaculture Licence from Gerard O'Reilly, Cromane Lower, Killorglin, Co. Kerry, for a site in Caragh Creek, 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 Caragh Creek, Castlemaine Harbour, Co. Kerry (ref. T06/466A - 6.216 hectares).

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 on the eastern shore of Caragh Creek; 2 km outside the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry; and within Castlemaine Harbour SAC and SPA.

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 is evidence that the area is frequented by leisure users, walkers, etc.

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.

Should the Minister decide to grant a licence for this site the applicant should be asked to provide details of proposed access routes and navigation marks.

Marine Survey Office (MSO):

This office has no objections from a navigational viewpoint to this application.

In order for charts and nautical publications to be updated the applicant is required to inform the British Admiralty Hydrographic Office at Taunton, UK, of the location and nature of the site.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following lights and marks: The site is to be marked with yellow poles, with a yellow Saint Andrews Cross as topmark, visible at all stages of tide, at a height of 2 metres above the water. The yellow poles (x 3) should be located at the offshore ends and at middle of the site.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T06/466 for the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations. However, it is recommended that at least a 10 metre access route is maintained between the proposed site boundary and the upper foreshore to facilitate other marine users.

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: T06/466A) should not proceed.

Marine Institute:

Site T06/466A 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 a licence being granted CIL has listed conditions for inclusion.

Irish Water

Irish Water noted that application T06/466A 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 13th June, 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 207 submissions received in relation to this application during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

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.

The majority of the remaining objections regarding this site followed one of three templates which were widely circulated in the weeks of the public consultation. A number of areas of concern were raised including the impacts industrial levels of oyster fishing would have on the scenic vistas and the consequent impact this would have on tourism in the area.

Many objectors highlighted tourism as being the largest contributor to the economy of the area. A number of objectors further noted that they believed the level of potential employment created by Oyster farming and aquaculture would be less than the levels of employment lost due to the negative impacts on the local tourism industry. A considerable number of objectors specifically mentioned the Dooks golf course as being a big draw to the area and that it would suffer greatly as a result of this development.

Objectors raised concerns that they would no longer have the use of local amenities provided by the beaches including walking, water sports, and leisure craft use. The reasons for objectors feeling these amenities were impaired stemmed mostly from trestles causing obstructions on the foreshore, below the surface of the water, as well as the disruption to the peace and tranquillity of the area caused by industrial farming. A few objectors noted that Rossbeigh Beach is a Blue Flag Beach and that this would, in their opinion, no longer be the case with such a large volume of sites operating in the Bay.

Many objectors had environmental concerns regarding the possible development of this site. These included damage to habitats, damage to the Brent Geese populations that winter in Ireland, pollution, erosion of sand banks, offensive smells, and the risk of invasive species (C. Gigas) establishing wild colonies in the bay.

Similarly, concerns were raised regarding possible toxins in the water due to slurry as well as the presence of a large number of sites. Some objectors believe that this poses an infection risk to swimmers as well as the risk of physical injury caused by submerged trestles. Objectors also raised concerns that the level of aquaculture operations would lead to greater numbers and volume of red tides and algal blooms in the Bay.

Some objectors stated that the location of the site was not suitable for the cultivation of Oysters due to food safety concerns. The aforementioned toxins and algal blooms are thought by objectors to lead to mass mortality of Oysters. Furthermore, objectors stated that local roads are not large enough, or of sufficient quality, to sustain such numbers of agricultural machinery as would be needed to operate the proposed site. Regarding suitability of the applications and applicants, some objectors feel that the application is incomplete and/or does not give a full measure of what is intended for the site.

The final common topic raised was personal connection to an area which, objectors have asserted, has played an important role in their lives. They feel that to license mass aquaculture in this Bay would do the area a disservice and destroy what makes it special.

Applicant response to observations made during the consultation process

The applicant did not provide a response to the submissions received during the consultation period.

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 T06/466A, would pose a risk of seston depletion and impact on the carrying capacity of the harbour. New Oyster licence applications, including T06/466A, 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.

The Department was contacted by an individual claiming that his company (Seefin Fisheries Ltd.) holds "good and marketable title to the exclusive fishing rights and bed and soil of the Caragh Estuary" on which this site is located. He sent documents, some of which were signed by a solicitor, which he asserts substantiate this claim. He stated that he had spoken to the applicant and, in the event of an aquaculture licence being granted by the Department, he intends on leasing the foreshore area to the prospective licensee. Further consideration of this matter is not required as this application is recommended for refusal.

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 T06/466A, for aquaculture in Castlemaine Harbour may result in the following adverse effects:

- o interrupting the progress towards achieving the Conservation Objectives of the SPA for those species in long term population decline;*
- o disrupt those factors that help to maintain the favourable conditions of the SPA (i.e. spatial extent of functional habitat);*
- o interfere with the distribution and density of SCIs that are the indicators of the favourable condition of the SPA (i.e. caused by displacement);*
- o 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;*
- o reduce the area of key habitats;*
- o result in disturbance that could affect population size or density or the balance between key species;*
- o result in habitat fragmentation;*
- o noise/visual disturbance for all intertidal SCIs and Cormorant; and*
- o 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 T06/466A, in compliance with the EU Birds and Habitats Directives.

(ii) Shellfish Waters

The site is 2 km outside of the 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. Population density in the area is low and trestles will only be visible at times of low tide. There is evidence that the area is frequented by leisure users, walkers etc. 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 T06/466A, 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 – T06/466A

Gerard O'Reilly has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles at a site, T06/466A (6.216 ha), on the foreshore at Caragh Creek, 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 (T06/466A)

DECISION SOUGHT

The Minister's determination is requested please, in relation to an application for a Foreshore Licence from Gerard O'Reilly, Cromane Lower, Killorglin, Co. Kerry, for a site in Caragh Creek, 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 (T06/466A), at a site (6.216 ha) at Caragh Creek, 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 on the eastern shore of Caragh Creek; 2 km outside the Shellfish Designated Waters, SI 268 of 2006, Cromane, Co. Kerry; and within Castlemaine Harbour SAC and SPA.

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 is evidence that the area is frequented by leisure users, walkers, etc.

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.

Should the Minister decide to grant a licence for this site the applicant should be asked to provide details of proposed access routes and navigation marks.

Marine Survey Office (MSO):

This office has no objections from a navigational viewpoint to this application.

In order for charts and nautical publications to be updated the applicant is required to inform the British Admiralty Hydrographic Office at Taunton, UK, of the location and nature of the site.

The applicant is required to apply to the Commissioners of Irish Lights for sanction to establish the following lights and marks: The site is to be marked with yellow poles, with a yellow Saint Andrews Cross as topmark, visible at all stages of tide, at a height of 2 metres above the water. The yellow poles (x 3) should be located at the offshore ends and at middle of the site.

Sea Fisheries Protection Authority (SFPA):

The issuing of an Aquaculture and Foreshore Licence in the area identified as T06/466 for the cultivation of Pacific Oysters would have no negative impact on local sea fishing operations. However, it is recommended that at least a 10 metre access route is maintained between the proposed site boundary and the upper foreshore to facilitate other marine users.

Public Consultation

The application was publicly advertised using a composite public notice covering both aquaculture and foreshore elements in "The Kerryman" on 13th June, 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 207 submissions received in relation to this application during the public consultation period. It is not possible to disaggregate the comments into aquaculture and foreshore elements.

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.

The majority of the remaining objections regarding this site followed one of three templates which were widely circulated in the weeks of the public consultation. A number of areas of concern were raised including the impacts industrial levels of oyster fishing would have on the scenic vistas and the consequent impact this would have on tourism in the area.

Many objectors highlighted tourism as being the largest contributor to the economy of the area. A number of objectors further noted that they believed the level of potential employment created by Oyster farming and aquaculture would be less than the levels of employment lost due to the negative impacts on the local tourism industry. A considerable number of objectors specifically mentioned the Dooks golf course as being a big draw to the area and that it would suffer greatly as a result of this development.

Objectors raised concerns that they would no longer have the use of local amenities provided by the beaches including walking, water sports, and leisure craft use. The reasons for objectors feeling these amenities were impaired stemmed mostly from trestles causing obstructions on the foreshore, below the surface of the water, as well as the disruption to the peace and tranquillity of the area caused by industrial farming. A few objectors noted that Rossbeigh Beach is a Blue Flag Beach and that this would, in their opinion, no longer be the case with such a large volume of sites operating in the Bay.

Many objectors had environmental concerns regarding the possible development of this site. These included damage to habitats, damage to the Brent Geese populations that winter in Ireland, pollution, erosion of sand banks, offensive smells, and the risk of invasive species (*C. Gigas*) establishing wild colonies in the bay.

Similarly, concerns were raised regarding possible toxins in the water due to slurry as well as the presence of a large number of sites. Some objectors believe that this poses an infection risk to swimmers as well as the risk of physical injury caused by submerged

trestles. Objectors also raised concerns that the level of aquaculture operations would lead to greater numbers and volume of red tides and algal blooms in the Bay.

Some objectors stated that the location of the site was not suitable for the cultivation of Oysters due to food safety concerns. The aforementioned toxins and algal blooms are thought by objectors to lead to mass mortality of Oysters. Furthermore, objectors stated that local roads are not large enough, or of sufficient quality, to sustain such numbers of agricultural machinery as would be needed to operate the proposed site. Regarding suitability of the applications and applicants, some objectors feel that the application is incomplete and/or does not give a full measure of what is intended for the site.

The final common topic raised was personal connection to an area which, objectors have asserted, has played an important role in their lives. They feel that to license mass aquaculture in this Bay would do the area a disservice and destroy what makes it special.

Applicant response to observations made during the consultation process

The applicant did not provide a response to the submissions received during the consultation period.

CRITERIA IN MAKING LICENSING DECISIONS

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 Gerard O'Reilly, Cromane Lower, Killorglin, Co. Kerry, in respect of a site (ref. T06/466A) located at Caragh Creek, 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 T06/466A, 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 T06/466A, 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 T06/466A, and how the integrity of the Natura 2000 sites might be adversely affected.

Thus, the licensing of aquaculture activity at these sites, including T06/466A, would be in contravention of Article 6(3) of the Habitats Directive.

Related submissions

There are no related submissions.

Comments

O'Shea, Nicole - 05/10/2018 10:07

Recommended to refuse an Aquaculture and Foreshore Licence for one site T06/466A.

Farrell, Brendan - 05/10/2018 10:26

Recommended that Licence application T06/466A is refused by the Minister for the reasons set out in this submission.

Quinlan, John - 08/10/2018 10:13

Refusal is recommended in this case please.

Beamish, Cecil - 09/10/2018 09:46

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 - 09/10/2018 10:02

Approved for submission to Minister. 09/10/2018

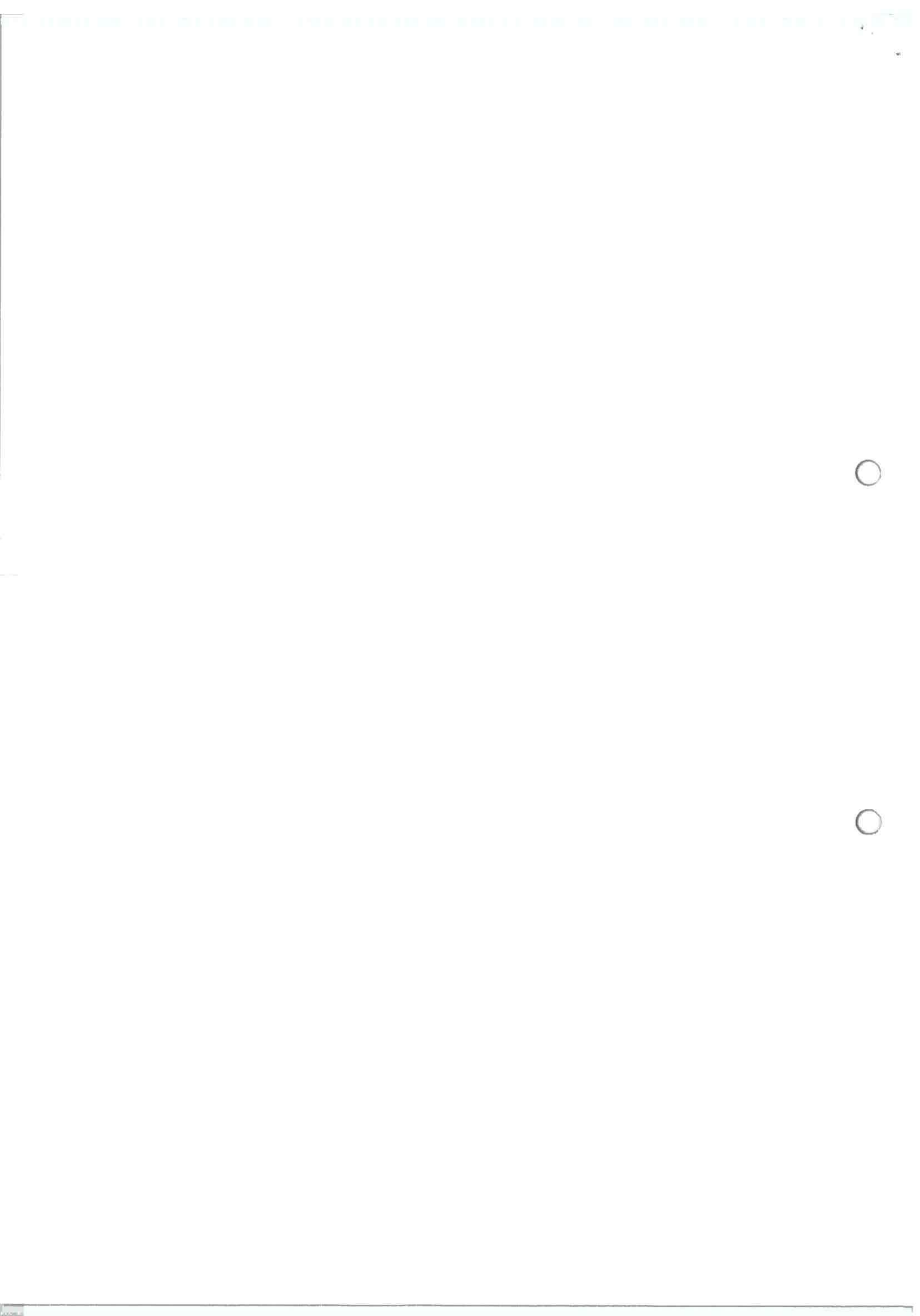
Lennox, Graham - 09/10/2018 11:37

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

User details

INVOLVED: Naughton, Maria
OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Sub Sec Gens Office
eSub Sec Gen
eSub Ministers Office
eSub Minister

READ RECEIPT: Naughton, Maria
OShea, Nicole
Farrell, Brendan
Quinlan, John
Beamish, Cecil
Smith, Ann
Lennox, Graham



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

COPY
sent by registered post

Gerard O'Reilly
Cromane Lower
Killorglin
Co. Kerry

Ref: T06/392A & T06/466A

09 October 2018

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

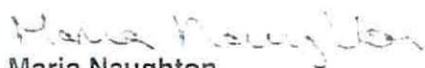
Dear Mr. O'Reilly,

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. T06/392A and T06/466A. (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,



Maria Naughton
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: T06/466A

APPLICANT: Gerard O'Reilly

**AQUACULTURE TO WHICH
DECISION RELATES:**

Cultivation of Pacific Oysters using bags and trestles on site T06/466A on the foreshore in Caragh Creek in Castlemaine Harbour, Co Kerry.

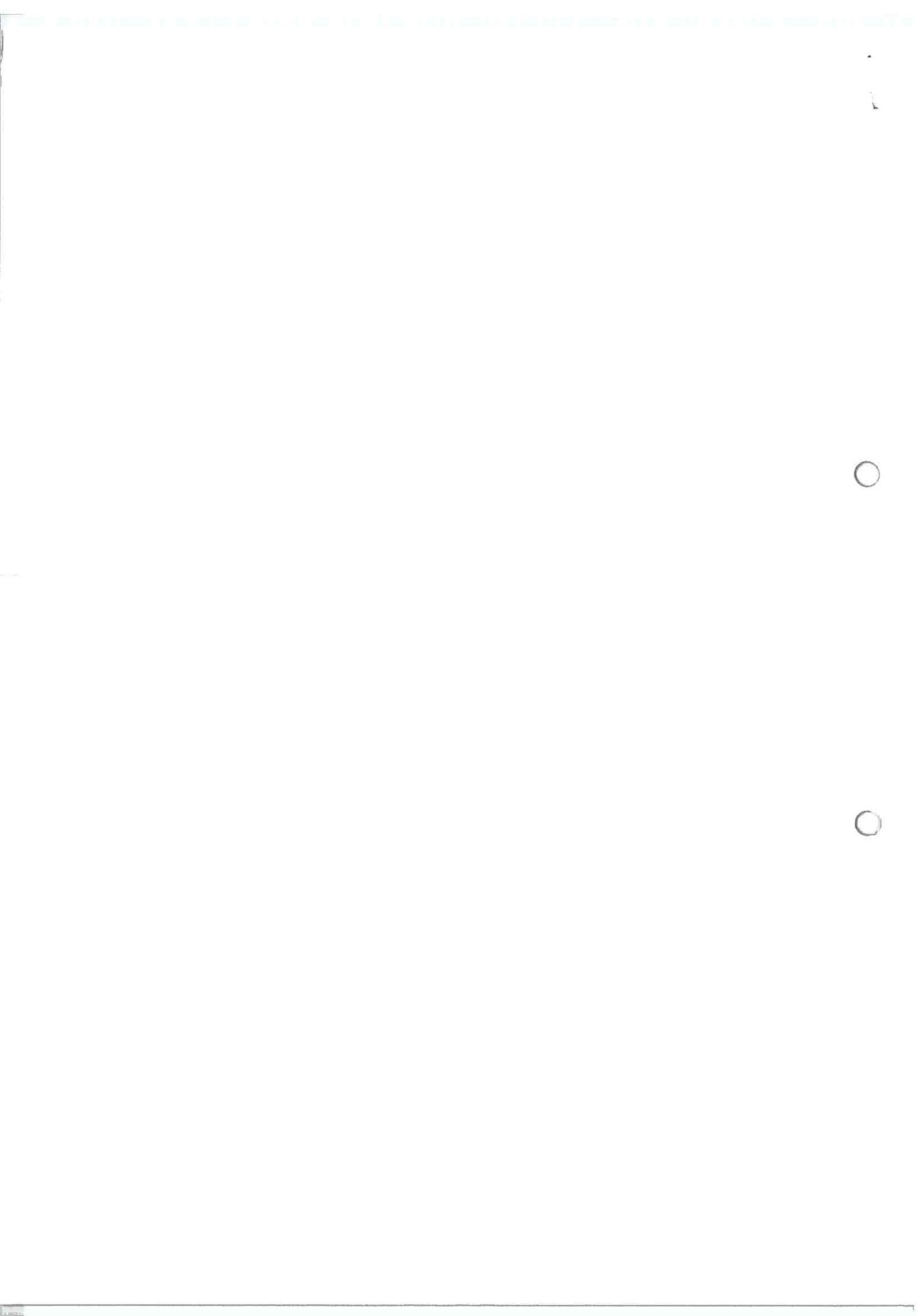
NATURE OF DECISION: Refusal of Licence.

DATE OF DECISION: 09 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.



FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) & FORESHORE ACT, 1933 (NO. 12)
NOTICE OF REFUSAL TO GRANT AQUACULTURE AND FORESHORE LICENCES

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to:

Site Ref.	Applicant	Location	Species & Cultivation
T06/392A	Gerard O'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]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
T06/466A	Gerard O'Reilly	Caragh Creek, Castlemaine Harbour	Pacific Oysters – Bag & Trestle
[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/>

