

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Submission re T6/466 Gerard O'Reilly

Received 27 November 2018

Save this Beach

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

Guthán/Telephone: 057 8631912 R-phost/Email: info@alab.ie Láithreán Gréasáin/Website: www.alab.ie





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Reennanallagane, Glenbeigh, Kerry
www.savethisbeach.com | savethisbeach@gmail.com

November 26, 2018

To:

ALAB

Kilminchy Court

Dublin Road

Portlaoise,

Co. Laois R32 DTW5

Tel: (057) 8631912

(By email to: info@alab.ie)

Case reference: Objection to appeal T6/466A – Gerard O'Reilly

To the ALAB review officers:

Save This Beach group and its supporters and members is hereby lodging an official objection to the appeal lodged by **Mr. Gerard O'Reilly for Site T6/466**.

Mr. Gerard O'Reilly is appealing the decision by the Minister for Agriculture, Food and the Marine (DAFM) who determined that it was not in the public interest to grant the application for the cultivation of Pacific Oysters on the foreshore in Castlemaine Harbour, Co. Kerry.

This application was one of 102 applications that was made for the EU-designated Special Area of Conservation/Special Protected Area/Natura 2000 and RAMSAR site of Castlemaine Harbour SAC 000343-SPA 004029. We are making objections to several appeals by applicants who have had their applications rejected in this SAC on the following grounds:

- **Carrying capacity:** The application was for an area that is in an SAC/SPA that is already currently being farmed for oysters, clams, and mussels. The carrying capacity of the Bay must be taken into account in the decision to grant or refuse new applications. To date this has not been calculated.
- **Contravention to conservation objectives of SAC:** The addition of another aquaculture farm is likely to have adverse effects on the conservation objectives of the Bay, as noted in the Appropriate Assessment Conclusion Statement (2018) and the Marine Institute's Report into Castlemaine SAC (2018).



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- **Errors and issues with the original application:** The applicant has failed to fully answer all parts of the application. Some parts are missing. Some questions are not answered. Some claims are unsubstantiated. DAFM should not have accepted an incomplete application and then pushed it through to public consultation.
- **No reasonable expectation of increased employment:** There is no demonstration of any additional employment created by this application. (In fact the section is missing from the application).
- **Unsuitability of site - Erosion and shifting sands:** The scientific evidence of the erosion and shifting sands of Rossbeigh will have significant impact on the distribution and feeding habits of birds of international importance, as well as on the currents and water movements, and these impacts haven't yet been measured. The precautionary principle must therefore apply.
- **Financially unviable:** The breach at Rossbeigh and shifting sediment has already affected several aquaculture farms in the area and will continue to do so in unexpected ways. Many applicants and appellants mention the high mortality rates they are experiencing due to sedimentary shifts. Aquaculture farmers in the area will likely continue to see very high mortality rates, with a diminishing return on investment. This makes creating a new business in this area highly inadvisable. It would be unfair and irresponsible to encourage a business that is not likely to thrive in these conditions.
- **Conflict with protected species:** The application is for a site directly adjacent Dooks beach on the Caragh Estuary, which is a salmonid river and where the Otter (*Lutra lutra*) is known to inhabit. The access by boat and farming activities cannot be shown to have no significant impact on this environment.
- **Conflict with established recreational uses:** Dooks beach is well-established as a recreational beach. There are swimmers, children, kayakers, horse-riders at low tide, walkers, tourists, B&Bs and a host of recreational activities on the beach both in summer and winter. It should be noted that this site would block an additional stream that feeds a trout lake used by anglers.

In addition, there have been hundreds of letters of objection from the general public to this and the 102 applications and increased use of the Bay for aquaculture. We hope that DAFM will make all documents from the public participation period available to ALAB before your process this appeal. This is especially important as this appeal was only posted on the ALAB website on November 19, 2018, but is stamped "Received 31 Oct 2018" by the aquaculture licences appeals board. This gives the public just 11 days instead of the 4 weeks prescribed in the appeals process to provide this comment.



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We would like to also note that the Minister has [granted significant sums to aquaculture applicants](#) in Kerry, in advance of any public participation on licensing decisions, including a grant to the appellant and one for the “development of a new oyster farm” to Caragh Clams. This is highly irregular, preemptive and can prejudice the licensing process.

The decision by the Minister to seem to be based on a [Marine Institute Report for 2018 for Castlemaine Harbour](#) and the [Draft Conclusion Statement for a 2018 Appropriate Assessment for Castlemaine Harbour](#), but that the Appropriate Assessment itself has yet to be published in full. The studies clearly show that additional licenses would be detrimental to the bay. Where any gaps in knowledge or study exist, the precautionary approach is fundamental and in cases of uncertainty it should be assumed the effects could be significant.

The AA Conclusion Statement states that the new license 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.*”

Allowing this appeal to go through as is or with modifications is likely to significantly impact the features of interest and conservation objectives of two overlapping Natura 2000 sites. As the impact is as yet unquantifiable, it makes it impossible to implement remedial measures for an unknown impact. We believe that any change in judgement of the Minister’s decision for this site will have adverse effects on this area of important European ecological value.

Therefore, we respectfully request that the appeal be refused and urge the Appeals Board to confirm the Minister’s ruling on this application.

Cordially,

Save This Beach group

Maurice Murphy, Pat Murphy, Kate O’Connor, Patrick Griffin, Patsy Curran, Carole Wynne
(Also representing 452 individual local residents who have given signed authorisation to Save This Beach group to object on their behalf.)



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Area context

The South-West region is the most popular holiday destination in Ireland with over a quarter of all holidaymakers travelling to this region (Fáilte Ireland, 2009), and has accommodated the highest number of foreign tourist nights in the country in recent years.

Statutory Status - Castlemaine Harbour

- Castlemaine Harbour SAC 000343
- Castlemaine Harbour SPA 004029
- Natura 2000 network
- Wildfowl Sanctuary Inch/Castlemaine Harbour WFS-27, Rosbehy/Caragh Creek WFS-29
- RAMSAR site: Castlemaine Harbour, 2,973 ha 52°07'N 009°50'W
- Rossbeigh Blue Flag beach
- Lough Yganavan Nature Reserve & Lough Nambrackdarrig Nature Reserve
- Nature Reserve (Castlemaine Harbour) - S.I. No. 10/1990

This area of Castlemaine Harbour is an SAC, SPA, Ramsar site, contains Blue Flag Beach and is part of the EU Natura 2000 network. It is also a Statutory Nature Reserve, and a Wildfowl Sanctuaries.

It's widely regarded as an area of breathtaking natural beauty and is renowned for the wide, unspoilt views and the impressive biodiversity of its wildlife and natural habitats.

It contains a range of coastal habitats of excellent quality, including many that are listed on Annex I of the E.U. Habitats Directive and two which are listed with priority status. It also includes long stretches of river and stream which are excellent habitats for the SAC's features of interest including salmon, lamprey, and otter. The dunes are recognised as among the finest in the country, with particularly well-developed dune slacks.

The site is a haven for a wide variety of wildlife. It supports internationally important waterfowl populations, rare plant species, the rare natterjack toad (Red Book), as well as populations of several animal species that are listed on Annex II of the E.U. Habitats Directive. There is evidence of Otter (*lutra lutra*), as well as have evidence of Brent geese, both protected species, as well as oystercatchers, egrets, and other species. Curlews have also been spotted and recorded in the area.

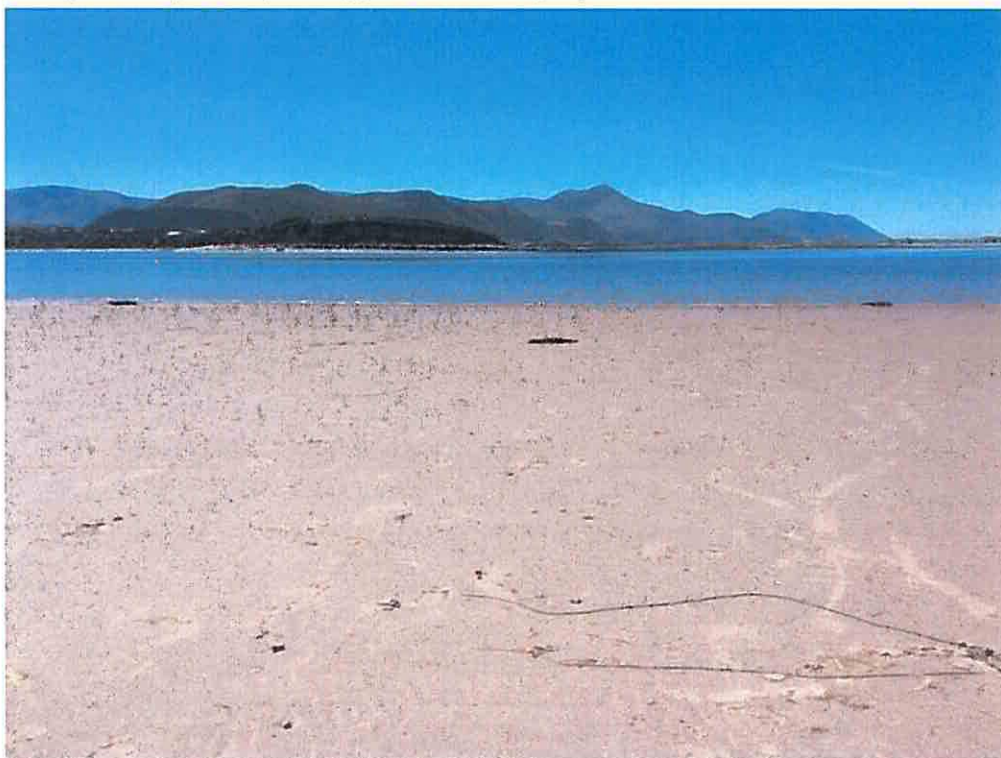


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Caragh Estuary, view from opposite bank to proposed site



Dooks Beach, adjacent to site



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Current aquaculture operations in Castlemaine Harbour

There are currently very large areas in the Castlemaine Harbour SAC towards Cromane in operation for aquaculture cultivation for clams, mussels, and non-native Gigas oysters.

Additionally, there have been 102 applications for extensive aquaculture farming in the same SAC.

Five licenses have been approved by the Minister, and one is pending:

- T6/301A – O’Sullivan McCarthy Mussel Development Ltd
- T6/305A – Derek O’Sullivan
- T6/306A – John O’Sullivan
- T6/340A – Dingle Bay Shellfish Ltd
- T6/340B – Owen & P Teahan Shellfish Ltd
- Pending: T6/457A – Patrick T O’Sullivan

Objections to the appeal and proposed license T6/466

1. Responses to applicant’s grounds of appeal

- a) The appellant says *“This site would be suitable for growing small seed. It’s nearer the open sea. I have suffered (sic) losses in seed over the years and I think there would be less mortality in a site like this.”*

There is no scientific basis for the applicant to believe that there would be fewer mortalities on this site. In fact, this site is far more unstable ([see below](#)), and there is a higher likelihood that sediment and freshwater will affect the oyster seed.

- b) The appellant says *“I could use a part of the site that would have no impact on the views from the golf course. As I would only be using it to grow seed the impact on the water quality would be insignificant. It wouldn’t have any impact on swimming or boating activities.”*

The appellant provides no scientific basis or data to substantiate this claim, i.e., that there would be no impact on the views, water quality, or recreational activities. In fact, in his original application, the applicant states he will access the site by boat, which will clearly impeded the swimmers, horse-riders, kayakers, and other recreational uses of the area around the site. The applicant would also have to demonstrate that the Appropriate



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Assessment or assessment of environmental impacts clearly shows that there would be no impact on the features of interest of the Natura 2000 sites.

- c) The appellant doesn't address the reason for the rejection of the licence, that is, the conclusions of the Appropriate Assessment of 2018. He also doesn't support the claims of insignificant impact with any objective or factual information.

2. Environmental concerns

Poor aquaculture planning in this sensitive environmental area could have very significant effects on the nature and ecology of this protected area.

Unknown impact: There is a complete lack of scientific evidence in light of environmental impact with regards to Environmental Impact Assessment and the impact that this aquaculture farm could have on the area. This makes it impossible to implement remedial measures for an unknown impact.

Protected species: There is evidence of otter (*lutra lutra*), as well as have evidence of Brent geese, both protected species, as well as oystercatchers, egrets, and other species right on the proposed site. Curlews have also been spotted, and natterjack toads recorded in proximity to the proposed development area.

Impact on important species: The impact on the distribution and feeding area of birds, including protected species, is unknown. This has not been adequately dealt with in the Appropriate Assessment and therefore there are no remedial measures possible.

Pollution and debris: With the known high mortality rates of *C. gigas* oysters (approximately 60%), there will be significant debris and dead oysters being discarded. We have evidence already of the existing sites operating in the Bay discarding live oysters larger than 6 inches (unfit for market) and leaving behind plastics, rusty metal debris, and more detritus. This would be greatly intensified with this application and the number of additional applications for the area.

Non-native oyster species: The decision to grow non-native oysters and oyster seeds in an SAC/SPA doesn't follow precautionary principles. Reports show that the use of non-native species like *C. gigas* can alter the environment in which they're being grown, and no research has been done into the potential impact or mitigation measures to be adopted for this in Rossbeigh Bay.



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The AA Conclusion Statement of 2018 states that “*The introduction of 1/2 grown' or 'wild' oyster or mussel seed stock into aquaculture plots (both within and proximate to the SAC) from outside of Ireland does pose a clear risk of establishment of non-native species in the SAC which cannot be discounted.*”

Threats to salmon and lamprey: The site is located in the estuary of a salmonid river (Caragh). Fisheries managers and scientists have been concerned for a number of years about the declining numbers of salmon and particularly once they leave freshwater and have instituted several conservation initiatives for stock recovery. Any changes in natural water flow will impact on ecological functioning of salmon and protected sea lamprey (Habitats Directive Annex species), as well as other fish species. Artificial barriers like trestles may result in stress, onset of disease and mortality of fish, and also present opportunities for predator aggregations. Artificial barriers can block or cause difficulties to lampreys and salmon’s upstream migration, restricting access to spawning areas.

In addition, river continuity is an important quality supporting ecological status under the hydromorphological element of the EU Water Framework Directive, and if a structure impedes or prevents the passage of fish, this is a contravention of the Water Framework Directive and National legislation.

Impact on river: This application is across the mouth of the river to Lough Yganavan (Nature Reserve), making it a threat to freshwater fishing, and species like trout.

Appropriate Assessment: The Appropriate Assessment for the area of 2011 is inadequate and doesn’t take into account the cumulative impact of the existing and planned aquaculture farms. Only the Appropriate Assessment Conclusion Statement (2018) and the Marine Institute's Report into Castlemaine SAC (2018) have been published, so we are confused by the environmental and technical basis for approval on which this application rests. We find that both Assessments leave important objective information gaps that are not discussed or dealt with adequately, leaving the reports lacking in essential environmental assessment areas.

3. Economically unviable

There is no reasonable expectation of additional employment that would be created if this license was granted.



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There have been numerous outbreaks of red tide algae blooms in the area [in recent years](#), as reported by the [press](#), in [Dáil debates](#), and even in BIM reports. These outbreaks present a significant risk to oyster farming in the area, and will result in closures and oysters having to be discarded.

In addition, there is an issue with the shifting sands of the area. The sediment and mud flats are changing rapidly, despite the applicant's claim that the farm would be on solid ground. Setting up an oyster farm in this area is unviable for a business due to the shifting sands. Reports show that in the coming years, further increased storm and daily wave penetration into Castlemaine and erosion of the internal dunes and the till – glacial sediment cliffs around the Dooks/outer Castlemaine Harbour area will continue. There will be increased and consequently increasing sediment supply to tidal areas, which will be trapped inside the harbour area.

The result is that this area will likely be highly unviable as a location to develop aquaculture.

In fact, the appellant (and other applicants) note the sediment issue causing mortality of their oysters. The increasing sedimentation fluxes and difficult working conditions will only be exacerbated by storms and climatic conditions that will weaken the structure of Rossbeigh beach.

This environmental uncertainty will only increase, and giving permission for a new site now will only offer a false sense of security to businesses and unreasonable expectations of future development in a highly vulnerable and volatile environment. Simply stated, this site is likely not suitable for aquaculture - and will be even less so in the future - and the appellant is likely to lose his investment.

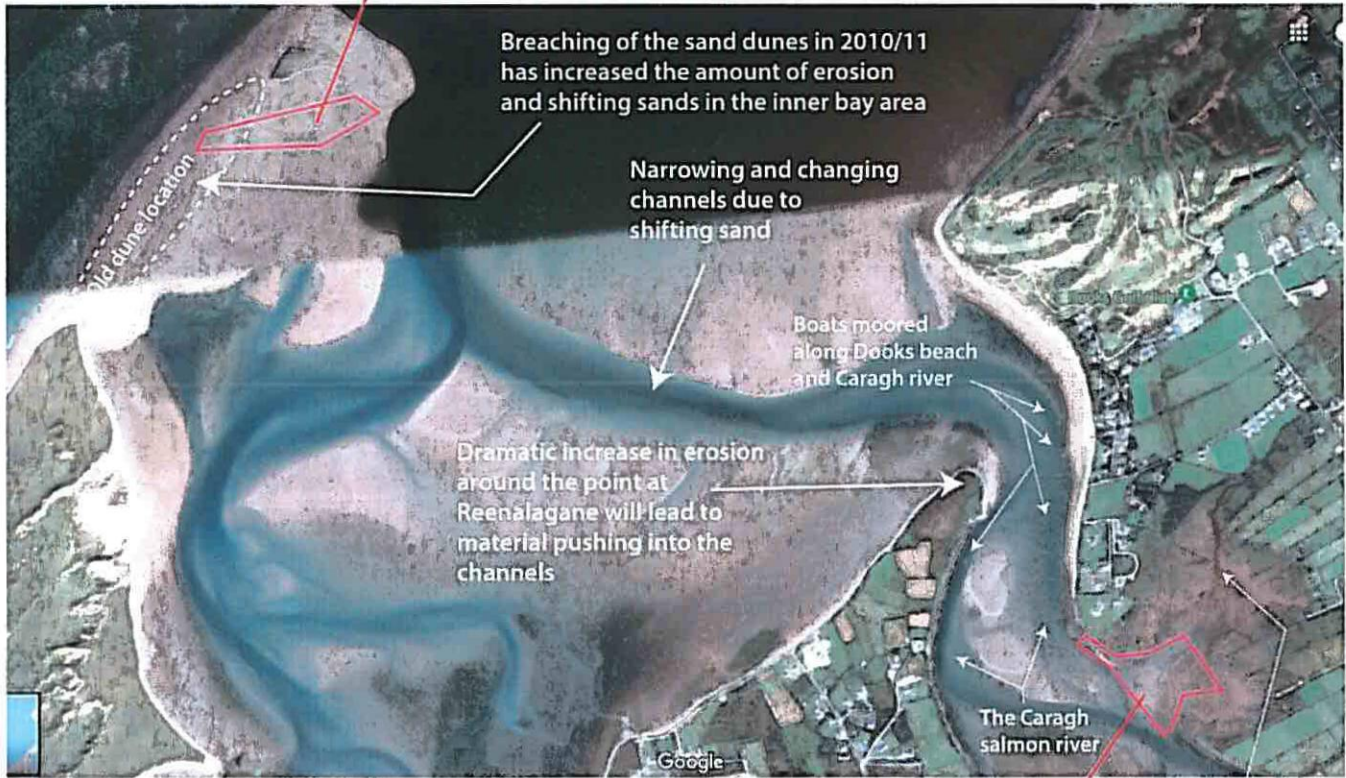


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Application
T6/473a
REFUSED

Minister's determination to refuse the licence sought: -
"The site applied for is no longer a suitable location for aquaculture due to the breach at Rossbeigh Spit and the continuing erosion and movement of sand at the location of the application"



Proposed site T6/466A

Channel to
Lough Yganavan
(Brown Trout)



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4. Conflict with recreational uses and existing tourism industry

This application is problematic on several fronts.

The location of the site applied for is in an area designated as a Special Area of Conservation, Special Protection Area, RAMSAR Site, and a Discovery Point on the Wild Atlantic Way.

The South-West region (Cork/Kerry) is the most popular holiday destination in Ireland with over a quarter of all holidaymakers travelling to this region (Fáilte Ireland, 2009), and has accommodated the highest number of foreign tourist nights in the country in recent years.

The site is to be located very close to Dooks Golf Course¹, an international and well-renowned golf course, one of few 'Links' in the world, and would be visible to players (see [video](#))². The view is a very important aspect of this golf course, as is evident from their promo material. This would cause serious damage to this business. Spoiling the view with oyster farms will have very serious negative consequences for this existing business.

The site selection is also in conflict with recreational use of the area by locals and tourists, as will certainly be evident from the numbers of letters DAFM is likely to receive from the population. More than 4,000 people have signed our petition against aquaculture farming in the Glenbeigh area.

Locals and tourists can often be seen kayaking and sailing on the area of the application, and the site is also adjacent to an angling area. Other activities include walking, bird watching, surfing, kite surfing, horse-riding, sailing, swimming, educational school activities (cockles) and wildlife touring.

The aquaculture farm on this site would block the only access for locals, kayakers and walkers to the inner Bay.

¹ <http://www.dooks.com/>

² https://www.youtube.com/watch?v=FKoc_567yQY



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*Sailing
adjacent to
Dooks
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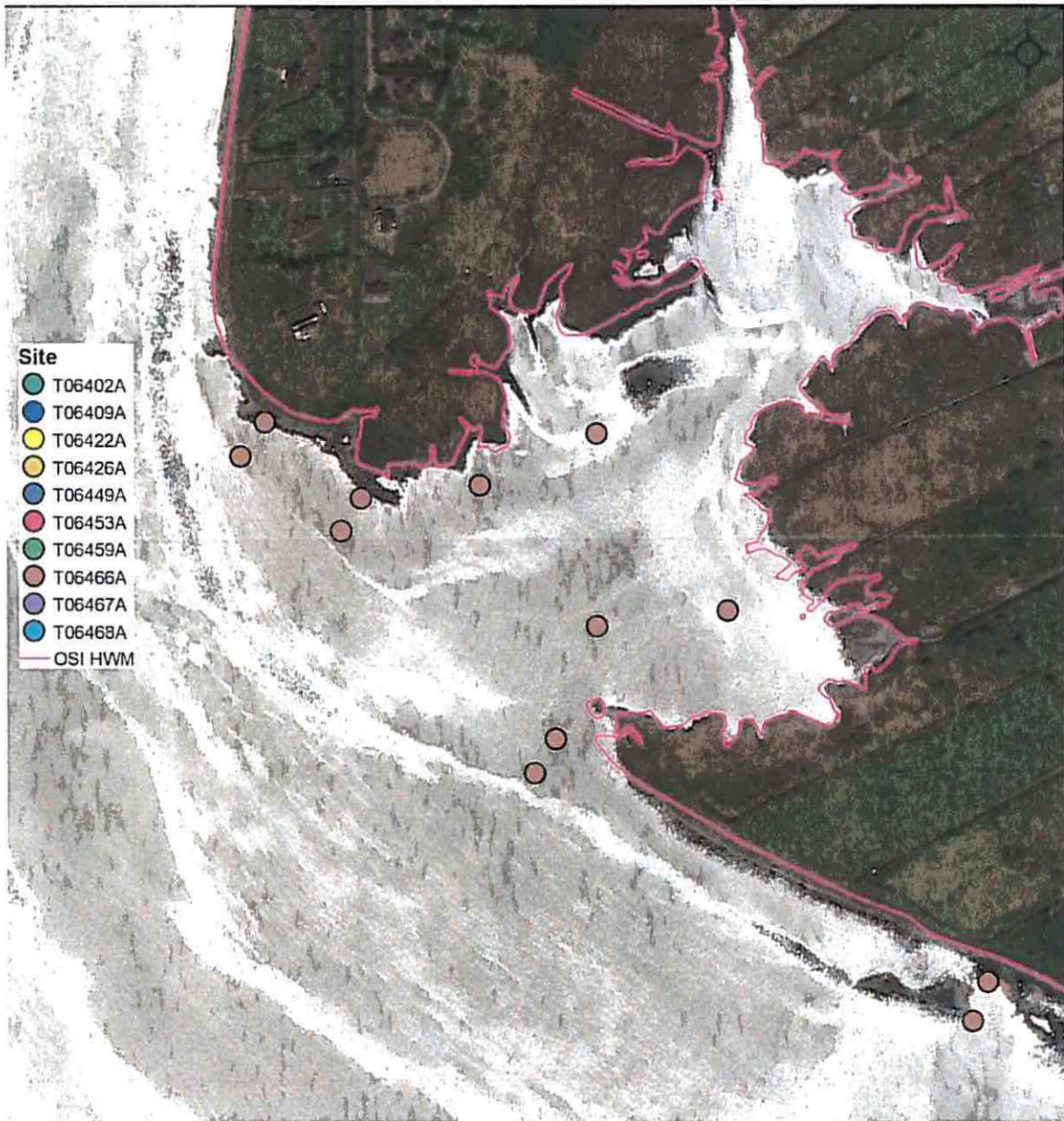


Locals and holidaymakers enjoying the Beach at Dooks



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Examples of local clubs and groups using the area recreationally:

- Caragh River Fishing Club
- Burkes Rossbeigh Beach Riding Center
- Dooks Golf Course
- Capanalea Outdoor Education and Training Center
- Glenbeigh Walking Club
- Community Councils healthy walking loop
- Annual Glenbeigh Races
- Kerry Birding
- Killorglin Canoe Club
- Jamie Knox Windsurfing
- Rossbeigh Dog Walkers Group
- Caragh Lake Swimming Group
- Wild West Swimming Group of Ireland
- Many, many more

Local tourism branding, such as MidKerry Tourism, GoKerry, Glenbeigh Tourism, and the new "Reeks District" initiative has featured Rossbeigh strongly in their marketing and provide economic benefit across the community. With the amount of money that's being invested by Failte Ireland to promote the Wild Atlantic Way and the Ring of Kerry, it doesn't make economic sense to open this area up to aquaculture farming - especially as it's evident that only a few applicants will benefit in the short term (and there are serious doubts over whether any new jobs will actually be created), when it's clear that the area is supported directly and indirectly by tourism.

5. Economic impact

There is no evidence of any new jobs being created with this application. In contrast, there is a thriving tourism industry in Dooks and surrounding area, and this application needs to be weighed up in light of the damage this could potentially do to the local industry.

Indeed, rural communities such as ours make our living thanks to the scenic beauty of the famous Ring of Kerry. There are B&Bs, restaurants, hotels, cafes, a hostel, an international golf links, caravan parks and holiday homes, all of which are likely to be impacted by the decision DAFM will take on this application. The beauty of the beach at Dooks is noted in hundreds of Tripadvisor reviews, and is one of the main reasons travellers come to the area.



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We have concerns about the value of houses that overlook this Natura 2000 site. The value of the houses for those who either live permanently or use them as holiday homes will undoubtedly decrease should the oyster farm be placed on this bay. There could be a mass exodus out of the area, caused by the introduction of this application, with devastating results for local businesses and quality of life.

There is no reason the aquaculture industry should monopolise the beach and the bay area. Placing oyster farms in this area of the beach will stop any locals from developing a local tourism-related business and from capitalising on the promotion of the Wild Atlantic Way and the marketing of the Ring of Kerry.

Tourism is of prime importance to the local economy, and this area is lauded for its scenic and unspoilt beauty, which is also its unique selling proposition. The importance of protecting and promoting the visual beauty of the area in order to sustain and further develop the tourism sector is clear.

In addition, the high mortality rate of proposed aquaculture species to be farmed may negate any presumed gains in employment, and at the expense of other industries. Over-licensing of the area will also probably result in reduced growth rates, quality, size, fouling and reject rates, which will be an issue not just for the licensee but for locals and wildlife alike.

6. Contravention to Kerry County Council Development Plan

This application (and the cumulative effect of the remaining 101 applications, in addition to the existing farms) is in contravention to the Kerry County Council Development Plan 2015-2021.

Specifically, there is conflict with the plan's directive to ensure that the development and exploitation of natural resources doesn't result in any significant adverse effects on the local community, that there be a balance between generating a sustainable and economically viable industry and complying with EU policies and quotas, and the sustainable support of biodiversity.

The plan also calls for the need to maintain Blue Flag Beach status, recreational use and nature conservation interests in an area when assessing maritime development proposals on sites. This application is in direct conflict to this.

Furthermore, this application will impact the County's development of tourism as a 'pillar of economic growth' which will contribute to the balanced economic development of the County



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and the tourism industry in the South West Region. The plan calls for conservation and protection of areas that form the basis of the County's tourism industry, including biodiversity, areas of important landscape and coastal scenery and its potential as "a world class destination for sports and recreation related tourism."

The plan calls for the sustainable development of the low impact experiential tourism including orienteering, angling, equestrian activities, bird watching, whale and dolphin watching, canoeing and kayaking, caving, paragliding, botany, photography, painting and meditation. All of these are current uses of the area where the applicant wishes to plop an aquaculture farm.

There are several more conflicts with the Kerry County Development Plan, and we feel that this application is contrary to the wishes of the County plans as well as to those of the local population.

This aquaculture development would significantly diminish the amenity, natural environment and economic value of Kerry's coastline. It would obstruct coastal tourism such as watersports and water-related activities.

This aquaculture development would obstruct leisure and recreation and would impact the visual appearance of the area around Glenbeigh, jeopardising the area's ability to capitalise on tourism and potential growth from this sector, which stands to benefit far more people than all the persons named in the applications.

Importantly, the plan calls for:

- A guarantee that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval (NE-11).
- The rejection of projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives (NE-12).
- The protection of species of plants listed in the Flora Protection Order (S.I. No. 94 of 1999) and their habitats, species and the habitats of species that require strict protection under the Habitats Regulations and animal and bird species and their habitats protected under the Wildlife Acts 1976-2000 (NE-14).
- Rivers, streams and other watercourses including those outside Protected Areas and maintain them where possible in an open state capable of providing suitable habitat for fauna and flora will be protected (NE-22)
- NE-52 Comply with the provisions of EU Marine and Coastal Zone Management Directives.



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- An ecosystems-based approach to the assessment of the potential impact of development proposals on coastal and maritime areas. In assessing the impact that development would have on coastal and maritime natural heritage values, the Council will take a **precautionary approach and proposals will be required to demonstrate that there will be no likely significant adverse impact on key environmental attributes.** Development proposals shall comply with all relevant objectives and standards of this plan **including those relating to biodiversity and environmental assessment (NE-53).**

Lastly, we would draw your attention to the guidelines and standards that Kerry County Council has implemented for development; we do not expect any less from DAFM:

“All applications involving access onto public roads or the intensification of the usage of an existing access point will be assessed having regard to the following criteria:

- the classification of the public road,
 - the speed limit which applies at the point of access,
 - the width and carrying capacity of the road,
 - the nature, scale and layout of the development,
 - the volume and nature of traffic likely to be generated by the development,
 - the design of the access and the sight line visibility available,
 - the number of access points in the vicinity,
 - the level of parking required and the provision of on-site parking,
 - lighting and advertising matter associated with the development,
 - footpaths and public lighting requirements,
 - access provisions for people with disabilities,
 - traffic calming measures.
- “An EIAR will be required as part of a planning application where the thresholds outlined in Schedule 5 of the Planning and Development Regulations 2001 are met. **The Planning Authority will also exercise its powers under Section 103(1) to require an EIS for sub-threshold development where it is considered that the development would be likely to have significant effects on the environment.**”

We note that this has not been done in the case of this application.

7. Issues with initial application

We note that there were faults with the application, which expects DAFM to maintain adequate screening standards for clean, coherent, and complete applications, as well as due diligence



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before pushing these applications to the public participation process. When this is not done, and poor and inadequately assessed applications are pushed through, it destroys the trust the public has in the process.

In this regard, we note that this application is unclear in places, incomplete, and contains errors.

- Incomplete application answers:
 - The applicant lists C.Gigas as the species but doesn't designate it as non-native (*iv. Species and whether species is native or non-native*)
 - The applicant also doesn't list source of seed or means of introduction (*viii*)
 - The applicant doesn't list predators for C. Gigas. Also "n/a" listed as method of control of predators.
 - The applicant did not answer the question *viii Means of collection and introduction to culture*
 - The application is missing Section 2.6.
 - The telephone number is missing from the application.
 - The checklist hasn't been filled out.
- Errors:
 - The applicant claims that the reason for the site selection is the "ground solid". In fact, this is incorrect. Several reports will confirm the shifting sands of the Bay, which make it very unstable.
 - The access route doesn't seem to match the site application. It's very unclear how the applicant will reach the site.

In conclusion, we urge ALAB to reject this appeal and confirm the Minister's decision.

