



AP 26/2019, AP27/2019, AP29/2019, AP/30/2019, AP31/2019

Technical Advisor's Report

Client: Aquaculture Licence Appeals Board
Address: Kilminchy Court, Dublin Road, Portlaoise, Co Laois. R32
DTW5

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**Appeal Ref No. AP 26/2019, AP27/2019, AP29/2019, AP/30/2019
and AP31/2019**

Aquaculture Licences Appeals Board

Technical Advisor's Report

Description: Assessment of appeals against the Minister's decisions with respect to applications for aquaculture and foreshore licences for cultivation of Pacific oysters at sites in Dungloe Bay, Co Donegal.

Licence Application

Department Ref No: T12/545, T12/521, T12/486, T12/481, T12/205

Applicant: Donegal Ocean Deep Oysters (T12/545, T12/481), Joe Gallagher (T12/521), Martin Boyle (T12/486) and Ostre'an Teoranta (T12/205).

Minister's Decision: To grant aquaculture and foreshore licences for sites T12/545, T12/521, T12/486, T12/481 and renew licence for site T12/205.

Type of Appeal: Appeal against the decisions of the Minister for Agriculture, Food and Marine to grant or renew aquaculture and foreshore licences to Donegal Ocean Deep Oysters Ltd. (T12/545 and T12/481), Joe Gallagher (T12/521), Martin Boyle (T12/486) and renew Ostre'an Teoranta licences (T12/205),

Appellant(s): Aileen Boyle, Save Our Dungloe Bay. (AP26/27/29/30), Nuala Bonner (AP31)

Observers: Donegal Ocean Deep Oyster Ltd., Joe Gallagher, Martin Boyle and Ostre'an Teoranta.

Technical advisor MERC Consultants

Date of site inspection: 07/08/2020

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1.0 General Matters / Appeal Details

1.1 Appeal Details & Observer Comments / Submissions

Date Appeal Received: 19/11/2019

Location of Site Appealed: Dungloe Bay, County Donegal.

1.2 Name of Appellant (s):

Save Our Dungloe Bay, C/O Aileen Boyle, Meenmore, Dungloe, Co. Donegal.
Nuala Bonner & Family, Meenmore, Dungloe, Co Donegal

1.3 Name of Observer (s)

Donegal Ocean Deep Oysters Ltd, Rosssylongan, Donegal Town, County Donegal.

Joe Gallagher, Roshine South, Maghery, County Donegal.

Martin Boyle, Lower Keadue, Burtonport, Letterkenny, County Donegal,

Ostre'an Teoranta, An Sean Tech, Gweedore Road, Dungloe, County Donegal.

1.4 Grounds for Appeal

With regard to the following appeals **AP26/2019, Site T12/545, AP27/2019, Site T12/521, AP29/2019, Site T12/486, AP30/2019, Site T12/481, AP31/2019, Site T12/205**. The Appellants question the validity of the Ministers decisions based on the reasons and considerations taken in the granting and renewal of the licences.

Substantive Issues

The following (1 – 9) are the matters considered by the Minister in his determination to grant the licences under appeal and are the headings under which the appellants have raised substantive issues in the appeal submissions.

Scientific advice is that the waters are suitable.

In relation to the Minister's determinations that the waters are suitable, the Appellants state:

AP26 – the appellant asserts that the applicant has not answered the question on page 8 of the application concerning whether or not the site is located within the Designated Shellfish Waters Area. The appellant submits that site T12/545 is outside Designated Shellfish Waters area. The appellant submits that there are two active discharge licences in the inner Dungloe Bay area: Lwat33 and D0208-01. Lwat33 is discharging close to the sites and its

presence raises both water quality and food safety issues should the licences be granted. Discharge D0208-01 is the primary outfall for the Dungloe Waste Water Treatment Plant (WWTP) and as such raises both water quality and food safety issues within the proposed aquaculture sites. Further, previous licence applications in this area of Dungloe Bay were refused because of the presence of the Dungloe WWTP discharge which raised significant food safety and water quality concerns. Furthermore, the appellant submits there are a large number of point source discharges into the Bay with less than half of the towns dwellings and businesses being connected to the Dungloe WWTP. It is also stated that monitoring of Dungloe Bay indicate that there are elevated levels of arsenic within the designated shellfish waters that require investigation under the Shellfish Regulations.

AP27 – the appellant asserts that the applicant has stated that the site is within Designated Shellfish Waters area, but submits the site is outside of the designated area and includes a diagram depicting the general location of T12/521 in relation to Designated Shellfish Waters area. The appellant submits that there are two active discharge licences in the inner Dungloe Bay area: Lwat33 and D0208-01. Lwat33 is discharging close to the sites and its presence raises both water quality and food safety issues should the licences be granted. Discharge D0208-01 is the primary outfall for the Dungloe Waste Water Treatment Plant (WWTP) and as such raises both water quality and food safety issues within the proposed aquaculture sites. Further, previous licence applications in this area of Dungloe Bay were refused because of the presence of the Dungloe WWTP discharge which raised significant food safety and water quality concerns. Furthermore, the appellant submits there are a large number of point source discharges into the Bay with less than half of the towns dwellings and businesses being connected to the Dungloe WWTP. It is also stated that monitoring of Dungloe Bay indicate that there are elevated levels of arsenic within the designated shellfish waters that require investigation under the Shellfish Regulations.

AP29 – the appellant asserts that the applicant has stated that the site is within Designated Shellfish Waters area, but submits the site is outside of the designated area and includes a diagram depicting the general location of T12/521 in relation to Designated Shellfish Waters area. The appellant submits that there are two active discharge licences in the inner Dungloe Bay area: Lwat33 and D0208-01. Lwat33 is discharging close to the sites and its presence raises both water quality and food safety issues should the licences be granted. Discharge D0208-01 is the primary outfall for the Dungloe Waste Water Treatment Plant (WWTP) and as such raises both water quality and food safety issues within the proposed aquaculture sites. Further, previous licence applications in this area of Dungloe Bay were refused because of the presence of the Dungloe WWTP discharge which raised significant food

safety and water quality concerns. Furthermore, the appellant submits there are a large number of point source discharges into the Bay with less than half of the towns dwellings and businesses being connected to the Dungloe WWTP. It is also stated that monitoring of Dungloe Bay indicate that there are elevated levels of arsenic within the designated shellfish waters that require investigation under the Shellfish Regulations.

AP30 – The appellant submits that there are two active discharge licences in the inner Dungloe Bay area: Lwat33 and D0208-01. Lwat33 is discharging close to the sites and its presence raises both water quality and food safety issues should the licences be granted. Discharge D0208-01 is the primary outfall for the Dungloe Waste Water Treatment Plant (WWTP) and as such raises both water quality and food safety issues within the proposed aquaculture sites. Further, previous licence applications in this area of Dungloe Bay were refused because of the presence of the Dungloe WWTP discharge which raised significant food safety and water quality concerns. Furthermore, the appellant submits there are a large number of point source discharges into the Bay with less than half of the towns dwellings and businesses being connected to the Dungloe WWTP. It is also stated that monitoring of Dungloe Bay indicate that there are elevated levels of arsenic within the designated shellfish waters that require investigation under the Shellfish Regulations.

AP31 – The appellant submits that there are two active discharge licences in the inner Dungloe Bay area: Lwat33 and D0208-01. Lwat33 is discharging close to the sites and its presence raises both water quality and food safety issues should the licences be granted. Discharge D0208-01 is the primary outfall for the Dungloe Waste Water Treatment Plant (WWTP) and as such raises both water quality and food safety issues within the proposed aquaculture sites. Further, previous licence applications in this area of Dungloe Bay were refused because of the presence of the Dungloe WWTP discharge which raised significant food safety and water quality concerns. Furthermore, the appellant submits there are a large number of point source discharges into the Bay with less than half of the towns dwellings and businesses being connected to the Dungloe WWTP. It is also stated that monitoring of Dungloe Bay indicate that there are elevated levels of arsenic within the designated shellfish waters that require investigation under the Shellfish Regulations.

2) Public Access to recreational and other activities can be accommodated by this project.

In relation to the Minister's determinations that recreational and other activities can be accommodated by this project the Appellants state:

AP26 – that current access to piers will be obstructed and/or altered by the proposed development and that three (3) separate applications propose to use a single access route from Meenmore Pier. The appellant questions whether the pier and route is suitable for the proposed scale of activities, given that Meenmore pier is used for a number of leisure activities.

The appellant further submits:

- Recreational and water based leisure activities will be negatively impacted by the granting of aquaculture and foreshore licences for these sites.
- A range of tourism existing leisure activities and proposed tourism projects some of which have received community funding will be negatively impacted by the granting of the aquaculture and foreshore licences for the proposed site.
- That granting of this aquaculture and foreshore licence is contrary to Section 8.2 paragraph 3 of the Fisheries (Amendment) Act in 1997 in that it takes away or abridges the immemorial use of the Dungloe Bay area.
- That granting of aquaculture and foreshore licences for this site is contrary to Donegal County Development Plan in the context of the protection and sustaining rural areas.

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The appellant further submits:

- Recreational and water based leisure activities will be negatively impacted by the granting of aquaculture and foreshore licences for these sites.
- A range of tourism existing leisure activities and proposed tourism projects some of which have received community funding will be negatively impacted by the granting of the aquaculture and foreshore licences for the proposed site.
- That granting of this aquaculture and foreshore licence is contrary to Section 8.2 paragraph 3 of the Fisheries (Amendment) Act in 1997 in that it takes away or abridges the immemorial use of the Dungloe Bay area.
- That granting of aquaculture and foreshore licences for this site is contrary to Donegal County Development Plan in the context of the protection and sustaining rural areas.

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- That granting of aquaculture and foreshore licences for this site is contrary to Donegal County Development Plan in the context of the protection and sustaining rural areas.

AP30 – that current access to piers will be obstructed and/or altered by the proposed development.

The appellant further submits:

- Recreational and water based leisure activities will be negatively impacted by the granting of aquaculture and foreshore licences for these sites.
- A range of tourism existing leisure activities and proposed tourism projects some of which have received community funding will be negatively impacted by the granting of the aquaculture and foreshore licences for the proposed site.
- That granting of this aquaculture and foreshore licence is contrary to Section 8.2 paragraph 3 of the Fisheries (Amendment) Act in 1997 in that it takes away or abridges the immemorial use of the Dungloe Bay area.
- That granting of aquaculture and foreshore licences for this site is contrary to Donegal County Development Plan in the context of the protection and sustaining rural areas.

AP31 – that current access to piers will be obstructed and/or altered by the proposed development.

The appellant further submits:

- Recreational and water based leisure activities will be negatively impacted by the granting of aquaculture and foreshore licences for these sites.

- A range of tourism existing leisure activities and proposed tourism projects some of which have received community funding will be negatively impacted by the granting of the aquaculture and foreshore licences for the proposed site.
- That granting of this aquaculture and foreshore licence is contrary to Section 8.2 paragraph 3 of the Fisheries (Amendment) Act in 1997 in that it takes away or abridges the immemorial use of the Dungloe Bay area.
- That granting of aquaculture and foreshore licences for this site is contrary to Donegal County Development Plan in the context of the protection and sustaining rural areas.

3) The proposed development should have a positive effect on the local economy .

In relation to the Minister's determinations that the proposed development should have a positive effect on the local economy, the appellants for AP26,AP27,AP29,AP30 and AP 31 all state that:

- the proposed development would have profound implications on the locality's ability to sustain its existing tourism trade on which much employment and local businesses depend and that ultimately, this would irrevocably damage West Donegal's wider tourism brand.
- the granting of foreshore and aquaculture licences sites will negatively impact the seaweed harvesting industry in the inner bay by reducing access to harvest areas and that the approval of these licenses will put permanent obstacles in the way of Rack Cutters and greatly reduce the area available to them.
- the proposed development will impact on views of the bay and will reduce the area available for leisure activities and will greatly reduce home and property values, tourist numbers and potential settlement into the area from outside.
- they disagree with Final Appropriate Assessment Conclusion Statement wherein it is stated 'No significant conflict between seaweed harvesting and proposed oyster farming areas is anticipated.'
- they disagree that the proposed development should have a positive effect on the economy of the local area.

4) All issues raised during the Public and Statutory consultation phase for the licensing of the sites

In relation to the Minister's determinations that all issues were raised during the Public and Statutory consultation phase for the licensing of the sites, the appellants for AP26,AP27,AP29,AP30 and AP31 question the validity of only one newspaper notice offering the opportunity for Public submissions regarding the Appeal. The appellants also question why proposed amendments to some site boundaries were not re-advertised and public submissions invited in relation to the proposed changes.

5) There are no effects anticipated on the man-made environment heritage of value in the area

In relation to the Minister's determinations that there are no anticipated effects on the man-made environment heritage of value in the area associated with the development or renewal of licenses referred to in AP26,AP27,AP29,AP30 and AP31, the appellants claim that:

- there are a number of heritage sites on the shores of Dungloe Bay that may be negatively impacted should the aquaculture and foreshore licences be granted.
- there is potential for further as yet unknown archaeological sites within the area to be negatively impacted if aquaculture and foreshore licences are granted.
- seaweed harvesting heritage of Dungloe Bay will be lost if the licences are granted.
- the areas proposed for the siting of the farms are inappropriate in the context of local heritage and the limited historical investigations that have been carried out in Dungloe Bay.

The appellants disagree with the Minister's determination that there are no effects anticipated on the man-made environment heritage of value in the area

6) No significant effects on wild fisheries

In relation to the Minister's determinations that there will be no significant effects on wild fisheries, the appellants for AP26,AP27,AP29,AP30 and AP31

The appellants maintain that licensing of the site will create physical obstacles to inshore shrimp and crab fisheries and infer a risk to the fisheries maintained by the Rosses Anglers Association.

The appellants disagree with the Ministers statement determination that no significant effects will arise regarding wild fisheries.

7)There is no potential for negative impacts on the Rutland Island and Sound SAC from aquaculture activities in the SAC.

In relation to the Minister's determinations that aquaculture activities in Rutland island and Sound SAC are being licensed and managed so as not to significantly and adversely affect the integrity of the Rutland Island and Sound SAC, the appellants for AP26,AP27,AP29,AP30 and AP31 state:

- the Appropriate Assessment carried out by the Marine Institute for the DAFM concludes " that intensification of aquaculture and granting of new applications will have a disturbing effect on the Rutland Island and Sound SAC specifically relating to harbour seal populations."
- AP26,AP27,AP29,AP30,AP31 argue that granting licences in respect of these applications by the minister would clearly be in complete contradiction of the department's own Appropriate Assessment for Dungloe Bay, as the sites are adjacent to or may even overlap, a harbour seal moulting site
- AP26,AP27,AP29,AP30,AP31 state that the granting of these applications, considering the details of the individual appeals, will significantly and adversely affect the integrity of the Rutland Island and Sound SAC.

The appellants disagree with the Minister's statement –"the site is located within the Rutland Island and Sound Special Area of Conservation. An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in this SAC, including this site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Rutland Island and Sound SAC."

8) Scientific observations related to the Appropriate Assessment received during the licensing Consultation process are addressed in the Licensing Authority's Appropriate Assessment concluding Statement.

In relation to the Minister's determinations that scientific observations related to the Appropriate Assessment received during the licensing consultation process are addressed in the Licensing Authority's Appropriate Assessment concluding statement, the appellants for AP26,AP27,AP29,AP30 and AP31 state:

- Applications for sites T12/545(AP26), T12/521(AP27) and T12/486 (AP29) are for areas that are outside of the Designated Shellfish Waters area within Dungloe Bay

The appellants in each appeal query:

- whether the intertidal area in Inner Dungloe Bay is suitable for the proposed Pacific oyster trestle aquaculture licences. The Appellant also questions
- whether the growing of Pacific oysters, *Crassostrea gigas*, in Rutland Island and Sound SAC should be sanctioned given the Appropriate Assessment

concluding statement of the DAFM that “the risk of Pacific oysters naturalising in Rutland Island and Sound cannot be discounted.”

The appellants for AP26,AP27,AP29,AP30 and AP31 refer to the findings of an An Taisce report into aquaculture licensing in Ireland that concluded “Environmental Impact Assessments (EIA) should be carried out to assess the in-combination effects of all aquaculture activities within each bay, rather than assessing licences on an individual basis. Annex III of EIA Directive 2011/92/ EU refers to the characteristics of projects that must be considered for an EIA. Paragraph 1(b) of Annex III refers to the cumulation with other projects, indicating that cumulative impacts of aquaculture operations are an important factor for EIA purposes”.

The appellants also refer to a further section of the An Taisce report wherein it is stated that an EIA in relation to aquaculture development should account for the impact of the entire life cycle of an aquaculture development from construction to decommissioning. An Taisce maintains that given the scale of aquaculture development and associated problems, there is a need to amend the European Communities (Birds and Natural Habitats) Regulations (SI 477 of 2011) to add the Pacific oyster to the Third Schedule therefore prohibiting its use for aquaculture in Ireland. The appellants make reference to this assertion in the context that the Pacific oyster is the species to be cultivated under the proposed licences under appeal.

The appellants disagree with the Ministers statement determination that scientific observations related to the Appropriate Assessment received during the licensing consultation process are addressed in the Licensing Authority's Appropriate Assessment Conclusion Statement

9) That the recommendations of the Appropriate Assessment for aquaculture are consistent with the conservation objectives of the SAC and SPA and that there will be no significant impact on the marine environment or quality status of the area

In relation to the Minister’s determinations that the recommendations of the Appropriate Assessment for aquaculture are consistent with the conservation objectives of the SAC and SPA and that there will be no significant impact on the marine environment or quality status of the area, the appellants for AP26,AP27,AP29,AP30 and AP31 state:

- Aquaculture through the accumulation of waste products can be detrimental to the marine environment
- Bird species feeding on mud flats are negatively impacted by oyster trestle culture
- That birds suffering severe declines in overwintering and breeding populations are present in inner Dungloe Bay

- That the granting of the aquaculture and foreshore licence for the proposed sites will interfere with the breeding and feeding of resident birds
- That the Appropriate Assessment is lacking in its consideration of the impact of mariculture on birds
- That the granting of aquaculture and foreshore licences will negatively impact the harbour seal population in the SAC. The conservation objectives supporting document for the Rutland Island and Sound SAC states “ In acknowledging the limited understanding of aquatic habitat use by the species within the site it should be noted that all suitable aquatic habitat is considered relevant to the species range and ecological requirements at the site and is therefore of potential use by harbour seals.” and that “Current information on breeding locations selected by harbour seals in Rutland Island and Sound SAC is comparatively limited”.
- That a number of moulting sites will be negatively impacted by the granting of aquaculture and foreshore licences for the proposed activity.
- That the concluding statement of the Appropriate Assessment questions the possibility for mitigation of disturbance at some proposed aquaculture sites and that impacts on seal conservation status cannot be discounted.
- There is no evidence to suggest that the proposed buffer of 200m is sufficient to mitigate for disturbance.
- That the competent authority can be certain that a project or plan will not have adverse affects on the integrity of a site.
- That there is insufficient information on the ecology of the harbour seal population within Dungloe Bay and that the redrawing of proposed licenced areas and access routes to these areas is insufficient given the NPWS states all suitable habitat is considered relevant.
- That the aquaculture activity will impact the qualifying feature habitat of Reefs.
- That the activity may change the infaunal benthic communities
- That the activity associated with the granting of foreshore and aquaculture licences will negatively impact the intertidal habitat.
- That the basis of the Appropriate Assessment Screening spatial overlap of the activity with habitats is insufficient
- That the conclusion of the Appropriate Assessment that an overlap between fishing activity and aquaculture on reef habitat is unlikely to occur is insufficient.
- Refusal of licence T12/397A, B and C was in part due to the potential of changing the morphology of the Bay due to the scale of operations.
- That expansion of aquaculture activity in Rutland Island and Sound SAC may impact the conservation status of Otter (*Lutra lutra*) in the adjoining Gweedore Bay and Islands SAC.
- Otters are a protected species and are present in Dungloe Bay.

In relation to AP26,AP27,AP29,AP30 and AP31 the appellants in each case state the “We strongly object to granting this application over the protection, freedom and pleasure that we and all of the above-mentioned species currently enjoy in the Inner Dungloe Bay”.

In relation to AP27, the appellants disagree with the Minister's statements “i. Taking account of the recommendations of the Appropriate Assessment the aquaculture activity at this site is consistent with the Conservation Objectives for the SAC/SPA” and there will be “No significant impacts on the marine environment and the quality status of the area will not be adversely impacted”

10) No Visual Impact

The appellants in AP26,AP27,AP29 and AP30 state that the proposed aquaculture site if granted will be visible from all areas of the town and/or will impact views from the Wild Atlantic Way. The appellants state that the structures associated with the licencing of the proposed aquaculture site, both trestles and navigational marks, will have a negative impact on high scenic amenity areas around Dungloe.

In relation to AP26,AP27,AP29,AP30 and AP31 the appellants in each case state the “We strongly object to granting this application over the protection, freedom and pleasure that we and all of the above-mentioned species currently enjoy in the Inner Dungloe Bay”.

In relation to AP31 (T12/205), the appellant submits “Possible scenic impacts from the proposed aquaculture are considered low to moderate. Views may be affected from the Wild Atlantic Way; Views from the WAW will be greatly affected in Dungloe if this application is granted. The views from Quay Road, Mill Road, Caravan Road, Pale Road, Tubberkeen, Meenmore, Crocknageeragh, Fairhill, are spectacular. “

11) The updated Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection now required under EU law

The appellants in AP26,AP27,AP29,AP30 and AP31 do not agree with the Minister for Agriculture, Food and the Marine’s determination that it is in public interest to grant a variation of the licences sought and the appellants state that they fail to see how the public interest is in fact served, other than by providing a limited number of jobs.

Non -substantive issues

There were no non-substantive issues

1.5 Minister's submission

Section 44(2) of the Fisheries (Amendment) Act 1997 states that

“The Board shall, as soon as practicable after receiving a notice of appeal, give a copy to each other party to the appeal.”

Section 44(2) of the Fisheries (Amendment) Act 1997 states that

“The Minister and each other party except the Appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it.”

The *Notices of Appeal* were received by the Department of Agriculture, Food and Marine on the 19/11/19. While the Department responded within the required time frame and in so doing provided copies of relevant documentation relating to the application and internal process, no Ministerial submission in relation to the appeal was received by the Board within the specified timeframe. It is therefore determined that no Ministerial submission was made in response to the appeal which the Board is required to consider.

1.6 Applicant response

A number of applicants provided a detailed response to the appeal as provided for under section 44 of the act.

Applicant responses were received from: Donegal Ocean Deep Oysters Ltd. with regard to licences T12/ 545 and T12/482 (AP 26/2019 and AP 30/2019) and Martin Boyle with regard to licence T12/486 (AP29/2019). A notice was issued by the Appeals Board pursuant to Section 46(1) of the Act granting J.P. Monaghan of Ostre'an Teoranta an extension to prepare a response to the Appeal to the renewal of licences at site T12/205 (AP31/2019).

Donegal Ocean Deep Oysters Ltd. (AP26/2019 & AP 30/2019) response to the appeal is summarised as follows:

1. Both licenced areas will be within Designated Shellfish Waters and further, designation is not a pre-requisite to licensing
2. This designation is beneficial to all users of the bay as it requires maintenance of good water quality status
3. Previous licencing applications at these sites were refused in 2008 until a Waste Water Treatment Plant (WWTP) became operational in the area.
4. The new WWTP for Dungloe town and Glenties is operational
5. Three significant Harmful Algal blooms have occurred in the Northwest in the past decade resulting in mortality as high as 85% within shellfish aquaculture

operations. Dungloe has had no significant impacts from these events. The Applicant submits this makes the licensing of these sites important as sanctuaries.

Martin Boyle's (AP29/2019) response to the appeal is summarised as follows:

1. The site under appeal was previously licenced.
2. There is no visual impact of the site from anywhere within Dungloe Bay.
3. That the petition against aquaculture moving into inner Dungloe Bay present a false impression of community objection to the licencing of aquaculture within in the inner bay area.
4. There are no watersports providers in the area and the licencing of the site will not impact water sports.
5. That shellfish aquaculture is beneficial to the environment, the economy and the consumer.

Ostre'an Teoranta – (AP31/2019) response to the appeal is summarised as follows:

1. That site T12/205 has been in production for a number of years and is sampled in compliance with European and National aquatic health legislation.
2. Shellfish produced from this site is classified A (direct human consumption) under the Sea Fish Protection Authority monitoring programme from 1st February to 1st August and B for the remaining period of the year
3. That the licenced area is extremely small relative to the area of the Bay and SAC
4. That the licenced area will have no impact on navigation or leisure use
5. That the Shellfish Water Designation provided a legislative basis for the upgrade of the WWTP at Dungloe benefitting all users of the area
6. That Ostrea'n Teoranta Ltd. is a driver for improvements in the bay
7. The company rejects the community claim of 'immemorial' use of the bay area
8. Ostrea'n Teoranta is a major employer in the area
9. That intertidal aquaculture is recognised by Donegal County Council as a key characteristic of Dungloe Bay
10. That the Donegal County Plan recognises aquaculture as a growth industry and supports further growth of the industry given adequate environmental safeguards and avoidance of 'overbearing visual impact'
11. That aquaculture has a positive impact on tourism and that aquaculture is an important part of the Wild Atlantic Way allowing tourists to see and taste fresh sea produce through initiatives such as 'Taste the Atlantic'
12. That the renewal of licencing of this site will create local jobs and support Failte Ireland's commitment to increasing the length of the tourist season
13. That no seaweed harvesting occurs in the area of the site

14. That licencing of the site will have no impact on known or unknown archaeological, heritage or shipwreck sites
15. That licencing of the site will have no impact on wild fisheries: crab, shrimp or salmonids
16. The company carried out a visual assessment of the impact of the aquaculture site following guidelines using Landscape and Visual Impact Assessment of Marine Aquaculture (ERM, 2001) for guidelines. The result of this study did not identify the potential for significant impacts to occur as the result of this project alone or in combination with other projects.

2.0 Consideration of Non-Substantive Issues

No non-substantive issues were raised in the appeal.

3.0 Oral Hearing Assessment

The Appellants did not request an oral hearing in relation to AP26/2019, AP27/2019, AP29/2019, AP30/2019 or AP31/2019.

Having reviewed the Ministers File, additional correspondence from the appellant/applicants and Department of Agriculture, Food and the Marine and having carried out a site visit, it is considered that there is sufficient information and documentation available to the technical review in order to make a clear recommendation in relation to the appeal.

4.0 Minister's file

Donegal Oceandeep Oysters AP26/2019 (T12/545)

No.	Date	Item
1	06/02/2019	Application for aquaculture and foreshore licence for T12/545
2	01/03/2019	Letter from the Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM
3	15/03/2019	Letter from SFPA to the Aquaculture and Foreshore Management Division of DAFM
4	02/04/2019	Email from the Marine Survey Office to the Aquaculture and Foreshore Management Division of the DAFM
5	10/04/2019	Email form the Marine Engineering Division of DAFM to the Aquaculture and Foreshore Management Division regarding seal habitat buffer zones.
6	10/06/2019	Letter to the Aquaculture and Foreshore Management Division of DAFM on the application for Aquaculture and Foreshore

- Licences T12/545 from the Marine Institute.
- 7 17/04/2019 Email from Marine Institute to Marine Engineering Division DAFM regarding access route to site T12/545
 - 8 18/06/2019 Email to the Aquaculture and Foreshore Management Division of DAFM on the application for Aquaculture and Foreshore Licences T12/545 from the Marine Environment and Foreshore Division of the Department of Housing, Planning and Local Government.
 - 9 27/06/2019 Report from the Marine Engineering Division of DAFM to the Aquaculture and Foreshore Management Division of DAFM on application for licences at site T12/545
 - 10 02/07/2019 Email to the Aquaculture and Foreshore Management Division of DAFM on the application for Aquaculture and Foreshore Licences T12/545 from Development Applications Unit of the Department of Culture, Heritage and Gaeltacht.
 - 13 02/08/2019 Email from Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM.
 - 14 14/08/2019 Email from Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM
 - 15 14/08/2019 Email from Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM.
 - 16 21/08/2019 Email from the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding T12/481.
 - 17 21/08/2019 Email from the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM.
 - 19 11/09/2019 Email from the Marine Engineering Division of DAFM to Marine Institute regarding access routes to T12/545 and potential harbour seal impact
 - 20 11/09/2019 Email from Marine Institute to Marine Engineering Division DAFM regarding access route to site T12/545 and potential harbour seal impact
 - 21 11/09/2019 Email from Marine Institute to Marine Engineering Division DAFM regarding access route to site T12/545 and potential harbour seal impact
 - 22 11/09/2019 Email from Marine Engineering Division DAFM to the Aquaculture and Foreshore Management Division DAFM on access to site T12/545
 - 23 11/09/2019 Email from the Marine Engineering Division of DAFM to Marine Institute regarding access routes to T12/545 and potential harbour seal impact
 - 24 13/09/2019 Marine Engineering Division DAFM report on Aquaculture and foreshore licence application T12/545.
 - 25 30/09/2019 Internal email within Aquaculture and Foreshore Management Division of DAFM regarding seal site buffer zones.

- 26 Undated Recommendation to grant the Licence 00606-19 for site T12/545 to the Minister from the Coastal Zone Management Division
- 27 22/10/2019 Determination of Aquaculture/ Foreshore Licensing application –T12/545 by the Minister for Agriculture, Food and the Marine.
- 28 10/12/2019 Letter from the Aquaculture and Foreshore Management Division of DAFM to the Aquaculture Licence Appeals Board acknowledging the appeal against the granting of aquaculture and foreshore licences to Donegal Deep Ocean Oysters Ltd. at site T12/545

Donegal Ocean Deep Oysters AP30/2019 (T12/481)

No	Date	Item
1	23/01/2012	Letter from the Coastal Zone Management Division DAFM to the Aquaculture and Foreshore Division of DAFM.
2	19/06/2014	Application for aquaculture and foreshore licences at T12/481
3	21/10/2014	Letter from Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of DAFM regarding the application for aquaculture and foreshore licences relating to T12/481
4	12/11/2014	Letter from the Commissioner of Irish Lights to the Aquaculture and Foreshore Division of DAFM
5	18/04/2016	Marine Engineering Division DAFM report on Aquaculture and foreshore licence application T12/481
6	23/01/2019	Email from the Aquaculture and Foreshore Division of DAFM to the SFPA
7	24/01/2019	Email from the SFPA to the Aquaculture and Foreshore Division of DAFM
8	10/04/2019	Email from the Marine Engineering Division DAFM to the Aquaculture and Foreshore Division of DAFM
9	10/04/2019	Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute.
10	17/04/2019	Email correspondence between the Department of Marine and the Aquaculture and Foreshore Management Division of DAFM
11	22/05/2019	Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Institute, Failte Ireland, An Taisce, Fisheries Ireland, Bord Iascaigh Mhara, the Marine Environment and Foreshore Division of the Department of Housing, Planning and Local Government, Department of Culture, Heritage and Gaeltacht Applications unit, and the Marine Division of Donegal County Council.
12	10/06/2019	Letter from the Marine Institute to Aquaculture and Foreshore Management Division of DAFM regarding aquaculture Licence T12/481.
13	18/06/2019	Email from the Marine Environment and Foreshore division of

- the Department of Housing, Planning and Local Government to Aquaculture and Foreshore Management Division of DAFM
- 14 19/06/2019 Application to the Aquaculture and Foreshore Management Division of DAFM for aquaculture and foreshore licence for T12/481
- 15 27/06/2019 Email from of Marine Division Donegal County Council to the Aquaculture and Foreshore Management Division of DAFM
- 16 27/06/2019 Email from of Marine Division Donegal County Council to the Aquaculture and Foreshore Management Division of DAFM
- 17 27/06/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of DAFM
- 18 01/07/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Division of Donegal County Council
- 19 01/07/2019 Email from of Marine Division Donegal County Council to the Aquaculture and Foreshore Management Division of DAFM
- 20 15/07/2019 Letter to the Aquaculture and Foreshore Management Division of DAFM from the Applicant, Donegal Ocean Deep Oysters, regarding comments, observations and objections received to the application for aquaculture and foreshore licences at site T12?481
- 21 02/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of DAFM
- 22 21/08/2019 Email from the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding submissions received rto the application for foreshore and aquaculture licences at site T12/481 from Donegal County Council, Department of Housing, Planning and Local Government and public submissions.
- 23 21/08/2019 Email from the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding submissions received rto the application for foreshore and aquaculture licences at site T12/481 from the Applications Division of the Department of Culture, Heritage and Gaeltacht
- 24 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 25 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 26 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 27 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute.
- 28 13/09/2019 Report from the Marine Engineering Division of DAFM to the Aquaculture and Foreshore Management Division of DAFM

- regarding submissions received to the application for foreshore and aquaculture licences at site T12/48 a for licences from the Marine Environment Section of the Department of Housing, Planning and Local Government, the Marine Section of Donegal County Council, the Development Applications Unit of the Department of Heritage, Culture and Gaeltacht and the public.
- 29 Undated Recommendation to grant the Licence 00606-19 for site T12/481 to the Minister from the Coastal Zone Management Division
- 30 22/10/2019 Determination of Aquaculture/ Foreshore Licensing application –T12/481 by the Minister for Agriculture, Food and the Marine.
- 31 10/12/2019 Letter from the Aquaculture and Foreshore Management Division of DAFM to the Aquaculture Licence Appeals Board acknowledging the appeal against the granting of aquaculture and foreshore licences to Donegal Deep Ocean Oysters Ltd. at site T12/481
- 32 13/12/2019 Letter form the Applicant, Donegal Ocean Deep Oysters Ltd. to the aquaculture Licence Appeals Board regarding the Appeal to the granting of aquaculture and foreshore licences to Donegal Deep Ocean Oysters Ltd. at site T12/48.

Joe Gallagher AP27/2019 (T12/521)

- | No | Date | Item |
|----|------------|---|
| 1 | 30/06/2017 | Application to Aquaculture and Foreshore Management Division of DAFM for aquaculture and foreshore licence for T12/521 |
| 2 | 24/08/2017 | Letter form the Commissioner of Irish Lights to the Aquaculture and Foreshore Management Division of DAFM regarding licencing of site T12/521. |
| 3 | 09/10/2017 | Letter from the Marine Surveyors Office to the Aquaculture and Foreshore Management Division of DAFM for aquaculture regarding the application for licences at site T12/521 |
| 4 | 20/06/2018 | Marine Engineering Division DAFM report on Aquaculture and foreshore licence application T12/521 |
| 5 | 06/02/2019 | Email from the Marine Engineering Division DAFM to the Aquaculture and Foreshore Management Division of DAFM |
| 6 | 28/02/2019 | Letter from Sea Fisheries Protection Authority to the Aquaculture and Foreshore Management Division of DAFM regarding the application for licences at site T12/521 |
| 7 | 10/04/2019 | Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute. |
| 8 | 10/06/2019 | Letter form the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding aquaculture licence T12/521. |
| 9 | 18/06/2019 | Letter from the Marine Engineering Division DAFM to the |

- 10 18/06/2019 Aquaculture and Foreshore Management Division of DAFM Letter from the Marine Environment and Foreshore Division of the Department of Housing, Planning and Local Government to the Aquaculture and Foreshore Management Division of DAFM regarding the application for licences at site T12/521
- 11 19/06/2019 Application to the Aquaculture and Foreshore Management Division of DAFM for aquaculture and foreshore licence for T12/481
- 12 02/07/2019 Letter form the Development Applications Unit of the Department of Culture, Heritage and Gaeltacht to the Aquaculture and Foreshore Management Division of DAFM regarding licensing site T12/521
- 13 02/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division DAFM detailing observations on application at site T12/521
- 14 04/08/2019 Letter from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division DAFM requesting observations on application at site T12/521.
- 15 14/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division DAFM requesting observations on application at site T12/521
- 16 21/08/2019 Email form the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding submissions made with regard to the licence application for site T12/521
- 17 21/08/2019 Email form the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding submissions made with regard to the licence application for site T12/521
- 18 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 19 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 20 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute
- 21 11/09/2019 Email correspondence between the Aquaculture and Foreshore Management Division of DAFM and the Marine Institute.
- 22 13/09/2019 Letter from the Divisional Engineer, Marine Engineering Divison DAFM to the Aquaculture and Foreshore Management Division of DAFM Statutory and public consultation responses to the application for licences at site T12/521
- 23 Undated Recommendation to grant the Licence 00606-19 for site T12/521 to the Minister from the Coastal Zone Management Division

- 22/10/2019 Determination of Aquaculture/ Foreshore Licensing application –T12/521 by the Minister for Agriculture, Food and the Marine
- 24 10/12/2019 Letter from the Aquaculture and Foreshore Management Division of DAFM to the Aquaculture Licence Appeals Board acknowledging the appeal against the granting of aquaculture and foreshore licences to Donegal Deep Ocean Oysters Ltd. at site T12/521

Martin Boyle AP29/2019 (T12/486)

No	Date	Item
1	28/07/2014	Application for foreshore and aquaculture licence T12/486
2	21/08/2014	Letter from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division DAFM
3	21/08/2014	Email to SFPA Killybegs from SFPA HQ Conakilty
4	22/08/2014	Email to SFPA HQ Clonakilty form SFPA Killybegs
5	08/10/2014	Letter to the Aquaculture and Foreshore Management Division of DAFM from the Department of Transport, Tourism and Trade on the application for foreshore and aquaculture licences at T12/486
6	11/09/2014	Letter from the Commissioners of Irish Lights to the Aquaculture and Foreshore Management Division DAFM regarding applications for licences at site T12/486.
7	03/11/2014	Marine Engineering Division DAFM report on aquaculture and foreshore licence application T12/486
8	10/04/2019	Email from the Marine Engineering Division DAFM to the Aquaculture and Foreshore Management Division DAFM.
9	10/06/2019	Letter form the Marine Institute to the Aquaculture and Foreshore Management Division DAFM regarding the application for licences at site T12/486
10	18/06/2019	Email from the Marine Environment and Foreshore Division of the Department of Housing, Planning and Local Government to to the Aquaculture and Foreshore Management Division DAFM regrding licensing site T12/486
11	27/06/2019	Email from the Marine Division of Donegal County Council to the Aquaculture and Foreshore Management Division DAFM regarding the application for licences at site T12/486
12	27/06/2019	Email form the Marine Division of Donegal County Council to the Aquaculture and Foreshore Management Division DAFM regarding the application for licences at site T12/486
13	14/08/2019	Email from Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM regarding comments received to the application to licence site T12/486
14	14/08/2019	Email from Aquaculture and Foreshore Management Division of DAFM to Marine Engineering Division DAFM regarding

15	21/08/2019	comments received to the application to licence site T12/486 Email form the Marine Institute to the Aquaculture and Foreshore Management Division of DAFM regarding submissions made with regard to the licence application for site T12/486
16	13/09/2019	Letter from the Divisional Engineer, Marine Engineering Division DAFM to the Aquaculture and Foreshore Management Division of DAFM regarding statutory and public consultation responses to the application for licences at site T12/486
17	Undated	Recommendation to grant the Licence 00608-19 for site T12/486 to the Minister from the Coastal Zone Management Division
18	Undated	Determination of Aquaculture/ Foreshore Licensing application –T12/486 by the Minister for Agriculture, Food and the Marine
19	Undated	Letter form the Applicant for licences at site T12/486 to the Aquaculture and Foreshore Management Division of DAFM to support his application and responding to a number of responses received during the consultation process.
20	10/12/2019	Letter from the Aquaculture and Foreshore Management Division of DAFM to the Aquaculture Licence Appeals Board acknowledging the appeal against the granting of aquaculture and foreshore licences to Maritn Boyle at site T12/486

Ostre'an Teoranta AP31/2019 (T12/205)

No	Date	Item
1	06/05/2014	Application for review and renewal of foreshore and aquaculture licences T12/205.
2	26/05/2014	Letter from the Commissioner for Irish Lights to the Aquaculture and Foreshore Management Division DAFM regarding licensing site T12/205
3	31/10/2014	Marine Engineering Division DAFM report on site T12/205
4	19/05/2019	Email from SFPA HQ Clonakilty to SFPA Killybegs
5	21/05/2019	Email form SFPA Killybegs to SFPA HQ Clonakilty
6	10/06/2019	Letter form the Marine Institute to the Aquaculture and Foreshore Management Division DAFM regarding the application for licences at site T12/205
7	18/06/2019	Email from the the Marine Environment and Foreshore Division of the Department of Housing, Planning and Local Governement tot the Aquaculture and Foreshore Management Division DAFM regarding licensing site T12/205
8	29/07/2019	Letter from the Applicant, Ostre'an Teoranta, to the Aquaculture and Foreshore Management Division of DAFM in response to comments, observations and objections received to the application for aquaculture and foreshore licences at site

- T12/205
- 9 02/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of the DAFM regarding comments and submissions received during the application consultation period for licence application T12/205
 - 10 14/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of the DAFM regarding comments and submissions received during the application consultation period for licence application T12/205
 - 11 21/08/2019 Email from the Marine Institute to Aquaculture and Foreshore Management Division DAFM regarding submissions received during the application procedure for licences at site T12/205
 - 12 14/08/2019 Email from the Aquaculture and Foreshore Management Division of DAFM to the Marine Engineering Division of the DAFM regarding comments and submissions received during the application consultation period for licence application T12/205
 - 13 13/09/2019 Letter from the Divisional Engineer, Marine Engineering Division DAFM to the Aquaculture and Foreshore Management Division of DAFM regarding statutory and public consultation responses to the application for licensing at site T12/205
 - 14 Undated Recommendation to grant the Licence 00605-19 for site T12/205 to the Minister from the Coastal Zone Management Division
 - 15 22/10/2019 Determination of Aquaculture/ Foreshore Licensing application –T12/205 by the Minister for Agriculture, Food and the Marine
 - 16 10/12/2019 Letter from the Aquaculture and Foreshore Management Division of DAFM to the Aquaculture Licence Appeals Board acknowledging the appeal against the granting of aquaculture and foreshore licences to Ostrea’an Teoranta at site T12/205
 - 17 26/03/2020 Email from Ostrea’an Teoranta to the Aquaculture Appeals Licence Board regarding observations made by Save our Dungloe Bay and Nuala Bonner and family regarding the licensing application for site T12/205
 - 18 26/03/2020 Email from Ostrea’an Teoranta to the Aquaculture Appeals Licence Board regarding observations made by Save our Dungloe Bay and Nuala Bonner and family regarding the licensing application for site T12/205

5.0 Context of the Area

5.1 Physical descriptions

Dungloe Bay the site of the aquaculture licences under review is located in the Rutland Island and Sound Special Area of Conservation, County Donegal. The SAC is located between Arran Island and Burtonport in northwest Donegal. The SAC displays a range of sediment types from coarse shelly sand to fine sand. In more exposed locations within the SAC free living calcareous algae, maerl, is found.

Inner Dungloe Bay is dominated by intertidal sand and mudflats with small areas of reef. The proposed sites are located in this area over intertidal sand and mud. To the north of the sites under review the shore is composed of rocky reefs and boulders interspersed with areas of mud and sand.

The surrounding land use is predominately improved agricultural grassland and rough grazing with scattered rural housing and farmsteads. The nearest urban center to the proposed aquaculture sites is Dungloe Town located 2.5km east of site T12/521. The majority of the bay area for the aquaculture licences under appeal is intertidal mud and sandflats interspersed with small areas of intertidal reef.

The Dungloe River enters the bay from the north-eastern corner approximately 2km east of aquaculture site T12/481. The Dungloe Waste Water Treatment Plant discharges into the Dungloe River approximately 2.5 km east of aquaculture site T12/545. The location of the sites under appeal is shown in Figure 1.

The site is located in a temperate climate with 258 days of rain per annum and an average of over 1500mm of rain per year.

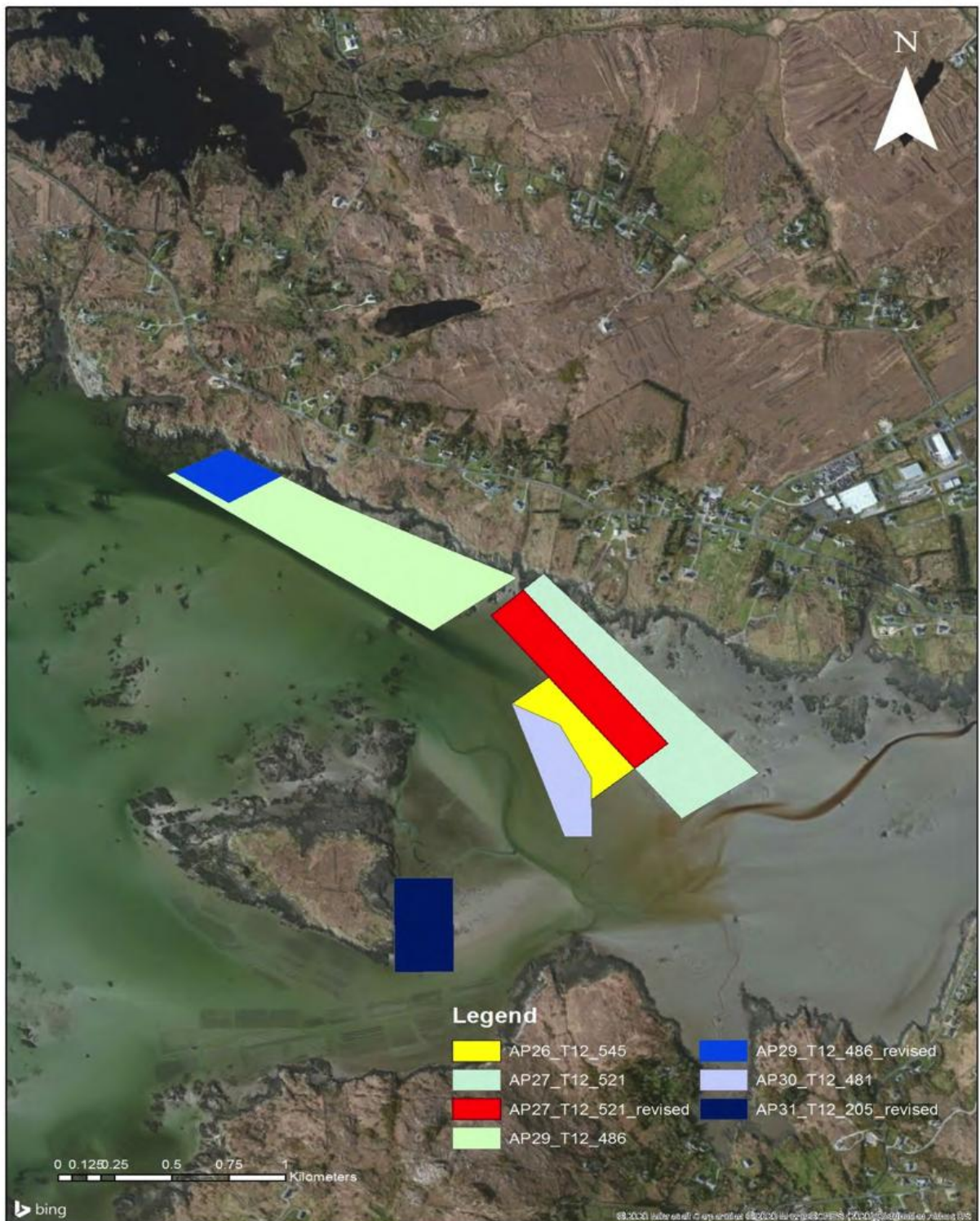


Figure 1. Location of sites under appeal in inner Dungloe Bay, Rutland Island and Sound SAC, County Donegal

5.2 Resource Users

Aquaculture Activity

Currently there are sixteen (16) licensed sites within the Rutland Island and Sound SAC with four (4) main licence holders. All of these sites focus on the production of Pacific oysters, *Crassostrea gigas*. The primary method of production is bag and trestle, however, there are a number of sites using a cuboidal cage system. Total oyster production in the Bay at present is approximately 600 tonnes.

The largest producer in the Bay is Ostre'an Ltd., a French owned company producing in excess of 500 tonnes of oyster annually in Dungloe Bay. The production is based on seed imported from France. They culture a mixture of half-grown and full grown oysters.

Both Diploid and Triploid oyster are grown in Dungloe Bay. Seed is imported at different times of the year Spring, February to June and August to October. Oyster seed is obtained from France and the United Kingdom.

Angling Activity

Within Dungloe Bay there are a number of known shore angling marks. Dungloe Pier produces mullet at high water. Five kilometres to the south west of the town on the southern shore of Dungloe bay is Magehry Strand. A rocky promontory found at the northern end of this beach, Termon, produces mackerel, pollack, sea trout, dab, flounder and wrasse.

To the north of Inishkeane Island the deep water channel associated with the River Dungloe supports a locally important sea trout fishery. There is also a small run of Atlantic salmon associated with the River.

Tourism

Donegal attracts 650,000 tourists annually including 300,000 overseas visitors. The town of Dungloe is an important tourist destination both as an attraction itself and as a centre from which the broader Rosses area and beyond can be explored. Dungloe is on the Wild Atlantic Way and the route passes along the Northern shore of Dungloe Bay to Burtonport. The town is a centre for freshwater angling in The Rosses with access to a large number of lakes in the surrounding area. The Mary from Dungloe Festival takes place in late July and attracts many visitors to the area. The town of Dungloe has a number of accommodation options for tourists including a hotel on the waterfront.

For walkers there are two walks within the town environs the shore walk and the river walk. There are plans (Donegal County Council 2018) to further enhance these walks and link to other more extensive walks in Donegal.

Future developments high-lighted by Donegal County Council to increase the tourism potential of Dungloe and the surrounding area include

- The Glenties to Dungloe Cycleway which is being developed by Transport Infrastructure Ireland and will link the two towns
- A link from the town of Dungloe to the Burtonport to Letterkenny Greenway

There are a large number of hill walking opportunities in the area. This activity attracts visitors from all over the country and abroad. The Rosses Walking Festival a two day event is based in the town of Dungloe and takes advantage of walking routes within the area.

Agricultural Activity

Dungloe is found in the rural district of Glenties. The total number of farms in this district was 1688 (2010) and the total area farmed was 47000 hectares, 25000 hectares of which was rough grazing.

Sheep are the most farmed livestock in the rural district of Glenties, more than 102,000 animals were recorded in 2010. Cattle production is significantly lower at just over 8000 animals. The total land area of crops in this rural district was 154 hectares in 2010.

Inshore Fishing activity

Fishing activity within Rutland Island and Sound SAC is limited to pot fishing for shrimp, crab and lobster. Ten (10) boats are involved in the shrimp fishery which takes place within Dungloe Bay and Rutland Sound. There is no information specific to the SAC or bay regarding the number of vessels involved in the lobster and crab fisheries that take place there. However, for NW Donegal, Killybegs to Malin Head, 200 vessels are involved in the lobster fishery, fishing c. 200,000 pots. The brown crab fishery for NW Donegal involves fifty (50) vessels fishing 50,000 pots (Tully, 2017).

Leisure Users of the water body & surrounding area

There are two commercial enterprises offering watersports in Dungloe Bay area. One centre is located at Maghery Strand 5km south west of the town and offers kayaking, stand up paddle boarding, snorkelling, hiking and cycling trips. Sea safaris, diving, and water based heritage tours are offered by a company based in Burtonport to the west. The area of operation for this venture appears to be Rutland Island and Sound and the Island of Arranmore.

Other users of the waters within Dungloe Bay include jet-skis, kayakers, canoeists and leisure craft.

There is an outdoor salt water swimming pool located on the north shore of the inner bay over-looking the intertidal sand flats. This is a popular swimming location locally.

There are a large number of hill walking opportunities in the area. This activity attracts visitors from all over the country and abroad. The Rosses Walking Festival a two day event is based in the town of Dungloe and takes advantage of walking routes within the area.

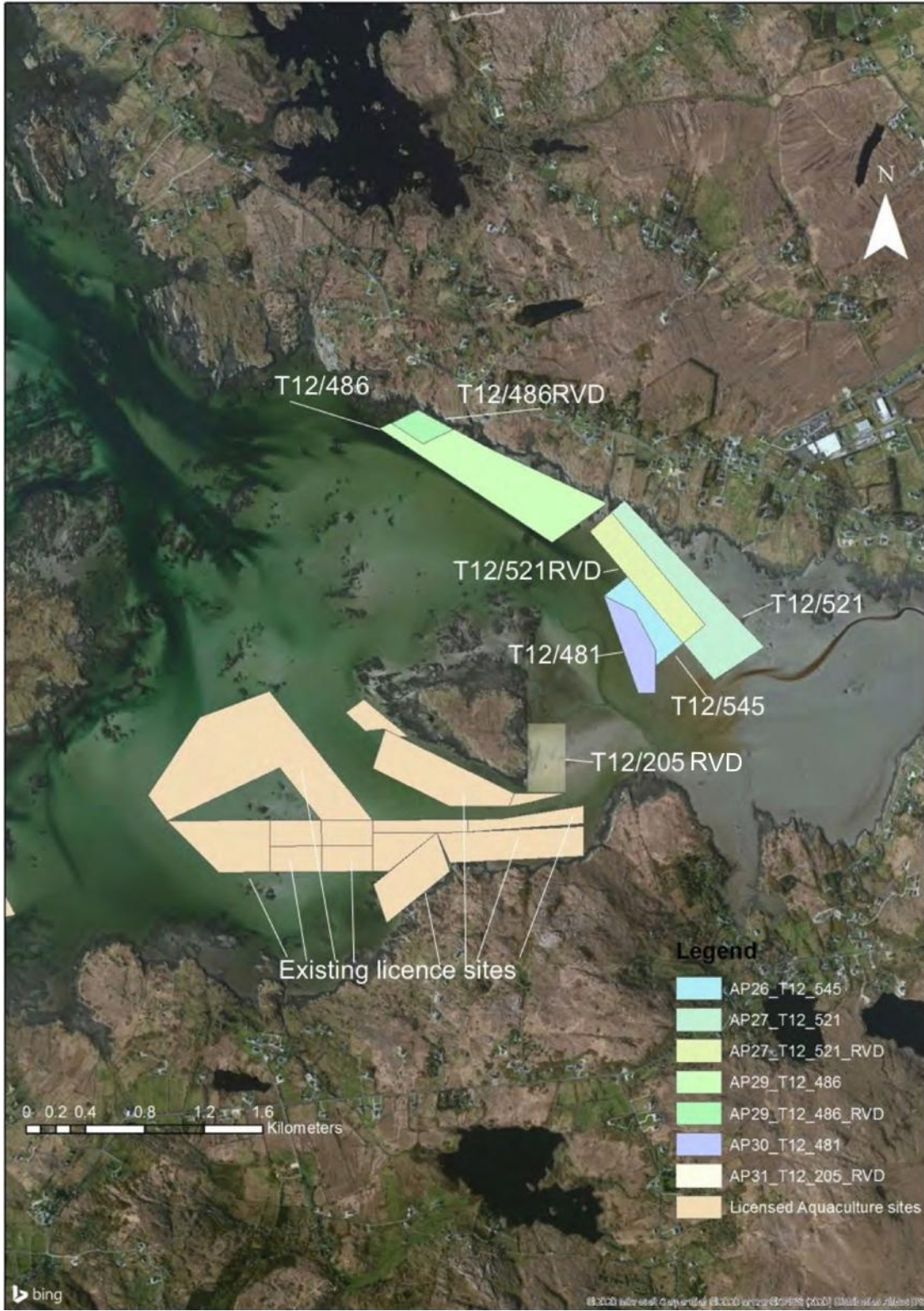


Figure 2. Existing licensed aquaculture sites and the application sites in Dungloe Bay. T12/205 RVD is a renewal application for an existing licenced site.

Seaweed harvesting

No currently accurate figures are available for the number of seaweed cutters working within Rutland Island and Sound SAC, Dungloe Bay, or County Donegal. In 1999 it was estimated that approximately ninety (90) full time and two hundred and fifty (250) part time harvesters were involved in the seaweed harvesting industry (White and Costelloe 1999) in Co Donegal.

It was estimated that that the harvestable mass of *Ascophylum nodosum* in Rutland Island and Sound SAC was 67, 756 tonnes. Oilean Glas Teo is licenced to harvest 8000 tonnes of *Ascophylum nodosum* per annum from the Rutland Island and Sound SAC (Aquafact 2014)

5.3 Environmental Data

Water Quality

Dungloe Bay and Rutland Island and Sound SAC are surrounded by the Gweebarra-Sheephaven catchment. This catchment includes the area drained by all streams entering tidal water in Gweebarra River, Sheephaven Bay and between Rossan Point and Fanad Head, Co. Donegal, a total area of 1,450 km². The largest urban centre in the catchment is Falcarragh. The other main urban centres in this catchment are Glenties, Dungloe, Dunfanaghy, Creeslough and Carrowkeel.

Dungloe Bay is defined as a coastal water body (IE_NW_140_0000). Water quality monitoring and assessments carried out on Irish coastal waters and for the Reporting period 2010-2012 by the EPA have classified the water quality of the coastal water body of Dungloe Bay as 'Unpolluted' (Source <https://gis.epa.ie/EPAMaps/Water>). The water quality status of the coastal waterbody which Rutland Island and Sound SAC is part of, the Northwestern Atlantic Seaboard, was assigned 'High Status' during the reporting period 2015-2018. This does not include the inner Dungloe Bay area where the licences under review are located.

Water framework directive

The water quality status of transitional and coastal waterbodies assessed under the EU Water Framework Directive (2000/60/EC) is provided under section 5.16. Under the Water Framework Directive an approved risk is also assigned to each feature by catchment scientists. The approved risk for Dungloe Bay coastal water is 'Not at risk'. (Source <https://gis.epa.ie/EPAMaps/Water> Framework Directive).

Waste Water

The Dungloe waste water treatment plant discharge is located approximately 2.5 km east of the proposed aquaculture site T12/545. The discharge undergoes primary, secondary and tertiary (removal of nitrogen and phosphorus) treatment prior to release into the receiving environment. Burtonport located 7.5 km to the north west of the proposed aquaculture site discharges untreated sewage with a population equivalent of 168 to the receiving waters from a location at the pier.

Classified bivalve Mollusc Production Waters

Areas of Dungloe Bay are classified bivalve mollusc production areas. There are separate area designations – Tearman and Dungloe. The Classification for these areas is as follows:

Dungloe Oysters A* *Seasonal Classification 01 Nov – 01 Aug reverts to Class B at other times (Note 1).

Tearman Oysters A* *Seasonal Classification 01 Dec – 01 July reverts to Class B at other times (Note 1).

A map showing LBM production areas in Dungloe Bay is available on the SFPA website -[Dungloe Bay LBM area map](#).

The Classified Bivalve Mollusc Production Areas in Ireland designate the production areas from which live bivalve molluscs may be taken. Gatherers may only harvest live bivalve molluscs from these production areas which have fixed locations and boundaries and which are classified as being of class A, B or C in accordance with Regulation (EC) No 854/2004. Annex II of Regulation (EC) 854/2004 sets out the requirements for the classification of production and relaying areas, the monitoring of classified relaying and production areas and the recording and exchange of information.

Designated Shellfish Waters

Areas of Dungloe Bay are designated shellfish waters (Figure 3). The designation under the EU Shellfish Waters Directive:

- Requires all member states, including Ireland, to designate waters that need protection in order to support shellfish life and growth.
- Sets physical, chemical and microbiological requirements that designated shellfish waters must either comply with or try to improve.
- It allows for the establishment of pollution reduction programmes for the designated waters.

The water quality status of the coastal waterbody which Rutland Island and Sound SAC is part of, the Northwestern Atlantic Seaboard, was assigned 'High Status' during the reporting period 2015-2018. This does not include the inner Dungloe Bay area where the licences under review are located.



Figure 3. Location of proposed aquaculture sites relative to Designated Shellfish Waters

Bathing Waters

Annual bathing water quality following monitoring is carried out by Local Authorities over the bathing period. The assessments are carried out on designated Bathing water locations as part of the legislation governing the quality of bathing waters that is set out in the Quality of Bathing Waters Regulations, 1992 (S.I 155 of 1992) and amendments, which transposed the EC Directive 76/160/EEC concerning the quality of bathing water. There are no identified bathing waters in Dungloe Bay.

5.4 Statutory Status

Nature Conservation Designations

The aquaculture sites under appeal are located within the Rutland Island and Sound Special Area of Conservation (Site Code: 002283). Illauncrone and Inishkeeragh SPA lies within the boundary of the SAC, as shown in Figure 4. Special Areas of Conservation (SAC's) were established under the EU Habitats Directive (92/43/EEC) and Special Protection Areas (SPA's) were established under the EU Birds Directive (79/409/EEC).

The site is designated as a SAC owing to a range of coastal and intertidal habitats present (Table 1). The SAC supports a nationally important population of Harbour seals, *Phoca vitulina*. The SAC provides habitat for all aspects of the seal's life cycle: resting, moulting, breeding and feeding. Feeding occurs both within the SAC and surrounding coastal waters.

Table 1. Features of Interest within Rutland Island and Sound SAC.

Rutland Island and Sound SAC (Site Code 002283)

Coastal Lagoons [1150]

Large Shallow inlets and bays [1160]

Annual vegetation of drift lines [1210]

Embryonic shifting dunes [2110]

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)

Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

Humid dune slacks [2190]

Phoca vitulina (Harbour Seal) [1365]

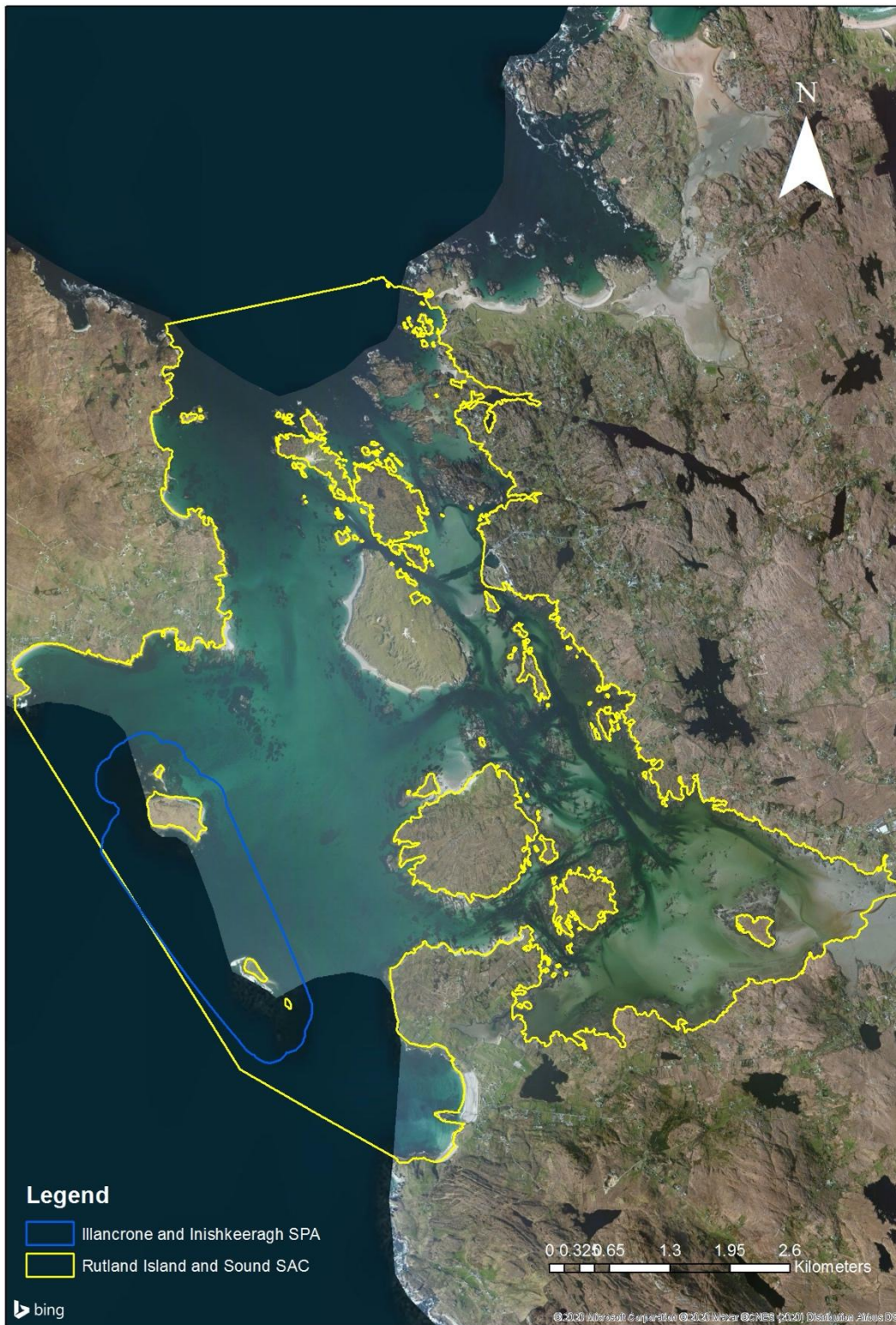


Figure 4. Rutland Island and Sound SAC (yellow boundary line) and Illauncrone and Inishkeeragh SPA (blue boundary line)

A number of additional Natura 2000 sites lie within a 15km radius of the proposed aquaculture site. Five (5) SAC's and two (2) SPA's lie within a 15km radius of the sites (See Table 2). The features of interest at Natura 2000 sites within a 15km radius of the proposed aquaculture sites are given in Table 3.

Table 2. Additional Natura 2000 sites within a 15 km radius of the aquaculture sites under appeal.

Site Code	Site Name	Distance from nearest aquaculture sites (km)
000142	Gannivegil Bog SAC	8.5 (T12/545)
001141	Gweedore Bay and Islands SAC	7.8 (T12/486)
002047	Cloghernagore Bog and Glenveigh National Park SAC	
001195	Termon Strand SAC	4.8 (T12/205)
000197	West of Ardara/Maas Road SAC	12.5 (T12/205)
004039	Derryveagh And Glendowan Mountains SPA	5.5 (T12//521)
004132	Illauncrone and Inishkeeragh SPA	12.5 (T12/205)

Table 3. Features of interest for all sites within a 15km radius of the aquaculture sites under appeal [EU Habitat or Species code]

Gannivegil Bog SAC (Site code: 000142)

- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
- Northern Atlantic wet heaths with *Erica tetralix* [4010]
- Blanket bogs (*if active bog) [7130]

Gweedore Bay and Islands SAC (Site code: 001141)

- Coastal Lagoons [1150]
- Reefs [1170]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritime*) [1410]
- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Decalcified fixed dunes with *Empetrum nigrum* [2140]
- Atlantic decalcified fixed dunes (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- Machairs (* in Ireland) [21A0]
- Oligotrophic to Mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Naojuncetea* [3130]
- European dry heaths [4030]
- Alpine and boreal heaths [4060]
- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- *Euphydryas asurinia* (Marsh Fritillary) [1065]

- *Lutra lutra* (Otter) [1355]
- *Petalophyllum ralfsii* (Petalwort) [1395]
- *Najas flexilis* (Slender Naiad) [1833]

Cloghernagore Bog and Glenveigh National Park SAC (Site code: 002047)

- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
- Water courses of plain to montain levels with *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation [3260]
- Northern Atlantic wet heaths with *Erica tetralix* [4010]
- European dry heaths [4030]
- Alpine and boreal heaths [4060]
- *Molonia* meadows on calcareous, peaty or clayey – silt-laden soils (*Molinion caeruleae*) [6140]
- Blanket bogs (*if active bog) [7130]
- Depressions on peat substrates of the *Rhynchosporion* [7150]
- Old sessile oak woods with Ilex nad Blenchnum in the British Isles [991A0]
- *Margaritifera margaritifera* (Freshwater pearl mussel) [1029]
- *Salmo salar* (Atlantic salmon) [1106]
- *Lutra lutra* (Otter) [1355]
- *Trichomanes speciosum* (KillarneyFern) [1421]

Termon Strand SAC (Site code: 001195)

- Coastal lagoons [1150]

West of Ardara/Maas Road SAC (Site code: 00197)

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Large shallow inlets and bays [1160]
- Annual vegetation of drift lines [1210]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritima*) [1410]
- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Decalcified fixed dunes with *Empetrum nigrum* [2140]
- Atlantic decalcified fixed dunes (*Calluno-ulicetea*) [2150]
- Dunes with *Salix erpens* spp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- Machairs (* in Ireland) [21A0]
- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
- Oligotrophic to Mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Naojuncetea* [3130]
- Northern Atlantic wet heaths with *Erica tetralix* [4101]

- European dry heaths [4030]
- Alpine and Boreal heaths [4060]
- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (*important orchid sites) [6210}
- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*)[6410]
- Lowland hay meadows (*Alopecurus pratensis*, *Snauisorba officinalis*) [6510]
- Blanket bogs (*if active) [7130]
- Depressions on peat substrates of the Rhynchosporion [7150]
- Alkaline fens [7230]
- *Vertigo geyeri* (Geyer's Whorl snail) [1013]
- *Margaritifera margaritifera* (Freshwater pearl mussle) [1029]
- *Euphydryas asurinia* (Marsh Fritillary) [1065]
- *Salmo salar* (Atlantic salmon) [1106]
- *Lutra lutra* (Otter) [1355]
- *Phoca vitulina* (Harbour seal) [1365]
- *Petalophyllum ralfsii* (Petalwort) [1395]
- *Najas flexilis* (Slender Naiad) [1833]
- *Euphydryas asurinia* (Marsh Fritillary) [1065]

Derryveagh and Glendowan Mountains SPA (Site code: 004039)

- Red-throated Diver (*Gavia stellate*) [A001]
- Merlin (*Falco columarius*) [A098]
- Peregrine (*Falco peregrinus*) [A103]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Dunlin (*Calidris alpina schinzii*) [A466]

Illauncrone and Inishkeeragh SPA (Site code: 004132)

- Barnacle Goose (*Brantra leucopsis*) [A045]
- Common Tern (*Sterna hirundo*) [A193]
- Arctic Tern (*Sterna paradisaea*) [A194]
- Little Tern (*Sterna albifrons*) [A195]

Natural Heritage Areas (NHA's) and Proposed Natural Heritage Areas (pNHA's)

There no NHA's and seven (7) pNHA's within a 15km radius of the aquaculture sites under appeal.

Table 4. pNHA's within a 15km radius of the aquaculture sites under appeal

Designation	Site Code	Name
pNHA	000142	Gannivegil Bog
pNHA	000148	Illauncrone
pNHA	000152	Inishkeeragh

pNHA	000197	West of Ardar/Maas Road
pNHA	001141	Gweedore Bay and Islands
pNHA	001195	Termon Strand
pNHA	002047	Cloghernagore Bog and Glenveigh National Park

Protected Species

Marine Mammals

The 1992 EC Habitats Directive as transposed by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) requires that both seal species (Common seal and Grey seal) and all cetaceans occurring in Irish waters are maintained at favourable conservation status. Under Article 12 of the Directive, all cetaceans should receive strict protection within the Exclusive Economic Zone. Under the Wildlife (Amendment) Act 1976-2005, all cetaceans and seals are protected species listed on the 5th Schedule. Under this Act, Natural Heritage Areas (NHAs) may be established to protect habitats or species. Whilst some terrestrial and coastal NHAs may encompass adjacent marine areas, no NHA's have been established for marine mammals to date.

Cetaceans

Twenty-four species of cetacean have been recorded in Irish waters to date. Of these 10 are considered to be year-round residents. Those that have been recorded off the west coast include those listed below:

Humpback whales: have been seen off all Irish coasts, though less frequently in the Irish Sea.

Fin Whale: Although they prefer deeper waters along the Continental shelf edge, they can be seen from Irish headlands when inshore feeding opportunities occur. A high-number sightings have been reported along the southern Irish coast, extending from Slea Head, Co. Kerry east towards Hook Head, Co. Wexford.

Minke whale: This is the most frequently recorded baleen whale in Irish waters can be seen off most headlands throughout the year along the entire Irish coast, although most sightings are recorded from the south and west Coasts.

Harbour porpoise: This is the most frequently reported and widespread species in Ireland and can be seen around the entire coast, although they appear to be most abundant off the southwest coast.

Common dolphin: This species can be seen inshore on all Irish coasts although they are most frequently recorded off the west coast.

Seals

Dungloe Bay is part of the Rutland Island and Sound SAC, the harbour seal (*Phoca vitulina*) is one of the qualifying features for this SAC. All aspects of this species' life cycle occur within the SAC, resting, feeding, moulting and pupping. Harbour seals are found within the SAC year-round. The most recent survey undertaken in 2017 -2018

(Morris and Duck 2019) recorded 284 seals within the SAC. Previous imaging surveys recorded 268 seals in 2003 and 230 seals in 2011/12.

Birds

Illauncrone and Inishkeeragh are two islands located within the Rutland Island and Sound SAC, 8 km west of Dungloe Town. Both islands are important breeding grounds for seabirds. Arctic Tern (224 pairs), Little Tern (13 pairs) and Sandwich Tern (1 pair) Annex I species listed under The EU Birds Directive were recorded in 1995. In 1984 Illauncrone had the largest known colony of Arctic Tern in Ireland at 132 nesting pairs.

The SPA also supports important numbers of Barnacle Geese. Roseate Terns, Common Terns, Lesser Black-backed Gulls and Herring Gulls have also been recorded in the SPA.

Otters

Gweedore Bay and Islands SAC, which adjoins the Rutland Island and Sound SAC in the northwest, is designated for the otter (*Lutra lutra*). It is anticipated that otters from the adjoining SAC migrate into Dungloe Bay to forage. The conservation status of the otter in the adjoining SAC is considered favourable.

Statutory Plans

Dungloe town (An Clochan Liath) located on the shores of inner Dungloe bay the location of the aquaculture licences under review is one of seven towns in Donegal that is the focus of 'The Seven Strategic Towns Local Area Plan 2018-2024.'

The reasons for Dungloe being identified as a 'Strategic Town' performing a 'Special Economic Function' were:

- Tourism and the Wild Atlantic Way
- Irish Language
- Centre for delivery of Local Authority Services

Chapter 3 of the Seven Strategic Town Local Area Plan (LAP) deals with the General Objectives and Policies of the Plan and Section 3.7 with Environment and Heritage.

Several objectives within this are of relevance to this review:

Objective GEN-EH-3: It is an objective of the Council to maintain the conservation value of all existing and or proposed SAC's, SPA's, NHA's and RAMSAR sites.

Objective GEN-EH-4: It is an objective of the council to protect and improve designated shellfish waters and pearl mussel basins.

Key planning issues identified for Dungloe in the Local area plan included:

- Consolidation and enhancement of the role and function of Dungloe as a key tourist destination on the western seaboard
- The remaining potential of the water front area within the town

Section 6.9 of the LAP seals with Tourism, Marine and Recreation in Dungloe. Dungloe is identified as an important tourist destination and hub both in itself and for exploration of the Rosses area.

Plans in the LAP considered central to this role include:

- Completion of the Shore Walk inclusive of an extension south to west to the Pond swimming area.
- Development of a marina at the town pier

The Council has a number of objectives in relation to Tourism, Marine and Recreation for Dungloe. Of relevance to this review is:

Objective CL-TMR-1: is to develop and maximise the tourism and leisure potential of the town. And,

Policy CL-TMR-2 : It is the policy of the Council to support the principle of a leisure/Amenity/ Tourism type development in Dungloe subject to compliance with the Habitats Directive, environmental considerations and all other relevant policies.

Chapter 7 of the County Donegal Development Plan 2018-2024 deals with the Natural and Built Heritage of the county and part of this section is considered relevant to this review. The aim of this part of the Development Plan is to:

‘Conserve, protect and enhance the County’s natural, built and cultural heritage for future generations and encourage appreciation, access and enjoyment of these resources.’

Section 7.1 of the Donegal County Development Plan deals with Natural Heritage of the county.

The landscape of Donegal has been categorised into three layers of value: ‘Especially High Scenic Amenity’, areas of ‘High Scenic Amenity’ and areas of ‘Moderate Scenic Amenity’.

Areas of Especially High Scenic Amenity (EHSA)

Areas of EHSA are sublime natural landscapes of the highest quality that are synonymous with the identity of the county. These areas have extremely limited capacity to assimilate additional development.

Areas of High Scenic amenity (HSA)

HAS area are landscapes of significant aesthetic, cultural, heritage and environmental quality and are unique to their locality and are a fundamental element of the

landscape and identity of County Donegal, These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape.

A number of objectives of the Development Plan are relevant to this review:

NH-O-2: To maintain the conservation value of all existing and proposed SAC's, Spa's, NHS's and Ramsar sites including animal and plant species identified for protection under the EU Habitats Directive (92/43/EEC), EU Birds Directive (79/409/EEC as amended by 2009/147/EC), the Wildlife Acts(1976-2014) and the Flora Protection Order (2015).

NH-O-5: To protect, manage and conserve the character, quality and value of the landscape having regard to proper planning and development of the area, including the consideration of the scenic amenity designations of this plan, the preservation of views and prospects and the amenities of places and features of natural, cultural, social or historic interest.

NH-O-6: To protect the integrity of Designated Shellfish Waters, and Freshwater Pearl mussel basins and to take account of any relevant Shellfish Reduction Program or FreshWater Pearl Mussel Sub-basin Plan.

NH-O-7 To protect the areas of Especially High Scenic Amenity from intrusive and/or unsympathetic developments.

NH-O-10 To maintain and restore ecosystems and to conserve valuable or threatened habitats and species in order to prevent further loss of biodiversity and to meet the EU's target to halt biodiversity loss by 2020.

Chapter 10 of the County Donegal Development Plan 2018-2024 deals with marine resources and coastal management and is considered relevant to this review. The Council recognises the importance of the aquaculture sector for local employment around the Donegal coastline and states its support for the sustainable development of onshore aquaculture activities. Donegal County Council set out a number of objectives for their Marine Sector relevant to this review:

- **MRCM-O-1 TO** maximise the social and economic potential of Donegal's marine sector by:
 - Consolidating and strengthening our Marine Leisure sector by, protecting the recreational and environmental quality of our coastal area.
 - Supporting the fishing and seafood sector by maintaining harbours
 - Supporting the offshore primary production sector of the aquaculture industry subject to adequate environmental assessments and safeguards being provided to the satisfaction of the council and to the avoidance of the development giving rise to an overbearing visual impact on the locality in which it is proposed.

Donegal County Council Development Plan also set out a number of policies with regards to the Marine Sector of these one was considered relevant to this review:

MRCM-P-10: It is the policy of the council to ensure development proposals do not compromise the recreational amenity and environmental quality of coastal area including flag beaches, Natura 200 sites and area of Especially high Scenic Amenity

Water Quality Status

Water Framework Directive

Coastal and Transitional Waterbody Status results are recorded in accordance with European Communities (Water Policy) Regulations 2003 (SI No. 722/2003). The regulation objectives include the attainment of good status in waterbodies that are of lesser status at present and retaining good status or better where such status exists at present by 22nd December 2015.

The water quality status of the coastal waterbody which Rutland Island and Sound SAC is part of, the North western Atlantic Seaboard, was assigned 'High Status' during the reporting period 2015-2018. This does not include the inner Dungloe Bay area where the licences under review are located.

5.5 Man-made heritage

There are a number of recorded national monuments in and around Dungloe Bay and Rutland Island and Sound SAC. Sites and features of importance include megalithic tombs, ecclesiastical monuments, a causeway, a number of churches, holy wells and a possible stone circle.

Online query of the Historic Environment Viewer of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs allows access to the Site and Monuments Record database. Data for townlands in close proximity to the licence application sites is presented in Table 5 below. None of the listed features are close to any licence applications under review and are not considered to be vulnerable to effects of the existing or proposed additional aquaculture activity within Dungloe Bay.

In addition, details of features surrounding Dungloe Bay recorded under the National Inventory of Architectural Heritage are available via the Historic Environment Viewer of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. The closest features to the proposed license sites are Dungloe Pier, a water mill and its outbuildings. None of the listed features recorded under the National Inventory of Architectural Heritage are considered to be vulnerable to effects of the existing or proposed aquaculture activity. Features of interest recorded in the inventory are shown below in Table 6.

Table 5. Sites of interest near the licence application sites.

Monument	Notes	Class
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Identifier		
DG01291	200m from the seashore. 5km west of Dungloe town	Megalithic tomb portal
DG03927	On a tidal channel in the townland of Termon.	Causeway
DG01290	Turas or pilgrimage station with holy stone.	Penitential Station
DG02826	Ruins of Templecrone church and 18 th century graveyard	Graveyard
DG01289	Ruins of Templecrone church and 18 th century graveyard	Church
DG01285	Holy well located 150m west of Templecrone Church	Ritual site
DG01284	Holy well located in marshy land	Ritual site

Table 6. Features of Architectural Heritage in the vicinity of Dungloe.

Registration no.	Townland	Name/Type
40825001	Meenmore	Water mill, outbuilding
49825011	Meenmore	Pier/jetty
40825001	Meenmore	Water mill, outbuilding
40825002	Meenmore	St Cronas Church of Ireland, Church/chapel
40825003	Dunglow	Bridge
40825007	Dunglow	Sweeneys Hotel/Hotel
40825016	Dunglow	Bank of Ireland/Financial Institution
40825014	Dunglow	House
40825012	Dunglow	Water pump
40825017	Dunglow	Patrick Johnny Sally's/Public House
40825009	Dunglow	Ionad Teampeall Chrone/church

6.0 Section 61 Assessment

6.1 Site Suitability

The sites for which the granting and renewal of aquaculture and foreshore licences are under appeal are **suitable** for the growing of oysters in bags on trestles or cuboidal cages for the following reasons:

- The waters of Dungloe Bay where all aquaculture sites under appeal are located are relatively sheltered
- The tidal regime at revised proposed site areas is suitable for intertidal oyster growing
- The waters of Dungloe Bay have seen limited impact from Harmful Algal Blooms
- The majority of the sites are flat and relatively hard with a mixture of mud and sandy substrates
- Oysters have been successfully grown within Dungloe Bay at sixteen (16) licensed sites for a number of years

With regard to specific sites within this review the sites are **suitable** for growing oysters in bags on trestles or cuboidal cages for the following reasons:

AP26 T12/545:

- The site has suitable shoreline gradient
- There is firm sandy substrate over almost the entire area of the proposed site
- The site is situated entirely above low water mean spring tides and below low water mean neap tides
- Site elevation and tidal regimes render the site suitable for intertidal oyster culture

AP27 T12/521 revised:

- There is firm substrate over the site
- The site has suitable shoreline gradient
- The site elevation and tidal regimes render the site suitable for intertidal oyster culture

AP 29 T12/486 revised:

- The site is sufficiently firm and of suitable elevation for oyster cultivation and mostly clear of rock outcrops
- The site elevation and tidal regimes render the site suitable for intertidal oyster culture
- The site is accessible without causing disturbance to harbour seals that utilise Dungloe

- No recorded seal haul outs occur within the site or within a buffer of 200m

AP30 T12/481:

- The site has suitable shoreline gradient
- The site as firm sandy substrate over almost the entire area
- The site is entirely above low water mean spring tides and below low water mean neap tides
- The site elevation and tidal regimes render the site suitable for intertidal oyster culture

AP 31 T12/205 revised:

- Site has suitable shoreline gradient
- The site has firm sandy substrate over almost the entire area
- Site elevation and tidal regimes render the site suitable for intertidal oyster culture
- The site is accessible without causing disturbance to harbour seals that utilise Dungloe
- No recorded seal haul outs occur within the site or within a buffer of 200m surrounding the site

The sites under appeal are **not suitable** for the growing of oysters in bags and trestles for the following reasons:

- The application sites are located in Rutland Island and Sound Special Area of Conservation. Rutland Island and Sound SAC is of national importance for the Harbour seal supporting 7% of the national population. All stages of this species life cycle occur within the SAC, resting, feeding, moulting and pupping. Harbour seals are found within the SAC year-round. The most recent survey undertaken in 2017 -2018 (Morris and Duck 2019) recorded 284 seals within the SAC. Previous imaging surveys recorded 268 seals in 2003 and 230 seals in 2011/12.

With regard to sites T12/545, T12/521 and T12/481

- Development of these sites will impede navigation to/from Dungloe Pier according to various states of tide
- The sites are located in close proximity to discharges from Dungloe WWTP
- The sites are likely to be susceptible to storm water overflow pollution events from Dungloe WWTP

- Proposed access route to sites T12/545 and T12/481 pass close to known harbour seal moulting sites
- A previously recorded harbour seal moulting site is within the revised site area of site T12/521
- A seal moulting site recorded in the harbour seal survey of August 2017 is 40m from the revised site boundary of site T12/521. 15 seals were counted at this site in 2017 (Callan Duck 2020, personal communication, 27 August) (Figure 5).

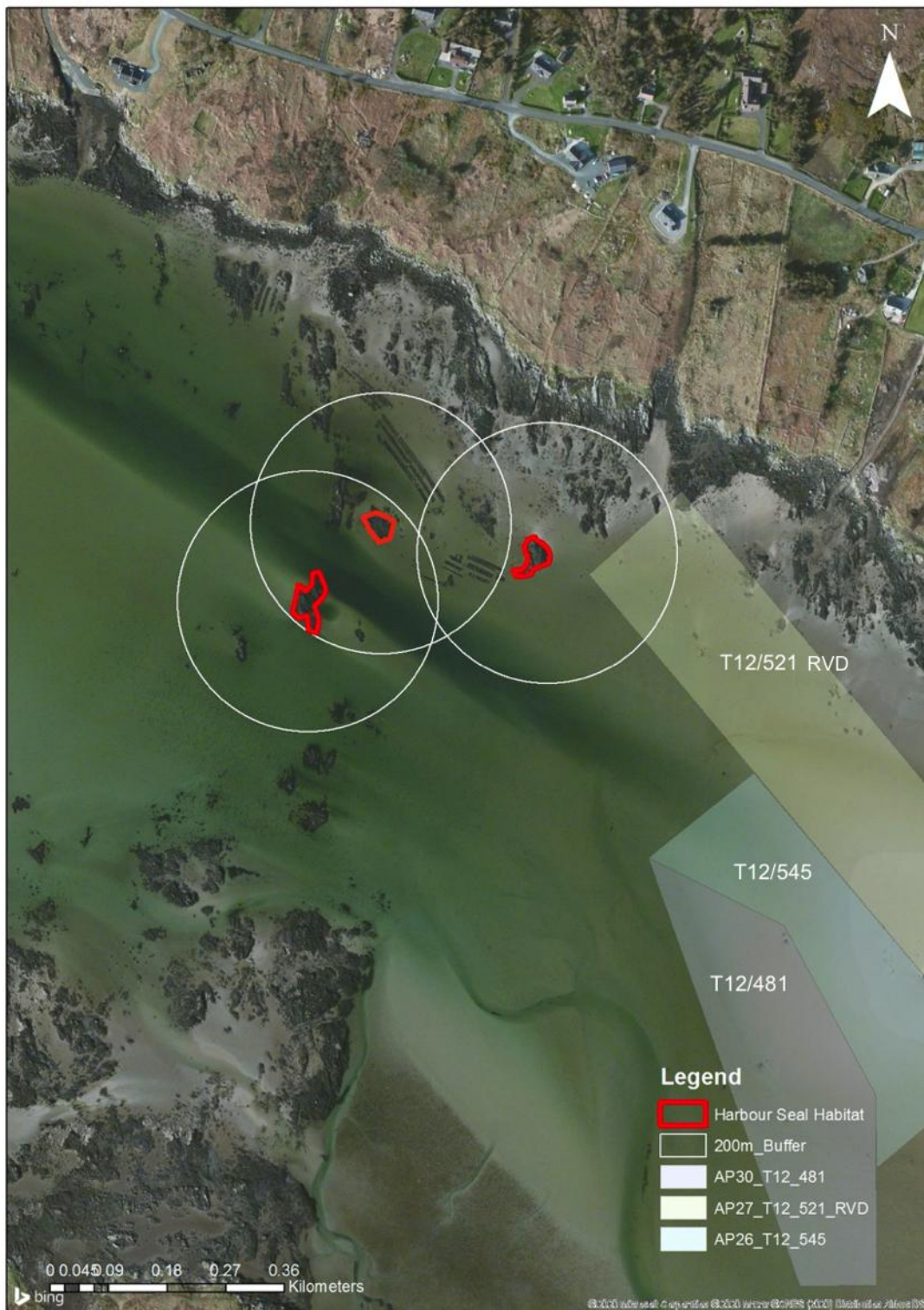


Figure 5. Recorded harbour seal habitat, the required buffer zone and sites under appeal T12/481/521RVD/545

6.2 Other uses

Tourism and leisure

Tourism and leisure activities identified for Dungloe and the surrounding area include kayaking, paddle boarding, snorkelling and walking. The cumulative impact of licensing sites T12/521, T12/481 and T12/545 on water-craft amenity and navigation are likely to be problematic. The cumulative visual impact of licensing these sites is close to significant for views from the Waterfront Hotel and other areas within the town of Dungloe. There is potential for the licensing of these sites to negatively impact the development of marine based leisure activities within Dungloe Bay and to impact on views of the inner Bay area from the town of Dungloe.

Sites T12/205 (revised) and T12/486 (revised) due to their respective locations are unlikely to have any significant impact on tourism or leisure users in Dungloe Bay.

Angling

Known angling locations within Dungloe Bay are generally located to the south of all sites under review at Magehry Strand and Termon. There is a locally important seatrout fishery in the deep-water channel of the Dungloe River and a small run of Atlantic salmon in the river.

Given the position of site associated structures and their intertidal nature it seems unlikely that the aquaculture sites under review will affect angling in the Dungloe area.

Commercial fisheries

Given the intertidal nature of the aquaculture sites and the fact that the Marine Institute recorded no fishing activity within the inner Dungloe Bay area as confirmed by the SFPA, it is considered highly unlikely that there will be a significant impact on any existing commercial fisheries taking place within Rutland Island and Sound SAC as a consequence of the granting of any individual, or all of the proposed aquaculture and foreshore licences.

Seaweed harvesting

Sites T12/481 and T12/545 are unlikely to have any negative effect on current or future seaweed harvesting activity within Dungloe Bay. There is no spatial overlap between seaweed harvesting and sites T12/481 and T12/545.

Site T12/486 has a very small overlap with seaweed harvesting areas as does the north western part of site T12/521 however any impact is likely to be insignificant on seaweed harvesting due to the small area of overlap. T12/205 was considered to hamper access to seaweed harvesting sites but has been in existence for a number of years and any issues appear to have been resolved. The relevant Marine Engineering Division reports stated that where overlap between aquaculture sites and seaweed harvesting did occur coexistence would not be an issue.

Licensing of sites T12/521, T12/481 and T12/545 has the potential to negatively impact the water-craft amenity, navigation and views of Inner Dungloe Bay.

6.3 Statutory Status

All sites under appeal (T12/486, T12/521, T12/545, T12/481 and T12/205) are located within Rutland Island and Sound SAC (Site code:002283) and are also adjacent to Illauncrone and Inishkeeragh SPA (site code: 004132) and Gweedore Bay and Islands SAC (site code: 001141). Special Areas of Conservation (SAC's) are established under the EU Habitats Directive (92/43/EEC). Special Protection Areas (SPA's) are established under the EU Birds Directive (79/409/EEC). Both the Habitats Directive and the Birds Directive are transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).

There are a number of other designated Natura 2000 sites in the locality as detailed in Section 5.4. The nearest other designated Natura site is Termon Strand SAC located 4.8 km to the south of site T12/205. The feature of interest at this SAC is coastal lagoons a feature that will not be negatively impacted by the licensing of the sites under review.

Rutland Island and Sound SAC contains a nationally significant population of Harbour seals, *Phoca vitulina*. The most recent survey was conducted in 2017 and 284 animals were counted during the annual moult. All aspects of this species life history take place within the SAC.

Part of Dungloe Bay is designated under S.I. No. 268/2006 - European Communities (Quality of Shellfish Waters) Regulations 2006 as amended by [S.I. No. 464 of 2009](#) and [S.I. No. 55 of 2009](#) as a Designated Shellfish Water . The regulations transpose EU Directive 113/2006 which aims to protect and improve shellfish waters in order to support shellfish life and growth and is designed to protect the aquatic habitat of bivalve and gastropod molluscs, which includes mussels, scallops, clams, oysters and cockles. The Directive requires Member States to designate waters that need protection in order to support shellfish life and growth, and then establish pollution reduction programmes for the designated waters.

In Dungloe Bay, sites T12/486, T12/521 and T12/545 are entirely outside of the Designated Shellfish Waters area, while the greater proportion T12/481 is also located outside the designated area. Site T12/205 occurs entirely within Designated Shellfish Waters.

The five application sites for which appeals are being evaluated are situated within the area that is classified by the SFPA for harvest of live bivalves for human consumption. In this regard, producers of bivalve molluscs that are harvested from

waters outside of designated shellfish waters must ensure that bivalve molluscs are harvested from waters that are classified according to Regulation (EC) No 854/2004, which designates the production areas from which live bivalve molluscs intended for human consumption may be taken (wild and farmed). It is permissible to harvest live bivalve molluscs from designated production areas which have fixed locations and boundaries and which are classified as being of class A, B or C in accordance with Regulation (EC) No 854/2004. The Sea fisheries Protection Authority published the 2020/21 List of Classified Bivalve Mollusc Production Areas in Ireland on 10 August 2020 (SFPA, 2020). Dungloe Bay is classified as A from February to August and B for the other months of the year. Under classification A, live bivalve shellfish can be supplied directly for human consumption. Under Classification B live bivalves can be supplied for human consumption after one of three processes. The options are:

- purification in an approved establishment
- relaying for at least one month in a classified Class A relaying area
- an EC approved heat treatment process

Under the Seven Strategic Towns Local Area Plan 2018-2024 Dungloe was identified as a strategic town for tourism and the Wild Atlantic Way. Key planning identified issues in this document included the consolidation and enhancement of the role and function of Dungloe as a key tourist destination and to develop the remaining potential of the waterfront area.

Under the Donegal Development Plan 2018-2024 a number a number of scenic views with high amenity value were identified in the Dungloe area. In its support of maritime development Donegal County Council set a number of objectives, of particular relevance are:

- Strengthening our Marine Leisure Sector by protecting the recreational quality of our coastal area, and
- Supporting the offshore aquaculture industry but avoiding development giving rise to an overbearing visual impact on the locality in which it is proposed.

Licensing of the proposed aquaculture sites T12/521, T12/481 and T12/545 has potential to impact negatively on features that underpin the SAC designations for Rutland Island and Sound SAC. The licensing of these sites may also negatively impact Dungloe's role as a Strategic Town and objectives set for Maritime development in the County Development plan.

Licensing of sites T12/486 and T12/205 is highly unlikely to impact on any statutory designation for Dungloe Bay including the designation as an SAC.

6.4 Economic effects

The Applicants state that employment maintained or generated by the granting of the licences will be:

- **T12/205:** 20 full time jobs by year four and 11 part time jobs
- **T12/545:** 3 full time jobs by year 4 and 5 part time jobs
- **T12/521:** 2 full time jobs and 1 part time job
- **T12/486:** 4 full time jobs and 4 part time jobs
- **T12/481:** no details

Accordingly the projected employment is likely to have a positive impact on the local economy.

The granting of aquaculture and foreshore licences under appeal will have a positive economic impact on the local economy.

6.5 Ecological Effects

The technical review has considered the potential for the developments to impact on a range of ecological features including marine mammals, avi-fauna, wild fisheries and adjacent seabed and terrestrial/coastal habitats.

Fish

Dungloe Bay is likely to act as a nursery for early life stages for a range of marine fishes. Further licensing of aquaculture sites may provide enhanced refuge for fish species that are attracted to the habitat that trestles create.

Otters

Otters are a feature of interest in the adjacent Gweedore Bay and Islands SAC, otters from this SAC may migrate to Rutland Island and Sound SAC. The granting of licences the sites under review may:

- Reduce the available prey habitat
- Change the density of prey species
- Increase the risk of entanglement due to increased levels of marine litter associated with trestle aquaculture

Seals

Rutland Island and Sound SAC is designated for Harbour seals, *Phoca vitulina*. The SAC supports a nationally important population of Harbour seals. In the most recent

national survey, 2017 – 2018, 284 seals were counted, the third highest count in the country.

To maintain the favourable conservation status of *P. vitulina*, the harbour seal, within Rutland Island and Sound SAC a number of targets are defined by the National Parks and Wildlife Service (NPWS 2013) :

Target 1) Species range should not be restricted by artificial barriers.

Proposed activities or operations that will result in permanent exclusion or permanently prevent access to suitable habitat.

Target 3) Conserve the moult haul-out sites in a natural condition

This target is relevant to proposed activities or operations resulting in significant disturbance or interference with a) moulting behaviour or b) aquatic/terrestrial/intertidal habitat used during the moult.

Proposed activities or operations that cause displacement from moult haul-out sites or alteration of natural moulting behaviour to an extent that may ultimately interfere with key ecological functions would be regarded as significant.

Target 4) Conserve the resting haul-out sites in natural condition

As for target 3.

Target 5) Human activities should occur at levels that do not adversely affect the harbour seal population at the site

Proposed activities or operations should not introduce man made energy including aerial noise that could result in significant negative impacts to individuals and/or the population of harbour seals within the site. This refers to both the aquatic and terrestrial/intertidal habitats used by the species in addition to important natural behaviours during the species' annual cycle.

This target also relates to proposed activities or operations that may result in the deterioration of key resources (e.g. water quality, feeding, etc) upon which harbour seals depend. In the absence of complete knowledge on the species' ecological requirements in this site, such considerations should be assessed where appropriate on a case-by-case basis.

The Appropriate Assessment supporting document prepared by the Marine Institute with regard to the impacts of both licenced and proposed aquaculture sites within Rutland Island and Sound SAC on harbour seals noted that no published studies have examined the ecological impacts of aquaculture activities on harbour seals. The Marine Institute acknowledged likely disturbance associated with aquaculture activities may lead to displacement of seals from suitable habitat and may lead to changes in distribution of seals within a site.

With regard to disturbance of seals the Marine Institute notes that published data suggests the distance at which observable disturbance of seals occurs varies from 80m to 1000m. Buffer zones to prevent disturbance vary, but in the Dutch Wadden Sea a buffer zone of 1500m is set around haul out sites in marine protected areas to prevent seal disturbance. With regard to seal haul out sites in marine Special Areas of Conservation in Ireland, the Marine Institute considers ‘approximately 200m’ to be a large enough buffer to prevent seal disturbance from human activities (Marine Institute, 2019).

In the Appropriate Assessment supporting document, the Marine Institute notes the overlap of aquaculture (licenced and proposed) with important harbour seal habitat in the SAC and that these activities are disturbing and have the potential to negatively impact the abundance and distribution of harbour seals in the SAC.

The Appropriate Assessment supporting document concludes with regard to new applications: “Many of the proposed aquaculture sites (applications) directly overlap or have access routes that run very close to seal haul-out locations. There would appear to be a strong potential for disturbance and possible access issues if these applications are granted and fully developed. While in some instances the application sites might be truncated to minimise the potential impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naive to development activities.”

Rutland Island and Sound SAC supports Harbour seal, *Phoca vitulina*, habitats for moulting, breeding and resting. Mapping of these habitats in relation to the aquaculture sites under appeal shows that a number of harbour seal moulting habitats occur in relatively close proximity to the aquaculture sites under review as shown in Table 7.

Table 7. NPWS recognised harbour seal habitats and their distance from the proposed aquaculture sites.

Licence Number	Harbour Seal Habitat Type	Distance at nearest point (m)
T12/486 (revised)	Moulting	427, 878, 816,894
T12/521 (revised)	Moulting	404, 425
T12/545	Moulting	467,
T12/481	Moulting	467,857,981
712/205 (revised)	Moulting	414, 490

One NPWS recognised harbour seal moulting site, described by the Marine Institute and the Engineering section of the DAFM as unused, occurs within the revised site layout of site T12/521. This recognised moulting site was discounted because it was not in use during one or more surveys. We assume that this habitat was attributed to moulting activity from information gathered in one of the earlier aerial seal surveys of Rutland Island and Sound SAC. Harbour seal habitat recorded in August 2017, though not included in the NPWS data, is approximately 40m to the west of the proposed site T12/521 (Figure 5).

Proposed westerly access routes to sites T12/481 and T12/545 cannot operate while implementing the MI recommended minimum 200m buffer zones (Figures 6 and 7).

The proposed aquaculture sites T12/481, T12/545 and T12/521 have the potential to negatively impact the conservation objectives as set out by the NPWS for Rutland Island and Sound SAC. With regard to specific targets the licensing of these sites may:

- Cause significant disturbance of moulting behaviour and moulting habitat use at known sites in the vicinity of the proposed westerly access routes to sites T12/545 and T12/481, the presence of a moulting site within site T12/521 and a moulting site 40m distant from the revised site boundary of this proposed site.

It is the technical advisor's opinion that the cultivation of oysters at sites T12 /545, T12/481 and T12/521 may negatively impact harbour seal habitat, specifically a number of moulting sites are located in the vicinity of these proposed sites.

This opinion is based on our view that there is considerable scientific **uncertainty** as to:

- inter-annual usage of known haul out sites within the SAC
- aquatic habitat use by harbour seals within the SAC
- that the implementation of the 200m buffer zone in the licensing procedure adequately defines habitat use by harbour seals at known haul out sites.

Further, the implementation of the 200m buffer zone from seal habitat identified in 2017 and previous aerial surveys prevents access to proposed sites T12 /545 and T12/481 from the west. The revised site boundary for T12/521 is 40m from moulting habitat identified in August 2017.

Access to sites T12/481 and T12/545 from the south, east or north are also likely to be problematic, however these possibilities have not been evaluated further as no other routes were proposed by the applicants.

Concerning sites T12/486 revised and T12/205 revised , it is considered that licensing of sites T12/486 revised and T12/205 revised is possible while conforming to Marine Institute suggested 200m minimum buffer distances from known seal haul-outs, based on current known seal habitat within Dungloe Bay.

Birds

No independently verifiable information was available relating to bird species that occur within the Rutland Island and Sound SAC. Annex I bird species occurring within the Illauncrone and Inishkeeragh SPA were not considered to feed within Rutland Island and Sound SAC. During the site visit a number of birds were seen feeding on the sand and mud flats being exposed by the ebbing tide at inner Dungloe Bay including oyster catcher, cormorant, heron, black backed gulls and curlew. Dungloe Bay is apparently utilised to a considerable degree by a range of species including waders, gulls and herons.

Habitats

The Marine Institute completed a report supporting Appropriate Assessment of aquaculture in Rutland Island and Sound SAC (Marine Institute, 2019). A number of habitats within the SAC were screened out of full assessment. An Appropriate Assessment conclusion was then prepared by the Dept of Agriculture, Food and the Marine (DAFM,2019) in relation to the likely interactions between aquaculture operations and features of interest for the Annex 1 habitats Large Shallow Inlets and Bays (1160) and Reefs (1170).

The likely effects of existing and proposed aquaculture activities were considered in light of the sensitivity of the constituent communities of the Annex 1 habitat 1160 that overlaps with the proposed intertidal oyster cultivation areas:

- Sand with *Tellina sp.* and *Perioculodes longimanus* community complex
- Intertidal reef community and Laminaria-dominated community complex and habitat 1170:

It is noted in the Marine Institute Appropriate Assessment supporting document that bag and trestle aquaculture is considered non-disturbing to sedimentary habitats. Cuboidal cage systems to be used at site T12/205 are considered disturbing to benthic habitats due to low bottom clearance leading to reduced water flow over the sediment surface. Bag and trestle culture is considered disturbing to reef habitat (1170) and the community type, *Laminaria* dominated-community complex, due to shading effects.

Combined spatial overlap of current and proposed oyster trestle cultivation for the qualifying feature habitat 1160 - Large Shallow Inlets and Bays constituent communities of Sand with *Tellina sp.* and *Perioculodes longimanus* is 3.56% and with Intertidal reef community and Laminaria-dominated-community complex was 4.87%

considerably less than the 15% overlap where this activity would be considered to have a significant impact.

Combined spatial overlap of current and proposed oyster trestle cultivation is confined to one community type identified for the qualifying feature habitat 1170 reefs, intertidal reef and *Laminaria* dominated-community complex, is 4.87 % considerably less than the 15% overlap where this activity would be considered to have a significant impact.

Intertidal access routes are considered disturbing to sedimentary habitats because of repeated and persistent compaction by machinery. The overlap with community types identified for the qualifying feature habitats is low, ranging between 0.12% and 0.14%.

Licensing of sites T12/481, T12/545 and T12/521 revised has significant potential to negatively impact Dungloe Bay and Rutland Island and Sound SAC in relation to the ecology of harbour seals that utilise the SAC for all aspects of their life history.

6.6 General Environmental Effects

- As outlined in the Appropriate Assessment Concluding Statement for Rutland Island and Sound SAC, the culture of large volumes of Pacific oysters may increase the risk of naturalisation of *C. gigas* within Dungloe Bay and Rutland Island and Sound SAC.
- The introduction to Dungloe Bay / Rutland Island and Sound SAC of non-native species as ‘hitchhikers’ on and among culture stock is also considered a risk. However this risk is considered to be mitigated through existing controls on the movement of live shellfish and introduction of stock.

Without appropriate mitigation concerning the risk of naturalisation of Pacific oysters in Dungloe Bay, licensing of the proposed aquaculture activity has potential to cause significant negative environmental impacts on Dungloe Bay and Rutland Island and Sound SAC. Mitigation of this risk by restricting stocking to use of triploid stock is recommended for any sites where it is recommended that the Minister’s decision be upheld and aquaculture and foreshore licences are issued.

6.7 Effect on man-made heritage

Sites T12/545, T12/486 revised, T12/521 revised and T12/481 are located close to the northern shore or within the central inner area of Dungloe Bay. The nearest

recorded building listed on the National Inventory of Architectural Heritage is located approximately 1.7km to the east on the shore of Dungloe harbour. The nearest National monument is approximately 6km southwest of these aquaculture sites.

Site T12/205 revised is located adjacent to a large block of previously licensed sites It lies approximately 4km north of the nearest National monument, a megalithic tomb, close to Maghera Lough. The nearest recorded building listed on the National Inventory of Architectural Heritage is located approximately is located 3.6 km to the east of the site.

There are no recorded shipwrecks within the Rutland Island and Sound SAC. Given the position of the sites under review and their distance from known archaeological and architectural heritage sites it is highly unlikely that any negative impact will occur by the licensing of the aquaculture sites under appeal.

Licensing of the aquaculture sites is unlikely to give rise to significant impacts on the known man-made heritage of the area.

6.8 Section 61 Assessment Conclusions

Site Suitability

The site applications under appeal are **suitable** for intertidal oyster culture for the following reasons:

1. *Dungloe Bay, Rutland Island and Sound SAC has a well-established Pacific oyster aquaculture industry.*
2. *The physical characteristics of the site renders it suitable for the culture of oysters*

With regard to sites , T12/481, T12/545 and T12/521 revised, the sites are **not suitable** for intertidal oyster culture for the following reasons:

1. *area.*
2. *In respect of T12/481, T12/521 revised and T12/545, the Appropriate Assessment concluding statement is relevant as it recommends an approximate buffer zone of 200m between aquaculture sites and access routes and known harbour seal habitat. It further recognises that with some aquaculture licence applications it may not be possible to mitigate or reduce the risk of seal disturbance.*
3. *The access routes to sites T12/481 and T12/545 cannot pass at a distance of at least 200m from known harbour seal habitat.*
4. *Site T12/521 has a recognised moulting habitat within the revised site boundary and a moulting site identified in August 2017 is located just 40 m from the revised site boundary.*

5. *The licensing of T12/545, T12/481 and T12/521 revised will impact navigation to and from Dungloe Pier at various states of tide*

Other Uses

Granting of licences for sites T12/481, T12/545 and T12/521 revised would have a significant negative impact on some other users of the inner Dungloe Bay area for the following reasons:

1. *Due to their location in the central part of Dungloe Bay, the proposed developments are likely to affect the recreational and amenity value of the site for a range of other users including walkers, watersports, leisure boaters and general navigation.*
2. *Displacement of seals could reduce the use of the inner harbour habitat areas so reducing the ecological value of the area and its tourism value.*
3. *The visual impact of the proposed developments is likely to negatively impact the amenity value of views of the inner Dungloe Bay at low water.*

Statutory Status

Licensing of sites T12/481, T12/545 and T12/521 revised could have a **significant adverse** impact on the statutory nature of the area for the following reasons:

1. *The licensing of new aquaculture sites in Rutland Island and Sound SAC (in addition to existing sites) was recognised in the Appropriate Assessment to have the potential to adversely impact the conservation objectives for the harbour seal within the SAC*
2. *Several recognised haul out sites are located in the vicinity of the westerly access routes to proposed sites T12/481 and T12/545. Recorded moulting sites are found within the revised site boundary of site T12/521 revised and at 40m distance from this site. Disturbance at these sites is contrary to the conservation objectives for the SAC.*

Licensing of individual and/or all sites (T12/481, T12/486 revised, T12/545, T12/521 revised, T12/205 revise) would have a **non-significant adverse** impact on the statutory status of the area for the following reasons:

1. *Rutland Island and Sound is designated as an SAC for a number of Annex I habitats. Two Annex I habitats have the potential to be impacted by this development, 'Large shallow Inlets and Bays' and 'Reefs'. Communities within these habitats that overlapped with existing and proposed aquaculture activities within the SAC were not considered to be significantly impacted. The area of overlap of these communities with existing and proposed aquaculture activity was substantially less than 15%, the threshold at which overlap is considered significant*

The proposed sites T12/481, T12/545 and T12/521 revised would have a **non-significant adverse** impact on the statutory nature of the area for the following reasons:

1. *They will impact the maritime amenity of the area.*
2. *The cumulative impact of licensing these sites will have a near significant impact on views from the hotel and other areas of the town.*

Economic effects

Licensing of individual and/or all sites (T12/481, T12/486 revised, T12/545, T12/521 revised, T12/205 revised) would have a **significant positive** impact on the local economy for the following reasons:

1. *Renewal of existing and granting of new licences will provide new employment and secure existing employment ongoing employment opportunities for up to 27 full time staff and 21 part-time staff in total.*

Ecological Effects

Seals

Proposed development of sites T12/481, T12/545 and T12/521 revised is likely to have a **significant adverse** impact on the ecology of the area for the following reasons:

1. *It is likely that displacement of seals from moulting habitat would occur through disturbance from licensing the proposed aquaculture sites.*
2. *Access routes to sites T12/481, T12/545 pass within the Marine Institute recommended minimum 200m buffer zone of known haul out habitat and would lead to access related disturbance*
3. *T12/521revised - the revised site layout is 40m distant from moulting habitat identified in August 2017.*

Sites T12/486 revised and T12/205 revised are unlikely to cause disturbance to or impact on the ecology of seals using Dungloe Bay based on a review of existing information and recent seal survey data for Dungloe Bay.

Fish

The proposed development could have a **non-significant beneficial** impact on wild fish for the following reasons:

1. *Placement of additional trestles on the foreshore could lead to the creation of further juvenile fish refuge habitat. Further wetted surfaces may support algal growth and colonisation and therefore foraging opportunities for juvenile fish.*

General Environmental Effects

The proposed development is unlikely to lead to **significant adverse** general environmental effects for the following reasons:

- 1. As outlined in the Appropriate Assessment concluding statement (DAFM, 2019), all future oyster licences granted in Dungloe Bay will be for culture of triploid seed only. This is considered sufficient mitigation to eliminate risks of naturalisation of Pacific oysters associated with the granting of proposed new licences.*
- 2. The introduction of non-native species as 'hitchhikers'. While there is minimal risk associated with the introduction of hitchhiker species with hatchery reared oyster seed, risks posed by the introduction of '½-grown' or 'wild' seed originating from another jurisdiction (e.g. Britain, France) cannot be discounted. However, as outlined in the Appropriate Assessment Concluding Statement, the source of seed and any changes to the source of seed are to be approved by the Department of Agriculture, Food and the Marine in advance, while movement of stock in and out of the Rutland Island and Sound SAC should adhere to relevant fish health legislation.*

Man-made Heritage

The proposed developments would have **no effect on known** man made heritage for the following reasons:

- 1. No known sites occur within the vicinity of the proposed developments*

6.9 Confirmation re Section 50 Notices

There are no pertinent matters arising outside of the Section 61 assessment which the Board ought to take into account, which have not been raised in the appeal documents. It is therefore not necessary to give notice in writing to any parties in accordance with Section 50(2) of the 1997 Act.

7.0 Screening for Environmental Impact Assessment.

Under S.I. No. 468/2012 - Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 an Environmental Impact Statement is required for aquaculture the Board determines would be likely to have significant effects on the environment. The Ministers file does not indicate that a pre-screening for EIA has taken place.

Environmental impact assessment means an assessment, to include an examination, analysis and evaluation to identify, describe and assess the effects of certain public and private projects on the environment including the direct and indirect effects of a proposed development on the following:

- (a) Human beings, flora and fauna
- (b) Soil, water, air, climate and the landscape,
- (c) Material assets and the cultural heritage, and
- (d) The interaction between the factors mentioned in paragraphs (a), (b) and (c) above

Having reviewed the proposed aquaculture licence applications in relation to potential impacts on the elements listed above (a to d) and notwithstanding previous determinations with respect to potential impacts on conservation objectives for harbour seals of Rutland Island and Sound Special Area of Conservation, it is the opinion of the technical advisor that development of any individual proposed aquaculture site/s is unlikely to have significant effects on the environment by virtue of inter alia, their nature, size or location.

8.0 Screening for Appropriate Assessment.

A report supporting Appropriate Assessment was prepared by the Marine Institute on behalf of the Department of Agriculture, Fisheries and Marine to examine the impacts of aquaculture and fisheries on Natura 2000 features for Rutland Island and Sound SAC (site code 002283). A number of Natura 2000 features of interest were screened out. DAFM issued a concluding statement in relation to aquaculture in Rutland island and Sound SAC in which an assessment is made of the likely impacts of aquaculture operations and features of interest for the Annex I habitats Large shallow inlets and Bays (1160) and Reefs (1170).

The impacts of existing and proposed aquaculture activities were considered for the constituent communities of Annex I habitat 1160 that overlaps with the existing and proposed aquaculture sites: Sand with *Tellina sp.* and *Perioculodes longimanus* community complex and intertidal reef community. Published literature considers oyster trestles non-disturbing to sand with *Tellina sp.* and *Perioculodes longimanus* community complex. The Appropriate Assessment conclusion for this community type was that intertidal oyster trestle aquaculture would have no significant impact on this community type.

Intertidal oyster culture is considered disturbing to the intertidal reef community due to shading. However, the overlap of existing and proposed aquaculture sites with this community was estimated at 4.87 %, substantially less than the 15 % overlap where this disturbance would be considered significant.

The impacts of existing and proposed aquaculture activities were considered for the constituent communities of Annex I habitat 1170 that overlaps with existing and proposed aquaculture sites: Intertidal reef community. Oyster trestle culture is considered disturbing to the intertidal reef community due to shading. However, the overlap of existing and proposed aquaculture sites with this community was estimated at 4.87 %, substantially less than the 15 % overlap where this would be considered significant.

Though the Appropriate Assessment supporting document also considered the impact of access routes on constituent communities in designated habitats impacts were considered below the threshold to cause significant disturbance .

With regard to harbour seals a qualifying feature of Rutland Island and Sound SAC the Appropriate Assessment supporting document concluded:

“Many of the proposed aquaculture sites (applications) directly overlap or have access routes that run very close to seal haul-out locations. There would appear to be a strong potential for disturbance and possible access issues if these applications are granted and fully developed. While in some instances the application sites might be truncated to minimise the potential impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naive to development activities.”

The proposed westerly access routes to sites T12/481, T12/545 cannot pass harbour seal habitat at a great enough distance to prevent disturbance of seals utilising this habitat. The proposed site T12/521 has known moulting habitat within the revised site boundary and moulting habitat identified in August 2017 40 m distant from the revised site boundary.

Based on the Appropriate Assessment concluding statement it appears that there is considerable scientific uncertainty as to the impacts on maintaining favourable conservation status for harbour seals within the Rutland Island and Sound SAC by granting new aquaculture licences.

9.0 Technical advisor’s Evaluation of the Substantive Issues in Respect of Appeal and Submissions/Observations Received

Items 1 - 11 in the following evaluation concern the matters referred to in the Minister’s determination to grant the licences under appeal. They are also the headings under which the appellants have raised substantive issues in the appeal

submission. The accompanying text provides a technical evaluation of the issues raised.

1) Scientific advice is that the waters are suitable.

Sites T12/521, T12/ 545 and T12/486 are outside of Designated Shellfish Waters within Dungloe Bay and site T12/481 is only partially located within Designated Shellfish waters.

Being outside of A Designated Shellfish Waters area does not in itself preclude licensing of sites for shellfish cultivation or harvesting and it does not provide sufficient grounds for refusing an aquaculture and foreshore licence application. Aquaculture sites outside of designated areas may still be licensed, however they are not subject to the statutory monitoring that is required under S.I. No. 268/2006 - European Communities (Quality of Shellfish Waters) Regulations 2006 as amended by [S.I. No. 464 of 2009](#) and [S.I. No. 55 of 2009](#)) and farms located outside of designated shellfish waters must engage with the SFPA in order to provide regular shellfish samples so as to allow waters to be classified according to Regulation (EC) No 854/2004, which designates the production areas from which live bivalve molluscs may be taken. It is permissible to harvest live bivalve molluscs from these production areas which have fixed locations and boundaries and which are classified as being of class A, B or C in accordance with Regulation (EC) No 854/2004. The Sea fisheries Protection Authority published the 2020/21 List of Classified Bivalve Mollusc Production Areas in Ireland on 10 August 2020 (SFPA, 2020). For Dungloe Bay, the waters are classified as A for the period 01 November – 01 August. Outside of this, Dungloe Bay reverts to Class B. An explanation of the classifications is provided below:

Live Bivalve Mollusc Production Area Classification

Category	Microbiological Standard (MPN 100g ⁻¹ shellfish flesh)	Treatment Required
A	<230 <i>E.coli</i>	Direct for human consumption
B	<4,600 <i>E.coli</i>	Must be depurated, heat treated or relayed to meet Class A requirements
C	<46,000 <i>E.coli</i>	Must be relayed for 2 months to meet Class A or B requirements or may be heat treated.

Dungloe WWTP discharge into the river channel below the pier. Treatment at the plant is primary, secondary and tertiary with phosphorus and ammonia removal.

The potential issue of water quality for sites T12/521, T12/545 and T12/481 were raised by number of Departments at the application stage.

There are likely to be periodic raised levels of bacteria associated with the discharge from Dungloe WWTP. Discharge Lwat33 is associated with Proiseail (An Clochan Liath) Teo, Meenmore, Dungloe a fish processing factory. The discharge is of treated effluent with a 20 person equivalent.

Elevated levels of arsenic were recorded under the Shellfish Monitoring Programme in the vicinity of Designated Shellfish Waters (EPA 2011). It is unknown whether this is a natural phenomenon or due to pollution of the catchment. No further information concerning the outcome of the Marine Institute's investigation of elevated arsenic levels has been available, or whether mitigation by Donegal County Council is required.

Under the Live Bivalve Mollusc Production Area scheme, Dungloe Bay is classified as A (seasonal) and B (outside of the period 01 August to 01 November). Approximately 600 tonnes of oysters are produced by aquaculture in Dungloe Bay annually. The bay has been producing oysters for more than 20 years and the fact that these have been determined to be fit for human consumption strongly supports the understanding that the waters of Dungloe Bay are suitable for production of oysters for human consumption.

2) Public Access to recreational and other activities can be accommodated by this project.

Sites T12/521, T12/545 and T12/481 are likely to restrict access to/from Dungloe Pier at various states of the tide. Development of these sites is also likely to negatively impact the recreational amenity of the area by reducing the area available for unimpeded navigation.

Access to sites T12/545, T12/481 will be from a pier located approximately 3.5 km west of Dungloe Pier, while access to site T12/521 will be from a private roadway to the north of the site. In both cases, the R259 provides adequate access to both foreshore routes. It is unlikely that traffic associated with these aquaculture sites will add significantly to existing levels on the R259.

The cumulative visual impact of the licensing of three proposed sites (T12/521, T12/545 and T12/481) in inner Dungloe Bay is likely to be significant in the context of intertidal seascapes that are visible from the Waterside Hotel and a number of other vantage points in Dungloe town and environs.

Sites T12/205 and T12/486 are unlikely to have a significant impact on recreational activities due to their scale and location. Site T12/205 is accessed from the southern

shore of Dungloe Bay and it is proposed that site T12/486 will be accessed from Meenmore Pier.

The claim by the appellant of the immemorial use of Dungloe Bay is considered outside the scope of this review.

3) The proposed development should have a positive effect on the local economy.

The granting of aquaculture and foreshore licences to sites T12/521, T12/545 and T12/481 are likely to impact navigation to and from Dungloe Pier at various states of the tide. They will also negatively impact the water borne amenity of the area and views of the intertidal area of Dungloe Bay when visible at low tide from parts of Dungloe town and nearby environs. Licensing proposed new sites in Inner Dungloe Bay (T12/521, T12/545 and T12/481) will impact significantly on the visual amenity from the Waterfront Hotel and a number of other areas of Dungloe town and nearby environs.

The licensing of all sites under review is likely to have a minimal impact on seaweed harvesting in the Bay as the overlap between harvesting activity and sites is very low. Where application sites overlap with or occur adjacent to seaweed harvesting locations e.g. site T12/205 (seeking licence renewal), seaweed harvesting and aquaculture have coexisted for a number of years with no apparent difficulty.

Sites T12/205 and T12/486 are unlikely to impact negatively on leisure activities in Dungloe Bay due to their moderate size and location. Site T12/205 has been licensed previously and is located to the east of Inisheane Island. Site T12/486 is located in an intertidal location approximately 4km east of Dungloe Pier .

It is likely that the licensing of sites will create employment and thereby provide some positive economic impact locally although this may in part be offset by negative impacts on recreational and amenity value of Dungloe Bay.

The impact of the licensing of the sites under review on house prices and immigration to the area is considered outside the scope of this review.

4) All issues raised during the Public and Statutory consultation phase for the licensing of the sites

The applicants complied with legal requirements for providing notice of application. Issues concerning the number of notices and re-notification of amendments to site boundaries are considered to be outside of the scope of the technical review and no further analysis has been made.

5) There are no effects anticipated on the man-made environment heritage of value in the area

It is considered highly unlikely that the licensing of these sites will impact on the manmade heritage of the area as no known sites of historical value occur within the vicinity of any sites under review.

6) No significant effects on wild fisheries

There is no significant overlap between commercial fisheries and the sites under review. Trap fisheries are likely to be able continue to operate economically and be prosecuted in Dungloe Bay, although some loss of potential fishing ground may be associated with licensing sites T12/481, T12/545 and TR12/521. The revision of the site boundaries for site T12/481 removed any potential for impacts on the small run of Atlantic salmon to the Dungloe River and the local fishery for sea trout located in the river channel. Impacts on recreational salmonid fisheries are considered highly unlikely.

7) There is no potential for negative impacts on the Rutland Island and Sound SAC from aquaculture activities in the SAC.

The Marine Institute Appropriate Assessment supporting document concludes with regard to new aquaculture licence applications: *“Many of the proposed aquaculture sites (applications) directly overlap or have access routes that run very close to seal haul-out locations. There would appear to be a strong potential for disturbance and possible access issues if these applications are granted and fully developed. While in some instances the application sites might be truncated to minimise the potential impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naive to development activities.”* A 200m buffer zone from harbour seal habitat to prevent seal disturbance by aquaculture was recommended by the Marine Institute in the Appropriate Assessment supporting document.

The proposed westerly access route to sites T12/481 and T12/545 cannot pass harbour seal habitat at a distance that would ensure no disturbance of seals utilising this habitat. The proposed site T12/521 has a known moulting habitat within the revised site boundary and identified moulting habitat 40m from the revised site boundary.

Based on the Marine Institute’s supporting document for Appropriate Assessment of aquaculture in Rutland Island and Sound SAC, it appears that there is considerable scientific uncertainty as to possible impacts on the maintenance of favourable conservation status for harbour seals within the Rutland Island and Sound SAC, were additional new aquaculture licences to be granted. The level of uncertainty must be considered to be significant in that it relates to potential for the project to have impacts on a key conservation species for the nearby SAC designation. Appendix 1 details adjacent locations from which harbour seals were recorded during the 2017 survey conducted by National Parks and Wildlife Service. There is clear evidence that

seals utilise some of the reefs adjacent to the application sites T12/481, T12/512, T12/545. However there is uncertainty concerning the periods during which these are used and by how many seals, as well as the availability of alternative haul outs. Accordingly it is considered that there is significant outstanding uncertainty in relation to the potential of these licence applications to result in disturbance and displacement of elements of the harbour seal population of Dungloe Bay.

8) Scientific observations related to the Appropriate Assessment received during the licensing Consultation process are addressed in the Licensing Authority's Appropriate Assessment concluding Statement.

The intertidal area of inner Dungloe Bay is considered suitable for the proposed aquaculture of Pacific oysters by the licensing authority. The possibility of naturalisation of Pacific oysters in Rutland Island and Sound is acknowledged in the Appropriate Assessment.

With respect to the matters raised by the appellants concerning the An Taisce report and statements included therein, it is beyond the scope of the technical advisor's report to make recommendations concerning overall Environmental Impact Assessment in relation to all aquaculture taking in a bay or that Pacific oysters should not legally be permitted to be cultured in Ireland. The technical advisor's report considers the process of determination of an application for aquaculture and foreshore licences in the context of legislative and procedural requirements.

9) That the recommendations of the Appropriate Assessment for aquaculture are consistent with the conservation objectives of the SAC and SPA and that there will be no significant impact on the marine environment or quality status of the area

The appellants state that:

Aquaculture through the accumulation of waste products can be detrimental to the marine environment

This is highly unlikely with regard to oyster trestle culture where sufficient water exchange takes place and in circumstances there is reasonably regular agitation of the seabed through water movement and or wave action, which acts to re-suspend sediments including organic wastes, thereby facilitating their dispersion through tidal water movement. Such conditions are considered to occur regularly at Dungloe Bay. Net current outflows from the Dungloe River pass close to the proposed T12/481, T12/545 and T12/521 site applications and is likely to contribute to dispersion effects. The culture of oysters may be beneficial to coastal marine environments through the removal of nutrients from the water column.

Bird species feeding on mud flats are negatively impacted by oyster trestle culture

Potential impacts on birds would be likely to result from displacement from foraging areas through the placement of oyster trestles or cuboids on the intertidal foreshore.

The Marine Institute report supporting Appropriate Assessment screened out potential impacts of the proposed development of aquaculture sites on birds, as avi-fauna are not a feature of conservation interest within Rutland Island and Sound SAC. This determination does not recognise that Rutland Island and Sound SAC may serve as a foraging area for birds from nearby and / or adjacent SPA sites and as such could be considered a connected site. Considerable use of the sand flats by a number of bird species was recorded at inner Dungloe Bay during the site visit carried out as part of the appeal evaluation (August 2020). It is a finding of the technical advisor's report that there is little data to support the assessment of potential impacts on avi-fauna of licensing of additional sites in inner Dungloe Bay and that issuance of new licences in this area could be premature given the uncertainty in relation to possible disturbance and /or displacement impacts on avi-fauna.

That birds suffering severe declines in overwintering and breeding populations are present in inner Dungloe Bay

No verifiable independent information on the presence of birds within Dungloe Bay was available for this review. The Marine Institute Appropriate Assessment supporting document screened out the impact of the proposed aquaculture sites as birds were not a qualifying feature of Rutland Island and Sound SAC and birds from Illauncrone and Inishkeeragh SAC were not known to feed within the areas of the application sites. A number of bird species were recorded on the mudflats of inner Dungloe Bay during the technical advisor's site visit (August 2020), including oyster catcher, curlew, heron and gulls. It is not possible to provide a more detailed analysis of the issue given the lack of supporting data concerning bird use of inner Dungloe Bay, however the possibility that bird use of the site may be affected by the granting of new licences in the central part of inner Dungloe Bay (T12/481, T12/521, T12/545) exists but is not supported with data. There is outstanding uncertainty concerning use of inner Dungloe Bay by avi-fauna.

That the granting of aquaculture and foreshore licenses for the proposed sites will interfere with the breeding and feeding of resident birds

No verifiable independent information on the presence of birds within Dungloe Bay was available for this review. The Marine Institute Appropriate Assessment supporting document screened out the potential for impacts of the proposed aquaculture sites on birds, as avi-fauna are not a qualifying interest or conservation objective of Rutland Island and Sound SAC. Birds from Illauncrone and Inishkeeragh SAC were not thought to feed within the area of the proposed sites. A number of bird species were recorded on the mudflats of inner Dungloe Bay during the technical advisor's site visit including oyster catcher, curlew, heron and gulls (August 2020). The possibility that use of the site by resident bird species may be affected by the granting of new licences in the central part of inner Dungloe Bay (T12/481, T12/521, T12/545) exists but is not supported with data. Accordingly, there is outstanding uncertainty concerning this issue.

That the Appropriate Assessment is lacking in its consideration of the impact of mariculture on birds

While a number of bird species were recorded on the mudflats of inner Dungloe Bay during the technical advisor's site visit including oyster catcher, curlew, heron and gulls (August 2020), no further verifiable independent information on the presence of birds within Dungloe Bay was available for this review. In the supporting document for Appropriate Assessment of Aquaculture in Dungloe Bay, the Marine Institute screened out the potential for impacts to birds related to existing and proposed new aquaculture sites as birds were not considered a qualifying interest or conservation objective of Rutland Island and Sound SAC. It was also noted that birds for which Illauncrone and Inishkeeragh SAC are designated are not thought to feed within the area of the proposed sites. However, there remains uncertainty concerning use of the Dungloe Bay by avi-fauna. In this regard it is noted that Rutland Island and Sound SAC could be considered to be a connected site in that there is potential that some species for which nearby SPA's are designated may use the site for foraging at certain times.

That the granting of aquaculture and foreshore licences for the proposed site will negatively impact the harbour seal population in the SAC. The conservation objectives supporting document for the Rutland Island and Sound SAC states " In acknowledging the limited understanding of aquatic habitat use by the species within the site it should be noted that all suitable aquatic habitat is considered relevant to the species range and ecological requirements at the site and is therefore of potential use by harbour seals." and that "Current information on breeding locations selected by harbour seals in Rutland Island and Sound SAC is comparatively limited".

Based on the Appropriate Assessment it is the technical advisor's finding that there is significant scientific uncertainty as to the potential impacts on the conservation status for harbour seals within the Rutland Island and Sound SAC associated with the granting of new aquaculture licences for sites T12/481, T12/545 and TR12/521. This is due to the proximity of these sites to known seal haul outs, and/or the proposed westerly access route from Meenmore pier that the applicants intend to use in order to service the T12/545 and T12/481 sites. The technical advisor also noted that while a 200m buffer is recommended by the Marine Institute as a minimum distance from seal haul out sites to avoid disturbance and displacement effects, no published data supports the view that a 200m buffer around suitable seal habitat removes the possibility of seal disturbance or displacement.

NPWS acknowledges in the conservation objectives supporting document for Rutland Island and Sound SAC that habitat use between October and May is poorly understood and that breeding and resting habitat are not fully described or understood within the site. However a review of recent data has confirmed use of sites adjacent to site T12/521 and the proposed access route to sites T12/481 and T12/545.

A review of the same information has indicated that sites T12/205 and T12/486 can be developed while adhering to the minimum buffer recommended by the Marine Institute of 200m for both operation of sites and the indicated access routes.

That a number of moulting sites will be negatively impacted by the granting of aquaculture and foreshore licences for the proposed activity.

The published westerly access routes to sites T12/481 and T12/545 cannot pass harbour seal habitat at a great enough distance to prevent disturbance of seals utilising this habitat. The proposed site T12/521 has known moulting habitat within the revised site boundary and moulting habitat identified in August 2017 40m from the revised site boundary.

That the concluding statement of the Appropriate Assessment questions the possibility for mitigation of disturbance at some proposed aquaculture sites and that impacts on seal conservation status cannot be discounted.

The concluding statement of the Marine Institute Appropriate Assessment supporting document states “While in some instances the application sites might be truncated to minimise the potential impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naïve to development activities.” The technical advisor therefore concludes that negative impacts on conservation interests of the SAC cannot be discounted as a consequence of developing proposed sites where either the site or the proposed access route is within the minimum recommended 200m buffer.

There is no evidence to suggest that the proposed buffer of 200m is sufficient to mitigate for disturbance.

A review of available scientific literature does not confirm that a 200m buffer will at all times ensure that disturbance of harbour seals at haul out sites is avoided, and the Appropriate Assessment supporting document recognises that seal disturbance may take place at distances of 80m – 1000m and refers to the 1.5km buffer used to prevent seal disturbance at seal haul outs in the Dutch Wadden Sea. However, the proposed development and relicensing of sites T12/481 and T12/205 can take place while implementing the Marine Institute recommended minimum buffer of 200m, minimising any disturbance to seals, recognising that in Dungloe Bay seals are unlikely to be naïve to trestle culture operations taking place at an appropriate distance.

That the competent authority can be certain that a project or plan will not have adverse effects on the integrity of a site.

The Marine Institute’s Appropriate Assessment supporting document states “While in some instances the application sites might be truncated to minimise the potential

impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naive to development activities.” There is scientific uncertainty concerning likely impacts on the conservation status of harbour seals within Rutland Island and Sound SAC by the licensing of proposed new aquaculture sites where these do not implement the minimum recommended buffer zone of 200m either by considering their location and proposed access routes.

That there is insufficient information on the ecology of the harbour seal within Dungloe Bay and that the redrawing of proposed licenced areas and access routes to these areas is insufficient, given the NPWS states all suitable habitat is considered relevant.

NPWS acknowledges the limitations of its knowledge of the ecology of harbour seals within Rutland Island and Sound SAC. This is considered to add to the body of evidence that suggests there is scientific uncertainty and doubt in relation to the potential for some new projects to impact on harbour seals within Rutland Island and Sound SAC.

That the aquaculture activity will impact the qualifying feature habitat of Reefs.

The overlap of proposed and already licensed aquaculture activity within the qualify feature Reefs (1170) is 4.87%. In the supporting document for Appropriate Assessment of Rutland Island and Sound SAC, the Marine Institute considers significant disturbance of a habitat or community to occur where the overlap of an activity with a habitat or community is in excess of 15%. Accordingly, it is not considered that the proposed additional aquaculture activity proposed in the licences presents a risk to EU habitat code 1170 (reefs).

That the activity may change the in-faunal benthic communities

In-faunal benthic communities may be changed along access routes due to compaction of sediments by vehicles. The area of habitat/community impacted by proposed access routes is considerably less than the 15% considered to be significant by the MI. Oyster trestle / cuboid culture is considered non-disturbing to benthic communities. It is considered highly unlikely that benthic communities will be negatively impacted to an overall extent were the additional licences to be granted or renewed (as applicable).

That the activity associated with the granting of foreshore and aquaculture licences will negatively impact the intertidal habitat.

Oyster trestle/cuboid culture is in general considered to be non-disturbing to benthic communities. The area of habitat *Large shallow inlets and bays* (EU Habitat code 1160) impacted by licensed and proposed aquaculture sites is 3.56 %, considerably less than the 15% overlap required for an activity to be considered significantly

disturbing to a habitat by the Marine Institute. Accordingly, it is not considered that the proposed additional aquaculture activity presents a significant risk to EU habitat code 1160.

That the basis of the Appropriate Assessment Screening spatial overlap of the activity with habitats is insufficient

This is considered outside of the scope of this review.

That the conclusion of the Appropriate Assessment that an overlap between fishing activity and aquaculture on reef habitat is unlikely to occur is insufficient.

There is no significant overlap between commercial fisheries and the sites for which new or renewal aquaculture and foreshore licences are sought. The revision of the site boundaries for site T12/481 significantly reduced potential for impacts on the small run of Atlantic salmon to the Dungloe River and the local fishery for sea trout located in the river channel. The combined overlap of fishing activity and aquaculture with reef habitat (1170) is below 15% and considered insignificant by the Marine Institute in the Appropriate Assessment supporting document.

Refusal of licence T12/397A, B and C was in part due to the potential of changing the morphology of the Bay due to the scale of operations.

This is considered outside the scope of this review.

*That expansion of aquaculture activity in Rutland Island and Sound SAC may impact the conservation status of otter (*Lutra lutra*) in the adjoining Gweedore Bay and Islands SAC.*

The conservation status of otter in the Gweedore Bay and Islands is considered favourable. The Marine Institute Appropriate Assessment supporting document acknowledges that otters may migrate from the Gweedore Bay and Islands SAC to Rutland Island and Sound SAC to forage, however significant impacts to the population were screened out. Otter activity patterns are crepuscular so direct impact from aquaculture activity is unlikely. Oyster trestles may attract fish species and offer foraging opportunities to otters. There is a small but significant risk of entanglement of otters in discarded or lost trestle bags.

Otters are a protected species and are present in Dungloe Bay.

No independent verifiable sources were available for this review on the presence of otters in Dungloe Bay though it is highly likely that otters are present. Oyster culture may provide enhanced foraging opportunities to otters. There is a small but undetermined risk of entanglement of otters in discarded or lost bags and related aquaculture equipment.

10) No Visual Impact

The licensing of sites T12/521, T12/545 and T12/481 will result in the placement on the foreshore of culture equipment that will be visually discernible from a number of

locations in Dungloe and nearby environs during stages of the tidal cycles although it is acknowledged that equipment will be covered for the majority of the time. While it is highly likely that licensing of new sites (T12/521, T12/545 and T12/481) will impact on views of inner Dungloe Bay from the Waterside Hotel and other areas within the town, no overall impact on the designation for high scenic amenity value of the site is considered likely.

11) The updated aquaculture and foreshore licences contain terms and conditions which reflect the environmental protection now required under EU law.

The appellants do not make clear what specific elements or aspects of EU Environmental law are not captured in licence terms and conditions. Accordingly it is not possible to comment on the appellants submit that the public interest is not served and further assessment or evaluation of this submission is not possible.

10.0 Recommendation of Technical Advisor with Reasons and Considerations.

The grounds for appeal (substantive issues) have been considered and evaluated and have been responded to in previous sections of the present report. The reasoning and considerations of the technical advisor with respect to the appeal are provided below and a final recommendation to the Aquaculture Licences Appeals Board follows.

The technical advisor has considered recent rulings of the European Court of Justice with respect to interpretation of Article 6 (3)* of the Habitats Directive in so far as this considers the significance of effects of a project or plan (alone or in combination with other projects) in view of a designated sites' conservation objectives. European case law has firmly and repeatedly established how competent authorities should respond to applications for consent for projects or plans that may affect designated sites.

In (Case C-258/11 Peter Sweetman and Others v An Bord Pleanála), the Court ruled inter-alia that: "Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities – once all aspects of the plan or project have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field – are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so **where no reasonable scientific doubt remains** as to the absence of such effects (see, to this effect, Case C-404/09 Commission v Spain, paragraph 99, and Solvay and Others, paragraph 67)."

The document supporting Appropriate Assessment of Rutland Island and Sound SAC provided by the Marine Institute stated *“While in some instances the application sites might be truncated to minimise the potential impact on seal haul-out areas, in others there are no obvious measures possible that might mitigate or reduce the risk, so the impacts on the seal conservation features from these proposed activities **cannot be discounted**, in particular at sites where seals may be naive to development activities.”*

NPWS acknowledges that both aquatic and terrestrial habitat use by harbour seals in the SAC is poorly understood. There is scientific uncertainty on habitat used for moulting, resting and breeding by harbour seals within the SAC. Three aerial surveys over a seventeen year period cannot be considered to provide scientific certainty of habitat use within the SAC.

Recommendation in relation to AP 26 - T12/545, AP27 - T12/521 and AP 30 - T12/481

In respect of applications for the above sites, Appendix 1 provides evidence of the use of reefs adjacent to or in close proximity to the above sites, or the proposed westerly access route for T12/481 and T1/545, by harbour seals, from 2017 surveys. It is considered that there is significant risk that the granting of aquaculture and foreshore licences in respect of these sites will result in disturbance to and likely displacement of, harbour seals that have recently been recorded as utilising the haul out habitat that these reefs provide.

Additionally, there is uncertainty regarding the use of the NPWS recorded moulting site previously recorded within site T12/521. A moulting site identified in the most recent survey is approximately 40m distant from the revised site boundary of T12/521. Concerning sites T12/481 and T12/545 the proposed westerly access route is highly likely to result in the disturbance of seals at a number of confirmed moulting sites. It is not possible to access sites T12/481 and T12/545 using vehicles from a westerly direction and pass known seal haul out sites while maintaining a minimum 200m of separation, the Marine Institute recommended minimum buffer. The scientific uncertainty around the NPWS recorded moulting site within site T12/521 further complicates accessing these sites from the north.

In relation to navigation and amenity, it is considered likely that licensing of these sites will impact negatively on navigation within inner Dungloe Bay and will reduce the recreational and amenity value of inner Dungloe Bay.

In relation to use of the site by birds, the proposed developments have potential to affect bird use of inner Dungloe Bay, for which insufficient data is available to support a detailed assessment of potential impacts on use of the site by a range of species.

Accordingly, given the likely negative impacts on navigation, recreational and amenity value of Dungloe Bay the fact that potential disturbance to seal habitat cannot be mitigated effectively and is therefore likely to negatively impact the conservation objectives for harbour seals within Rutland Island and Sound SAC, it is recommended that Appeals AP26, AP27 and AP30 be upheld in respect of applications for aquaculture and foreshore licences for sites T12/545, T12/521 and T12/481 and that aquaculture and foreshore licences are not granted in respect of these applications at this time.

In relation to risks of naturalisation of Pacific oysters within Dungloe Bay and Rutland Island and Sound SAC, it is considered highly likely that such risks can be mitigated for in respect of the proposed sites through the requirement for stocking using triploid seed only. Risks of introduction of non-native and/or invasive species can be mitigated for by implementing existing legislative requirements and recognised best practice in terms of stocking sites with partially grown seed. These mitigations are considered acceptable by the Licensing Authority in the Final Appropriate Assessment Conclusion Statement by the Dept of Agriculture, Food and Marine in support of the Appropriate Assessment of Aquaculture in Rutland Island and Sound SAC.

Recommendation in relation to AP 29 - T12/486 (revised site)

With reference to the granting of aquaculture and foreshore licences in relation to site T12/486 (AP29/2019), the substantive issues raised by the appellant have been considered and an appropriate analysis has been conducted during the technical review process. In the context of the environmental and ecological concerns raised by the appellant, the appellants submission that a range of negative impacts will arise as a consequence of issuing these licences has not withstood the analysis.

Analysis of data and information available to the review confirms that issuing aquaculture and foreshore licences in respect of site T12/486 (AP29/2019) is consistent with all legal requirements and has taken into consideration all submissions from expert technical and statutory entities, as well as submissions from the public consultation phase.

It is considered that the granting of aquaculture and foreshore licences for site T12/486 will not significantly affect the recreational and amenity value of inner

Dungloe Bay due the location of the site and the reduced scale of the proposed licensed area. With limited mitigation, as identified by the Marine Institute in the report supporting Appropriate Assessment and as accepted by the DAFM in the Appropriate Assessment concluding statement, it is considered that site T12/486 (revised area) can be developed and operated without risk of causing significant negative impacts to the environmental or ecological features of Dungloe Bay or Rutland Island and Sound SAC.

As determined by the Marine Institute, certain sites can likely be developed without impacting on the conservation objectives for Rutland Island and Sound SAC. Site T12/486 can be developed and operated without significant risk of disturbance to seals by implementing the Marine Institute recommended mitigation of a minimum buffer of 200m from known seal habitat during operation of the site and by using the proposed access route from Meenmore Pier. Impacts related to the potential contribution of this site to the risk of establishment of Pacific oysters in Dungloe Bay can be effectively mitigated by restricting the stocking of the site to the use of triploid seed. Risks of introduction of alien species can be mitigated by implementation of existing legislative requirements in this context and by following best practice guidelines for movement of stock.

While the Minister has considered a broad range of environmental and ecological concerns during the application process in arriving at the decision to grant aquaculture and foreshore licences in respect of site T12/486, it is the view of the technical advisor that risks associated with the possible introduction of non-native species and potential for naturalisation of Pacific oysters in Dungloe Bay are not adequately captured in the decision to grant. Accordingly, it is recommended that the Ministers decision to grant aquaculture and foreshore licences in respect of site T12/486 be upheld, conditional on the site only being stocked with triploid seed and that existing legislative requirements and best practice guidelines for prevention of introduction of alien species be applied at all times in the operation of the site.

No further change to the Ministers decision is recommended as a consequence of AP29.

Recommendation in relation to AP 31 - T12/205 Revised

With reference to the application for renewal of aquaculture and foreshore licences for site T12/205, the substantive issues raised by the appellant have been considered and an appropriate analysis has been conducted during the technical review process. In the context of the environmental and ecological concerns raised by the appellant, the appellants submission that a range of negative impacts will arise as a consequence of renewing these licences has not withstood the analysis.

Analysis of data and information available at time of review confirms that renewal of the aquaculture and foreshore licences relating to site T12/205 (AP31/2019) is consistent with all legal requirements and has taken into consideration all submissions from expert technical and statutory entities, as well as submissions from the public consultation phase.

Specifically, it is considered that the renewal of aquaculture and foreshore licences in this case will not affect the recreational and amenity value of inner Dungloe Bay due to the location and scale of the licensed area.

With limited mitigation, as identified by the Marine Institute in the report supporting Appropriate Assessment and as accepted by the DAFM in the Appropriate Assessment concluding statement, it is considered that site T12/205 can be operated through a new license period without risk of causing significant negative impacts to the environmental or ecological features of Dungloe Bay or Rutland Island and Sound SAC.

Risks of naturalisation of Pacific oysters can be effectively mitigated against through the use of triploid seed for stocking the site, while risks of introduction of alien species can be mitigated by implementation of existing requirements and following best practice guidelines. Both mitigations are considered acceptable by the Licensing Authority in the Final Appropriate Assessment Conclusion Statement by the Dept of Agriculture, Food and Marine in support of the Appropriate Assessment of Aquaculture in Rutland Island and Sound SAC.

Continued operation of the site will not impact on the conservation objectives for Rutland Island and Sound SAC. Risks related to the potential contribution through the development of this site to the establishment of Pacific oysters in Dungloe Bay can be effectively mitigated against by restricting the stocking of the site to the use of triploid seed. In this regard it is recommended that a condition be inserted into any aquaculture licence to reflect this.

As determined by the Marine Institute, certain sites can likely be operated without impacting on the conservation objectives for Rutland Island and Sound SAC. Site T12/205 can be operated through a new license period without significant risk of disturbance to seals as the location of the site and the existing access route effectively implements the Marine Institute recommended mitigation of a minimum buffer of 200m from known seal habitat.

The appellant has not provided sufficient supporting evidence that details how the Minister erred in taking the decision to grant renewal such that the decision to grant should be overturned. No evidence is provided that indicates that the potential negative impacts described occurred during the previously licensed period.

While the Minister has considered a broad range of environmental and ecological concerns during the application process in arriving at the decision to issue aquaculture and foreshore licence renewals for site T12/205, it is the view of the technical advisor that risks associated with the possible introduction of non-native species and potential for naturalisation of Pacific oysters in Dungloe Bay are not adequately captured in the decision to grant. Accordingly, it is recommended that the Ministers decision to grant aquaculture and foreshore licences in respect of site T12/205 be upheld, conditional on the site being stocked only using triploid seed and that existing legislative requirements and best practice guidelines for prevention of introduction of alien species be applied at all times in the operation of the site.

No further change to the Ministers decision is recommended as a consequence of AP31.

11.0 Draft Determination Refusal /or Grant

It is recommended that Appeals AP26, AP27 and AP30 concerning the Ministers decision to grant aquaculture and foreshore licences for sites T12/545, T12/521 and T12/481 be upheld and that the Minister’s decision to grant the stated licences be overturned.

It is recommended that the Ministers decision to grant aquaculture and foreshore licences in respect of sites T12/205 and T12/486 be upheld subject to inclusion of a condition requiring use of triploid seed for stocking these sites. In order to mitigate the risk of introduction of alien species into the SAC as a result of aquaculture activities all movement of stock in and out of the Rutland Island and Sound SAC should adhere to relevant legislation and follow best practice guidelines (e.g. <http://invasivespeciesireland.com/cops/aquaculture/>).

It is recommended that AP29 and AP31 be rejected and that aquaculture and foreshore licences are granted in respect of these sites, conditional on the use of triploid seed and effective implementation of legislative requirements and best practice in terms of movement of stock in and out of the sites.

Technical advisor: MERC Consultants

Date: 23.10.2020

References

Aquafact 2014 Natura Impact Statment For the Hand-Harvesting of *Ascophyllum nodosum* in Rutland Island and Sound candidate Special Area of Conservation, Co. Donegal.

Dept Agriculture, Food and Marine, (2019). Final Appropriate Assessment Conclusion Statement by Licensing Authority in support of the Appropriate Assessment of aquaculture in Rutland Island and Sound SAC (Site code: 002283).

EPA 2011 Inspectors report on Waste Water Discharge Licence from Donegal County Council for the Dungloe agglomeration, Reg. No. D0208-01 http://www.epa.ie/licences/lic_eDMS/090151b280419436.pdf

Marine Institute 2019. Report supporting Appropriate Assessment of Aquaculture in Rutland Island and Sound SAC (Site code: 02283). August 2019.

Morris, C.D. and Duck, C.D. 2019. Aerial thermal-imaging survey of seals in Ireland, 2017 to 2018. Irish Wildlife Manuals, No. 111, National Parks and Wildlife Service, Department of Heritage and Gaeltacht, Ireland.

Sea Fisheries Protection Authority 2019. 2020/21 List of Classified Bivalve Mollusc Production Areas in Ireland. SFPA

Tully, O. 2017. Atlas of Commercial Fisheries for Shellfish around Ireland, Marine Institute, March 2017. ISBN 9781902895611 58pp.

White, F. and Costelloe, J. 1999. A socio-economic evaluation of the impact of the aquaculture industry in Counties Donegal, Galway, Kerry and Cork.

Appendix 1 Imagery from 2017 harbour seal surveys

Seal survey data provided by and copyright National Parks and Wildlife Service, Department of Culture, Heritage and Gaeltacht (2017).

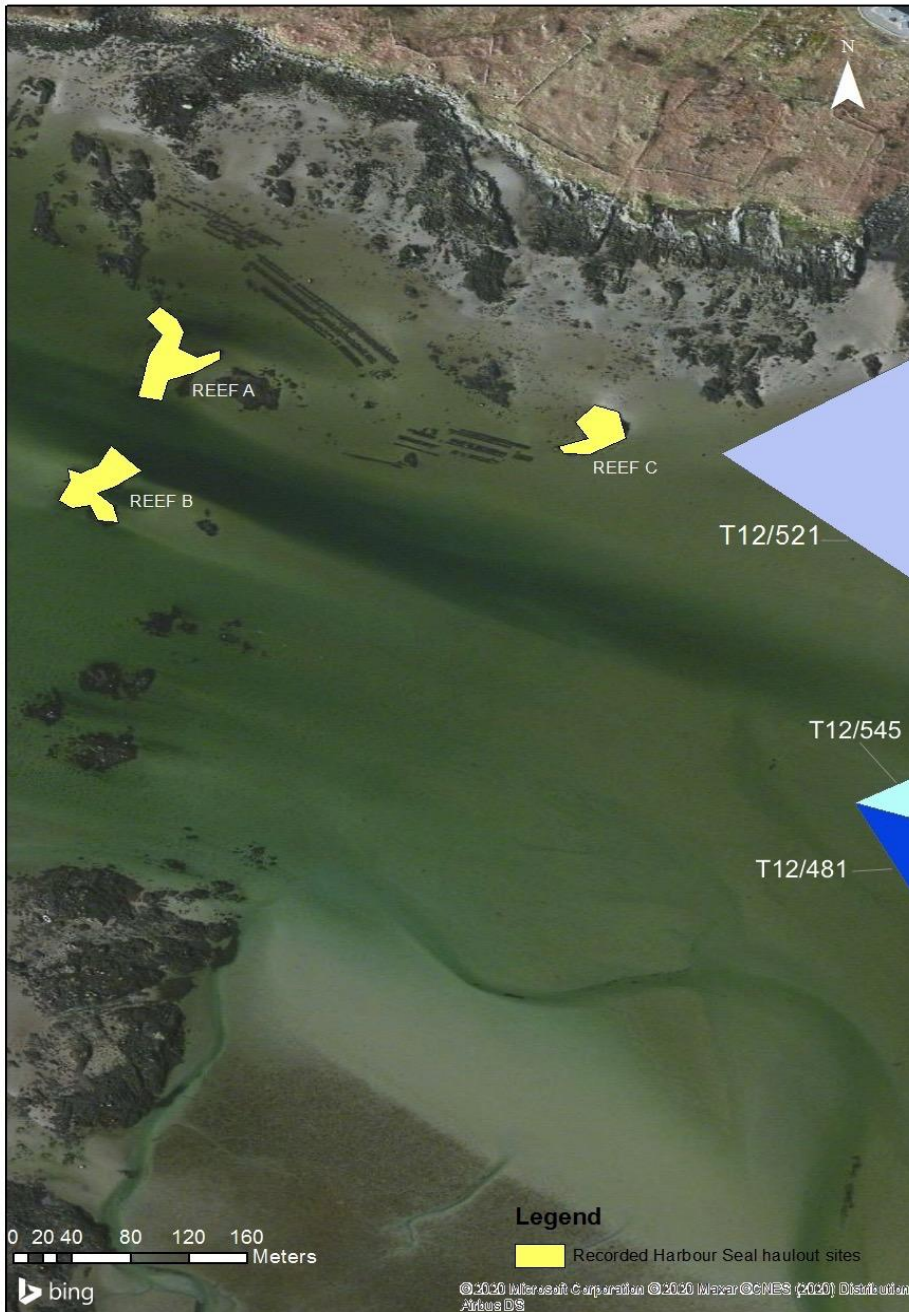


Figure APP1 – Dungloe Bay Co Donegal. Location of harbour seal haul out reefs in relation to application sites T12/545, T12/521 and T12 481.



Figure App2. Aerial image of Reef “A” taken on 22 August 2017. Seals can be seen hauled out in several locations. Image provided by and copyright National Parks and Wildlife Service, Department of Culture, Heritage and Gaeltacht 2017.



Figure App3. Aerial image of Reef “B” taken on 22 August 2017. Seals can be seen hauled out in several locations. Image provided by and copyright National Parks and Wildlife Service, Department of Culture, Heritage and Gaeltacht 2017.

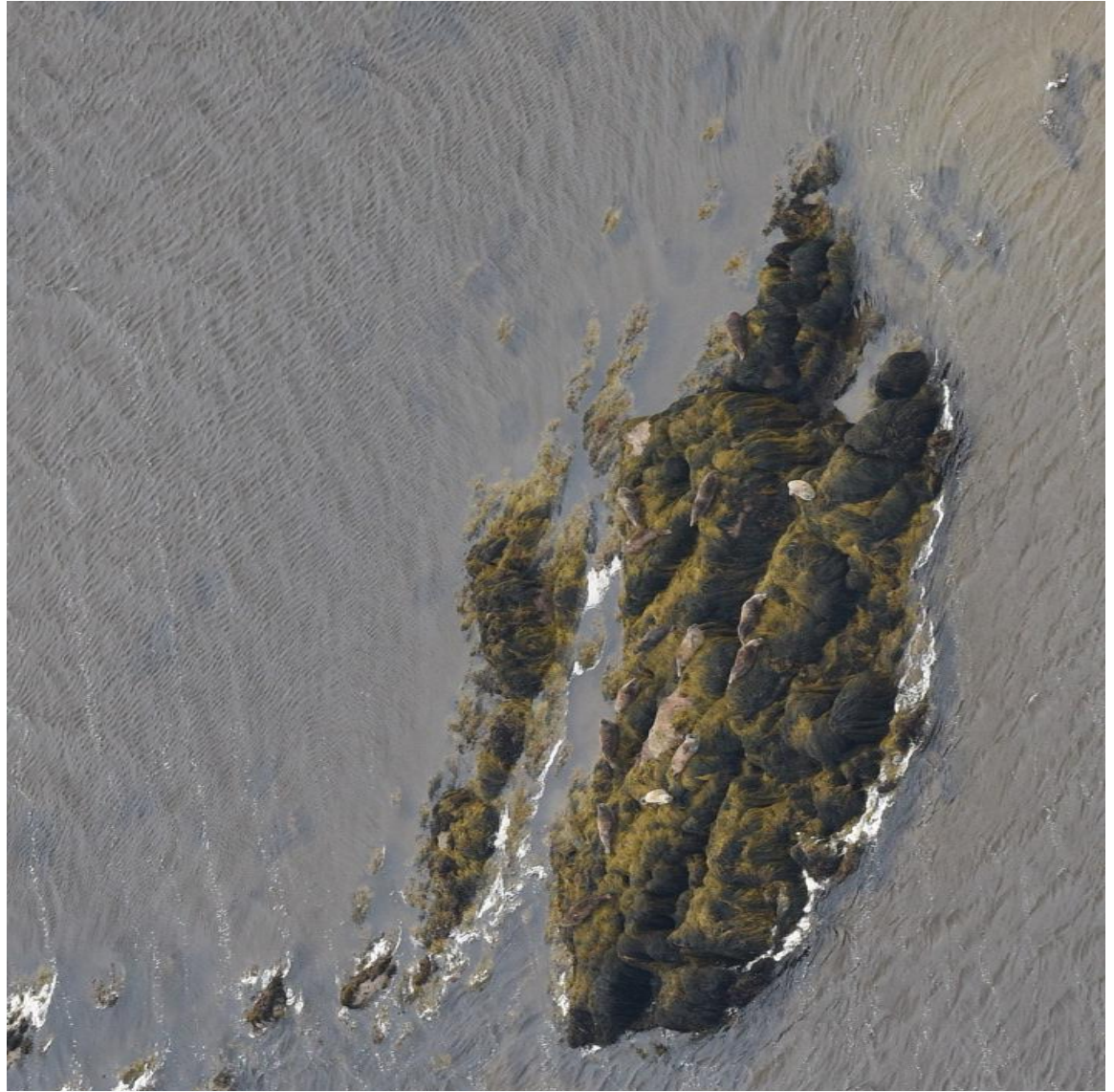


Figure App4. Aerial image of Reef “C” taken on 22 August 2017. A significant number of harbour seals can be seen hauled out. Image provided by and copyright National Parks and Wildlife Service, Department of Culture, Heritage and Gaeltacht 2017.