

AQUACULTURE LICENCES APPEALS BOARD
NOTICE OF APPEAL UNDER SECTION 40(1) OF FISHERIES (AMENDMENT) ACT 1997 (NO. 23)

- 3 DEC 2019

Appeal Form



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Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices

Name of Appellant (block letters)	Tomás Hayes		
Address of Appellant	Top Oysters Ltd. Tochar, Cromane, Killorglin, Co. Kerry		
Phone:		Email:	
Mobile:		Fax:	

Fees

Fees must be received by the closing date for receipt of appeals	Amount	Tick
Appeal by licence applicant	€380.92	x
Appeal by any other individual or organisation	€152.37	
Request for an Oral Hearing * (fee payable in addition to appeal fee) * In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.	€76.18	x
(Cheques Payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D

Subject Matter of the Appeal

Cultivation of Pacific Oyster using Bags and Trestles at Site No. T06/505A in Castlemaine Harbour. This area adjoins my existing site T)6/241A.

I am seeking a **site extension** as using the new site application process as it is the only means of doing so.

Site Reference Number:-

(as allocated by the Department of Agriculture, Food and the Marine)

T06/505A adjoining licenced site

T06/241A

Appellant's particular interest in the outcome of the appeal:

1. This appeal is critical to the ongoing development of my business where considerable funding (200k+) has been invested.
2. This site T06/505A adjoins my existing site T06/241A and I require an ongoing growing and fattening area.
3. My existing site is compromised at this point due to shifting water channels and sandbanks which has led to trestle damage and to neighbouring sites (licenced to other parties) having to relocate or move within the boundaries of my current site as sections of their sites are becoming unusable. Sandbank "creep" and change due to water currents/channels are a constant theme in operating on these sites. This means that sections of some sites have become unusable and have reverted to natural positions. In the overall context of increased ground usage, the reality is that some sections of sites become unusable.
4. This site produces the Speciale Oyster, a high value product well recognised by the European market.

Outline the grounds of appeal (and, if necessary, on additional page(s) give full grounds of the appeal and the reasons, considerations and arguments on which they are based):

1. Applicant Background

The applicant has thirty years' experience in growing shellfish in Castlemaine Harbour. The applicant has invested considerably over the past years and has secured additional funding to develop the project. The applicant holds a strong third level qualification and has the strength and appetite to develop the business further. Funding has been approved from Bórd Iascaigh Mhara in 2019. This has allowed the purchase of a barge, mechanised equipment for grading of oysters, construction of a work facility and employment of additional staff.

2. Employment

There is a clear economic benefit which is a core consideration under the Licencing Act. Oyster farming is not

mechanised and is one of the most labour intensive methods of producing seafood . It requires one full time and two part-time employees for every twenty tons produced making it an ideal industry for rural Kerry communities which have had a long and challenging tradition making a living from the sea .

3. Environment

Oyster farming provides an entirely sustainable source of seafood. It is based on a naturally re-occurring resource in our bays every Summer — plankton production. There are no artificial feed inputs. There is no veterinary input. All materials used in farming are fully recyclable. It has an extremely low impact and if it had to be removed from a site for some reason the foreshore would be left exactly as it was found. It is the first time that any human based activity has provided food from our estuaries sustainably and will help remove pressure from traditional fisheries which are collapsing all over the world despite the best efforts of CFP and quota based management systems. Oyster shell growth directly sequesters and permanently stores carbon from our oceans. It is being now being developed in other coastal countries as an environmental tool to try and combat the continuing nitrification of our estuaries by agriculture and waste-water discharge.

4. Wildlife and SAC

There is little or no impact of oyster farming within our SAC network. Most of the species protected by the SAC network in Castlemaine Harbour are stable or increasing.

Birdlife is dynamic and changing and the applicant has seen an increase in bird life including Greenshank and Redshank. This application does not represent habitat loss but a recycling of areas which have become unusable due to tidal changes and access. In the overall context, ground usage will remain the same with a shifting of activity.

The provision of additional space adjoining my existing site which is only accessed by water will lead to continues **extensive** oyster farming with the wildlife benefits as opposed to concentrated **intensive** farming which will develop on the present site with growth pressures.

5. Precedent

It is my contention that a precedent has already been set in relation to the granting of licences to some individuals and not to others in recent times with the approval/licencing of areas licenced for mussel production and conversion for oyster production. This undermines any argument for the granting of oyster licences in Castlemaine Harbour as it has now set a precedent. The tone of this appeal could be that I am applying for a mussel licence with further ambition of seeking a conversion to oyster licences at some stage in the future.

This precedent undermines the argument in relation to wildlife concerns, it undermines the vagueness of the argument of the “insufficient” evidence as presented in the refusal.

There was no public comment in relation to this application other than statutory comment. Department officials suggest public comment as reasons for the refusal which indicates that the Department did not consider the application in full **specifically my request/permission for site extension**. A covering letter was provided with the original application which was not considered, It appears as if a generic response has been provided rather than individual assessment.

6. Site Extension

This is a site extension request but the only method of seeking a site extension is through a new application process. I have operated my existing site with no issues for the past 30 years and this area extension is a valid request based on need and the requirement for extensification of operations (i.e. low density) and changing site characteristics (i.e. natural water channels movement)

Oyster farming has replaced the entire traditional inshore sector combined (crab, mussel, periwinkles, etc) in annual value terms of exported shellfish. The former is a declining overfished resource under enormous pressure with the latter a fully sustainable activity available for future generations to come.

I would ask that your Board seriously consider these indisputable facts in making a determination which reflects the seafood security challenges ahead and the environmental and economic realities we now live in.

Signed by appellant: Tommy O'Keefe Date: 02/12/19

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Fees must be received by the closing date for receipt of appeals

This notice should be completed under each heading and duly signed by the appellant and be accompanied by such documents, particulars or information relating to the appeal as the appellant considers necessary or appropriate and specifies in the Notice.

DATA PROTECTION – the data collected for this purpose will be held by ALAB only as long as there is a business need to do so and may include publication on the ALAB website

Extracts from Act

40.—(1) A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.

(2) A notice of appeal shall be served—

(a) by sending it by **registered post** to the Board,

(b) by **leaving it at the office of the Board**, during normal office hours, with a person who is apparently an

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employee of the Board, or

(c) by such other means as may be prescribed.

(3) The Board shall not consider an appeal notice of which is received by it later than the expiration of the period referred to in subsection (1)

41.—(1) For an appeal under *section 40* to be valid, the notice of appeal shall—

(a) be in writing,

(b) state the name and address of the appellant,

(c) state the subject matter of the appeal,

(d) state the appellant's particular interest in the outcome of the appeal,

(e) state in full the grounds of the appeal and the reasons, considerations and arguments on which they are based, and

(f) **be accompanied by such fee**, if any, as may be payable in respect of such an appeal in accordance with regulations under *section 63*, and

shall be accompanied by such documents, particulars or other information relating to the appeal as the appellant considers necessary or appropriate.