

An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Supplementary Technical Advisors Report
Appeal Ref AP12-18/2019

Kilmackilloge Harbour, Co Kerry

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11 October 2022

This supplemental report was prepared in addition to the technical advisor's report provided to the Board by Aster Consultants on 8th August 2022. This supplemental report reviews the Aster technical advisors report and provides the opinion of the Boards own technical advisor.

Summary of Appeal Sites

Seven mussel growing sites were appealed in Kilmackilloge Harbour, Co. Kerry, appeal references AP12-18/2019. Two of these sites were renewals and five were new applications. The locations of all appealed sites are marked in red in Figure 1 below. Kilmackilloge Harbour is located south-west of Kenmare town in Co. Kerry. The harbour faces north west and is sheltered from the prevailing south westerly wind. There are currently licences for mussel cultivation, scallop, oyster and salmon farming in the harbour. The Harbour is dominated by mussel aquaculture. Currently, growth rates on mussel farms in the Harbour are such that stock is reaching market size in 18 months, which is considered an optimum time frame. However additional licencing has the potential to increase the time for mussels to mature to market size due to possible increased competition for food supply.

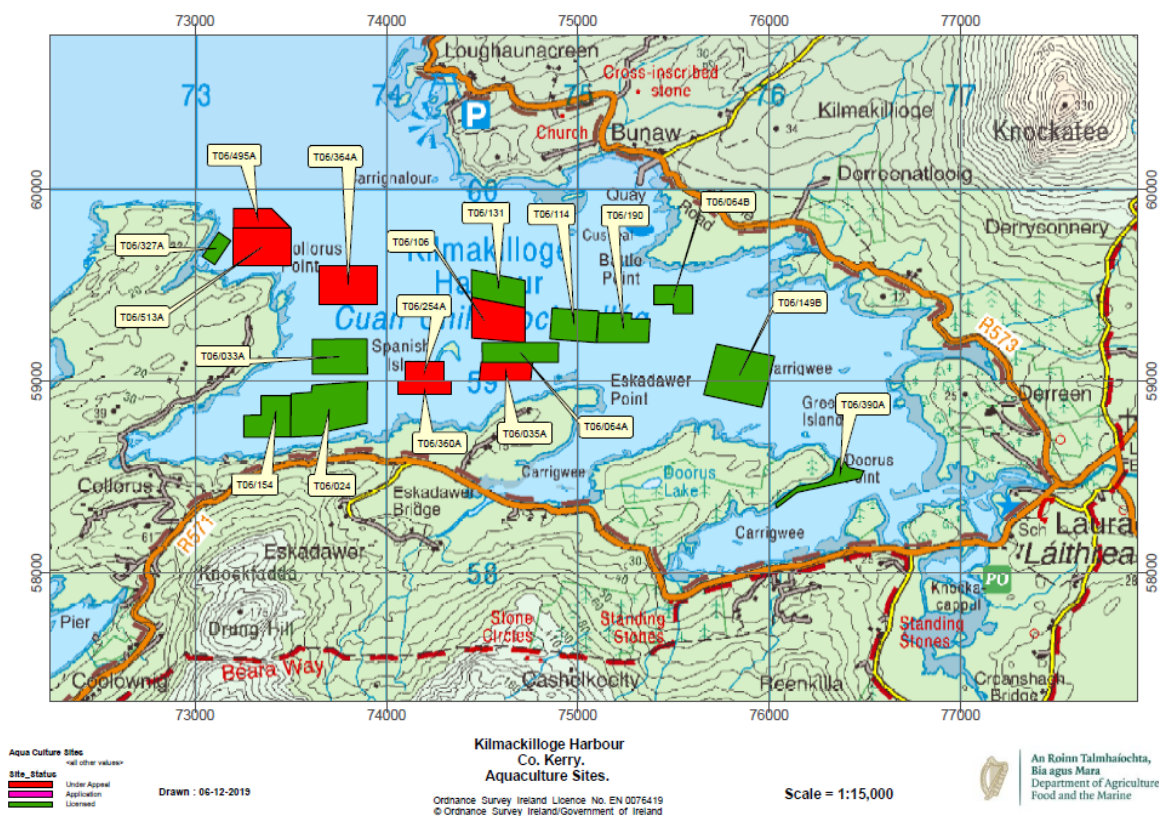


Figure 1: Current status of licenses in Kilmackilloge Harbour, as provided by AFMD, DAFM.

It can be seen from Table 1 below that the appeals are divided between applicants appealing the Minister's decision to refuse a licence and third parties appealing the granting of licenses.

Table 1: Appeal details AP12-18/2019, Kilmackilloge Harbour

Appeal Number	Reference number	Site Status	Applicant	Appellant	DAFM Decision
AP12/2019	T06/364A	New Application	Kieran Lyons	Applicant	REFUSAL
AP13/2019	T06/35A	Renewal	The Shamrock Shellfish Company	Kush Seafarms Ltd	GRANT
AP14/2019	T06/106	Renewal	The Shamrock Shellfish Company	Kush Seafarms Ltd	GRANT
AP15/2019	T06/254A	New Application	The Shamrock Shellfish Company	Applicant	REFUSAL
AP16/2019	T06/495A	New Application	The Shamrock Shellfish Company	Applicant	REFUSAL
AP17/2019	T06/513A	New Application	Kush Seafarms Ltd	Save Killmackilloge Bay	GRANT
AP18/2019	T06/360A	New Application	Kush Seafarms Ltd	Ross Shellfish, Carl Daly and Shamrock Shellfish	GRANT

A summary of the appeal issues before ALAB are given in Table 2 below. A technical advisor report prepared for the Board by Aster Consulting recommended the granting of both renewal sites and refusal of all new sites. Observations on all appeals were also received by ALAB from the “Save Killmackilloge Bay” group, who raised issues which reflect the issues raised by the various other appellants and have all been discussed in the Aster report.

Table 2: Appeal issues raised.

Appeal Number	Reference number	Site Status	Appellant	Appeal Issue
AP12/2019	T06/364A	New	Applicant – K Lyons	Disagreed with reasons for refusal – which were given as negative visual impact and impact on growth rates
AP13/2019	T06/35A	Renewal	Kush Seafarms Ltd	Appealed based on impact on growth rates, disease risk and challenges experience and training of company
AP14/2019	T06/106	Renewal	Kush Seafarms Ltd	As above
AP15/2019	T06/254A	New	Applicant-Shamrock	Appeal questions overall fairness of licencing in harbour
AP16/2019	T06/495A	New	Applicant-Shamrock	Appealed based on claimed preferential treatment of another operator and a potential conflict of interest
AP17/2019	T06/513A	New	Save Killmackilloge Bay	Appealed based on other users as site is apparently encroaching on existing fishing grounds, carrying capacity of harbour, visual impacts and tourism, navigation impacts
AP18/2019	T06/360A	New	Ross Shellfish, Carl Daly and Shamrock Shellfish	Appeal questions fairness of licencing in harbour and granting of site to another operator

Technical Advisors Assessment and Conclusions

Recommendation AP12/2019 – T06/364

As discussed in detail in Section 5.5 of the Aster report, this site was deemed unsuitable for development. Firstly, it was deemed unsuitable due to impacts on other users. The SFPA noted this area is traditionally used for shrimp or scallop fishing. The introduction of mussel lines in this area would block access for fishing activities in the area. A minor potential impact in terms of visual impact was highlighted in the Aster report. However, aquaculture has become embedded in the visual landscape of Kilmackilloge Harbour given it has been active in the area since the 1970's.

The site was also deemed unsuitable due to potential negative ecological and environmental impacts. A study of currents in the Harbour carried out in 2017 (BIM draft report, 2017 and 2019 addendum) showed that the location of Site T06/364 had the potential to negatively impact phytoplankton distribution to the rest of the Harbour. Therefore, it has the potential to negatively impact on both the ecology and environment of the Harbour as well as other licenced producers of mussels. This conclusion is shared by the Marine Engineering Division assessment of the site and the technical report provided by Aster. As noted in the Aster report, only the data collected and presented in the 2017 BIM draft report, and its 2019 addendum were used by the technical advisors in these assessments. The opinions expressed by the authors of the BIM draft report (2017 and 2019) were not taken into account in this assessment of aquaculture impacts in Kilmackilloge Harbour.

In terms of appeal issues raised by the applicant, while the technical advisor finds the concerns regarding visual impact as a reason to refuse are reasonable given aquaculture is embedded in the landscape in this area, the dispute regarding growth rates is not supported. The evidence suggests a negative impact on growth rates in other parts of the Harbour should this development proceed.

Given all the above, the recommendation of the technical advisor is to **UPHOLD** the Minister's decision to **REFUSE** to grant an aquaculture licence to Kieran Lyons for site T06/364.

Recommendation AP13/2019 - T06/35A

It is recommended to grant the renewal of the licence for Site T06/35A. This site has been active for a number of years and as noted above and in the Aster report, the harbour is recognised as currently being at a suitable level of production in terms of carrying capacity and growth rates. One issue raised during the statutory consultation relates to

navigation channels and marking of sites as raised by the Commissioner of Irish Lights, discussed in the Aster report. According to MED, there are existing navigational aids in Kilmackilloge Harbour. MED recommends that the group navigational marking scheme (SUMS) is revised to take account of any reconfiguration of the aquaculture sites. The SUMS scheme should provide a safe system of navigation for all marine users. This is deemed a reasonable accommodation by the technical advisor and is specified in the draft DAFM licence. It is anticipated that on the grant of the licence, the SUMS scheme will be revised in consultation with Kerry County Council, BIM, MSO and CIL. This site will be therefore be in the SUMS for Kilmackilloge Harbour.

In terms of appeal issues raised by the appellant, impacts to growth rate and disease risk will not be increased by the granting of this renewal, given it is an existing site already operating in the harbour. Regarding the claims as to the adequacy or otherwise of relevant training in the applicant's company, no evidence was forthcoming to support this contention. Also, this matter is considered to be outside the scope of the technical advisor and is more properly a matter for DAFM.

It is therefore the recommendation of the technical advisor to **UPHOLD** the Minister's decision to **GRANT** a renewal of an aquaculture licence to Shamrock Shellfish for site T06/35A.

Recommendation AP14/2019 - T06/106

This appeal also relates to the renewal of an existing site and had similar concerns raised by the appellant and statutory consultees as were seen in the previous appeal. This site has also been active for a number of years and as noted above and in the Aster report, the harbour is recognised as currently being at a suitable level of production in terms of carrying capacity and growth rates. Again, an issue was raised during the statutory consultation relating to navigation channels and marking of sites, by the Commissioner of Irish Lights and discussed in the Aster report. According to the MED, there are existing navigational aids in Kilmackilloge Harbour. MED recommends that the group navigational marking scheme (SUMS) is revised to take account of any reconfiguration of the aquaculture sites. The scheme should provide a safe system of navigation for all marine users. This is deemed a reasonable accommodation by the technical advisor and is specified in the draft DAFM licence. It is anticipated that on the grant of the licence, the SUMS scheme will be revised in consultation with Kerry County Council, BIM, MSO and CIL. This site will be therefore be part of the SUMS for Kilmackilloge Harbour.

In terms of appeal issues raised by the appellant, again, as seen in the previous appeal, impacts to growth rate and disease risk will not be increased by the granting of this renewal, given it is an existing site already operating in the harbour. Regarding the claims

as to the adequacy or otherwise of relevant training in the applicant's company, no evidence was forthcoming to support this contention. Also, this matter is considered to be outside the scope of the technical advisor and is more properly a matter for DAFM.

It is therefore the recommendation of the technical advisor to **UPHOLD** the Minister's decision to **GRANT** a renewal of an aquaculture licence to Shamrock Shellfish for site T06/106.

Recommendation AP15/2019 - T06/254

As discussed in detail in Section 5.5 of the Aster report, this site was deemed unsuitable for development. Visual impact was highlighted as a minor concern. However, the main reason for refusal is the potential impact of this development on phytoplankton availability in the Harbour and potential impacts to existing mussel farms and on the ecology and environment of the area.

The location of the proposed site has been previously highlighted as an important location in the Harbour for phytoplankton distribution due to the strong current flows. Concerns have been raised relating to the potential impact of increasing the number of lines in the area due to knock on impacts to phytoplankton distribution throughout the rest of the harbour. A draft report by BIM (2017, 2019) recommended further research to resolve this issue. To date, this work has not been carried out, so doubt remains as to the potential negative impact. Also, modelling work on the carrying capacity of Killmackilloge Harbour had been planned by the Marine Institute as part of a Horizon 2020 project which would have provided some guidance on the potential impacts of future development and expansion of mussel aquaculture in the harbour. While some initial modelling work on flushing rates on the bay was completed by the Marine Institute (Mamoutos et al, 2017), the more complex carrying capacity modelling work could not be carried out to date due to a lack of baseline data (Tapas project draft report, 2019). As such, given the lack of evidence and the concerns raised, the technical advisor has to recommend the refusal of this licence due to potential impacts on other users, the ecology and the environment of the area.

In relation to the appeal issues raised by the applicant, the technical advisor cannot comment to the fairness of previous assessments. However, the current assessment has been carried out by both an independent consultant and the Board's own technical advisor in an impartial manner following the requirements laid down by the legislation.

Therefore, the recommendation of the technical advisor is to **UPHOLD** the Minister's decision to **REFUSE** to grant an aquaculture licence to Shamrock Shellfish for site T06/254.

Recommendation AP16/2019 - T06/495

This proposed development was found to encroach on existing navigation channels according to the Commissioners for Irish Lights, with obvious impacts for other users. It was also reported by the SFPA that this area is a traditional fishing ground for shrimp and scallop fishing. The MED raised concerns regarding the visual impact of this site, located as it is in an area of the harbour with no other visible aquaculture installations. Also, and as discussed in the previous appeal, all new developments in Kilmackilloge Harbour raise concerns regarding carrying capacity given the gaps in the data.

Regarding the appeal issues raised by the applicant, while the technical advisor cannot comment as to claimed preferential treatment of other operators or conflicts of interest, this assessment was fully independent and shows clear reasons for refusing to grant this licence application.

It is therefore the recommendation of the technical advisor to **UPHOLD** the Minister's decision to **REFUSE** an aquaculture licence to Shamrock Shellfish for site T06/495.

Recommendation AP17/2019 - T06/513

This site is located adjacent to Site T06/495 discussed in the previous appeal. As such, a number of issues apply here too. It was reported by the SFPA that this area is a traditional fishing ground for shrimp and scallop fishing. This opinion was seconded by a submission from the Marine Institute. The MED did not raise concerns regarding the visual impact of this site; however, the technical advisor feels the same concerns that applied to T06/495 also apply here. Also, as discussed in the previous appeal, all new developments in Kilmackilloge Harbour raise concerns regarding carrying capacity given the gaps in the data.

In terms of appeals issues raised, the technical advisor found there were potential impacts on other users in terms of encroachment on fishing grounds, potential impacts on the carrying capacity of the harbour in terms of mussel production and visual impacts. No evidence was found regarding leisure users of the area, but it is clear the area is already in use by members of the fishing sector.

It is therefore the recommendation of the technical advisor to **OVERTURN** the Minister's decision and to **REFUSE** to grant an aquaculture licence to Kush Seafarms for site T06/513.

Recommendation AP18/2019 - T06/360

Site T06/360 is located adjacent to Site T06/254, discussed above. The recommendation for site T06/254 was to refuse the granting of a new licence given the uncertainty regarding potential impacts to phytoplankton supply and water flow to other portions of the harbour, subsequent impacts to existing aquaculture developments, along with potential impacts to the ecology and environment of the harbour. These same concerns also apply to this site, but the issue is complicated by the existence of an illegal aquaculture development in this particular site for a number of years. This site has operated at a density of 2.5 lines per hectare.

In terms of appeals issues raised, these fall outside of the scope of the technical advisor's assessment and while the technical advisor cannot comment as to claimed preferential treatment of other operators or conflicts of interest, this assessment was fully independent and shows clear reasons for refusing to grant this licence application.

It is therefore the recommendation of the technical advisor to **OVERTURN** the Minister's decision and to **REFUSE** to grant an aquaculture licence to Kush Seafarms for site T06/360A.