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Legal Submission Relating to Appeal pursuant to Section 40 of the Fisheries (Amendment) Act 1997 Aquaculture Licences in Wexford Harbour.

1. This submission sets out legal objections to the grant of any licence on the applications referred to in this appeal and purported appropriate assessment on the basis that:
  - The legislation is not capable of supporting a valid appropriate assessment;
  - The Minister failed to prepare or make available for inspection any fisheries Natura plan;
  - The assessment as carried out is incomplete;
  - The assessment insofar as it was carried out at all, was concluded prior to the receipt of public submissions;
  - The reasons were inadequate;
  - The assessment did not demonstrate beyond reasonable scientific doubt and without gaps or lacunae that the proposed activities would not adversely affect the integrity of the Wexford Harbour and Raven Point SAC and SPA.
2. It is common ground that the licence applications at issue in this decision require a full appropriate assessment under Article 6(3) of the EU Habitats Directive. This obligation is given effect to by SI 346/2009 in respect of sea-fishing (as defined in the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006)).

**Appeal against Purported Appropriate Assessment**

3. An Taisce is entitled to bring an appeal against the above applications, all of which have been subjected to a single appropriate assessment based on a single set of documents. An Taisce submits it is entitled to bring a single appeal against a series of licences in light of Section 40 of the Fisheries (Amendment) Act 1997 (the 1997 Act), which provides for an appeal against a decision, and Section 18 of the Interpretation Act 2005 which provides that a reference in an Act to the singular includes the plural. An Taisce also notes Section 42 of the 1997 Act which provides that the Board may treat two or more appeals as a single appeal, and may split appeals, and the Schedule to S.I. No. 449/1998 - Aquaculture Licensing Appeals (Fees) Regulations, 1998 which provides a particular fee for an applicant appealing against a particular application, whereas the fee for a third party is a fee based on the appeal, without such limitation. Accordingly, the relevant fee for an appeal and oral hearing is submitted.
4. An Taisce is not financially in a position to pay more than one appeal fee. If more than one fee were applied, this would render the appeal prohibitively expensive and would in effect deprive An Taisce of its right of public participation and its right to an administrative review, contrary to Article 6 of the Habitats Directive read in light of Article 6 of the Aarhus Convention and Article 47 of the Charter on Fundamental Rights of the European Union.

### **Grounds Relating to AA Report**

*Report Title: "Appropriate Assessment Summary Report of Aquaculture in the; Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710), Wexford Harbour and Sloba SPA (site code 004076) and Raven SPA (site code 004019) Prepared by: Marine Institute, Version: August 2016*

5. This Marine Institute Report purports to be an assessment conducted for the purposes of the obligations arising under SI 346/2009, and there are a range of fatal flaws arising in the context as set out below.

### **Preface**

6. The Preface to the Report states that the Marine Institute is acting pursuant to SI 346 of 2009, the European Communities (Habitats and Birds) (Sea Fisheries) Regulations 2009:

*“Here, the industry or the Minister may bring forward fishing proposals or plans which become subject to assessment. These so called Fishery Natura Plans (FNPs) may simply be descriptions of existing activities or may also include modifications to activities that mitigate, prior to the assessment, perceived effects to the ecology of a designated feature in the site. In the case of aquaculture DAMF receives applications to undertake such activity and submits a set of applications, at a defined point in time, for assessment.*

7. This is not correct. According to Regulation 3 of SI 346 of 2009, :

*... (i) a person affected by the designation [as an SAC or SPA], or*

*(ii) the Minister,*

*may prepare a plan (“fisheries Natura plan”) that relates to fishing activity within the site.*

8. To be clear a fisheries Natura plan is the initiating document in the application for consent for a project or plan that is likely to have a significant effect on an SAC or SPA. The prescribed way to carry out an AA of a sea fishing activity (as defined in the [Sea-Fisheries and Maritime Jurisdiction Act 2006](#)) for the purposes of the Habitats Directive, in relation to such a plan or project is to follow the procedure set out in SI 346. If this procedure is not followed, the entire application is bad in law and invalid.
9. It is not clear who prepared the plan in this instance, or if there is a plan. No plan has been made available for public inspection. There is no indication that there was a plan. There is no indication of what material the Marine Institute used as a basis for its Report. There must be a plan for the project, on foot of which an assessment can be carried out.
10. The characteristics of a plan are set out at Regulation 3(2) to (4):

*(2) The objective of a fisheries Natura plan is to assist in the achievement of the objectives of the birds Directive and the habitats Directive, so far as sea-*

*fisheries has an impact on the achievement of those objectives, in a site to which the plan relates.*

*(3) A fisheries Natura plan may relate to one or more sites referred to in paragraph (1).*

*(4) A draft fisheries Natura plan may include measures—*

*(a) restricting, including prohibiting, fishing activity or fishing activity of a particular class or description,*

*(b) restricting, including prohibiting, use of fishing gear or fishing gear of a particular class or description or other fishing means,*

*(c) limiting fishing effort by sea-fishing boats generally or sea-fishing boats of particular class or description,*

*(d) limiting fishing activity by means other than sea-fishing boats,*

*(e) restricting, including prohibiting, times of fishing, and*

*(f) restricting, including prohibiting, the taking of particular species,*

11. There is no publicly available plan containing any of these items. Accordingly, there is no basis for the Marine Institute Report, which means there is no legal basis on which the Minister could take a decision, or from which an appeal could be taken. Accordingly, the decision of the Minister must be set aside.

12. (If there is a plan, it has not been made available for public inspection, in breach of the right of participation conferred by the Aarhus Convention through the Habitats Directive. These rights include the right to effective judicial protection, which includes the right of access to a tribunal. See in this respect Case C-243/15 of the European Court at para 52 to 55<sup>1</sup>. The right of access to a tribunal is set at naught if the

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<sup>1</sup> 52 Where a Member State lays down rules of procedural law applicable to actions concerning exercise of the rights which an environmental organisation derives from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of the Aarhus Convention, in order for decisions of the competent national authorities to be reviewed in the light of their obligations under those provisions, that Member State is implementing obligations stemming from those provisions and must therefore be regarded as implementing EU law, for the purposes of Article 51(1) of the Charter.

53 Accordingly, the Court has jurisdiction to answer the request for a preliminary ruling inasmuch as it relates to Article 47 of the Charter.

54 The right to an effective remedy and to a fair hearing set out in Article 47 of the Charter includes, in particular, the right to an effective remedy before a tribunal.

necessary documentation is not made available in the course of the public participation process.)

13. Regulation 3(5) provides:

*(5) A person referred to in paragraph (1)(i) may submit a draft fisheries Natura plan to the Minister.*

(Included for completeness.)

14. The role of the Marine Institute is covered at Regulation 3(6) and (7):

*(6) The Minister shall, after preparing, or on receipt of, a draft fisheries Natura plan, send a copy to the Marine Institute.*

*(7) The Marine Institute shall prepare an assessment of a draft fisheries Natura plan sent to it by the Minister having regard to the achievement of the objectives of the birds Directive and the habitats Directive, so far as the draft fisheries Natura plan would have an impact on the achievement of those objectives, in a site to which the plan relates and make a report of the assessment to the Minister.*

15. This report appears on its face to be an assessment of a draft fisheries Natura plan, but the plan sent to it by the Minister is not apparent and not referred to in the document. Accordingly, there is either a breach of the Regulations or a failure to make a key document, the plan, available for public inspection in accordance with Regulation 3(8):

*(8) The Minister shall-*

*(g) publish a draft fisheries Natura plan (whether prepared in accordance with paragraph (1)(ii) or submitted under paragraph (5)) and the report received under paragraph (7) in a manner that he or she considers appropriate (including electronic publication), and*

*(h) send a copy of a draft fisheries Natura plan (whether prepared in accordance with paragraph (1)(ii) or submitted under paragraph (5))*

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55 As regards that right to an effective remedy, it should be noted that Article 9(2) of the Aarhus Convention grants access to a review procedure to environmental organisations that meet the conditions referred to in Article 2(5) of that convention — which LZ does — in so far as the review is of a decision which falls within the scope of Article 9(2).

*and the report received under paragraph (7) to the Minister for the Environment, Heritage and Local Government, the Minister for Communications, Energy and Natural Resources and any other person who he or she considers appropriate, and invite representations on the report within one month of the date of publication or, for 2009, a shorter period determined by the Minister.*

*(9) A person may make representations on a report on a draft fisheries Natura plan within one month of it being published or, for 2009, a shorter period determined by the Minister.*

16. The Regulations are here invalid, because they only allow for public participation after the assessment of the plan has been completed. Article 6(4) gives a right to early public participation at a time when all options are open. Such participation is not provided in this instance because public participation is not allowed until after the assessment of the plan has taken place. The public participatory rights in Appropriate Assessment were expressly clarified by the CJEU in case C-243/15 and subsequently.

17. Also, where the plan is made by the Minister and assessed by the Marine Institute, which falls under his remit, the assessment is not independent and breaches the rules of natural justice. Accordingly, the decision of the Minister is void.

18. There is no subsequent obligation to review the assessment in light of the public submissions. Regulation 3(10) provides:

*(10) As soon as may be after receipt of representations under paragraph (9), the Minister shall finalise the fisheries Natura plan and publish the fisheries Natura plan in any manner that he or she considers appropriate (including electronic publication).*

*(11) The Minister shall publish notice of a fisheries Natura plan or the amendment or withdrawal of a fisheries Natura plan in Iris Oifigiúil.*

19. Thus, the Minister, who prepared the plan or decided to submit it to the Marine Institute (if in fact there was a plan) is the person charged with simply “finalising” the plan, not conducting or updating the assessment. The Minister is therefore made a judge in his own case, in violation of the principles of natural justice, in a manner

which was not necessitated by European law and represented an unlawful choice by the Minister in implementing the Habitats Directive.

20. The Regulations are invalid and do not provide an adequate basis for determination of an application.

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21. The Marine Institute has also misdirected itself as to its role, saying at p3:

*“If the AA finds that significant effects of such activities cannot be discounted the plans or projects will need to be mitigated further if such activities are to continue. The AA is not explicit on how this mitigation should be achieved but rather the degree of mitigation required.*

22. This is an incorrect legal basis for an appropriate assessment (AA). The AA has to ensure that there will be no adverse effect on the integrity of the site. It can only do this if the preventive measures have been verified at the time of the assessment. They cannot be figured out later, as the whole purpose of the assessment is to ensure that, after they are applied, there will be no adverse effect. If they are not assessed, that level of certainty cannot be achieved. (Case C-164/17, Grace<sup>2</sup>)

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23. The Marine Institute carries out its purported assessment on foot of an unidentified and unknown data set which was either not available or, insofar as it was available, was not capable of forming the basis for an AA. This is clear from the Conclusions Report, prepared by the Minister, which notes: “From an aquaculture perspective, the

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<sup>2</sup> 39 The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (see, to that effect, judgment of 12 April 2018, People Over Wind and Sweetman, C-323/17, EU:C:2018:244, paragraph 38 and the case-law cited).

40 The fact that the appropriate assessment of the implications of a plan or project for the area concerned must be carried out under that provision means that all the aspects of the plan or project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives of that area must be identified in the light of the best scientific knowledge available in the field (see, to that effect, judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 113 and the case-law cited).

41 It is at the date of adoption of the decision authorising implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the area in question (see, to that effect, judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 120 and the case-law cited).

information upon which the Appropriate Assessment is based is the definitive list of applications and extant licences for aquaculture available at the time of assessment.”

24. The applications list does not include any data on foot of which an assessment could be carried out, and the data set (if any) for the report is not made clear, nor was it available for public consultation. As a result, the procedure carried out was fundamentally flawed and unfair, and did not constitute a proper public consultation as required by law.

### **Summary SAC Considerations, Conclusions and Recommendations**

25. The 2016 AA report in the above section, at p4 says:

*“For the practical purpose of management of sedimentary habitats a 15% threshold of overlap between a disturbing activity and a habitat is given in the NPWS guidance.*

*“Below this threshold disturbance is deemed to be non-significant. Disturbance is defined as that which leads to a change in the characterizing species of the habitat (which may also indicate change in structure and function). Such disturbance may be temporary or persistent in the sense that change in characterizing species may recover to pre-disturbed state or may persist and accumulate over time.*

26. It is presumed that the reference to a 15% threshold is a reference to the document, NPWS (2011) Slaney River Valley SAC (site code: 0781) Conservation objectives supporting document -marine habitats and species, Version 1, August 2011 which says:

*“2.1. Significant anthropogenic disturbance may occur with such intensity and/or frequency as to effectively represent a continuous or ongoing source of disturbance over time and space (e.g., effluent discharge within a given area). Drawing from the principle outlined in the European Commission’s Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status, this Department takes the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%. Thereafter, an increasingly cautious approach is*



*advocated. Prior to any further licensing of this category of activities, an inter-Departmental management review (considering inter alia robustness of available scientific knowledge, future site requirements, etc) of the site is recommended.*

27. There is no legal basis for this conclusion. The mere fact that a 25% disturbance may be considered to be adverse does not mean that a smaller disturbance will not be.
28. The criteria in an AA are not based on disturbance. A licence must be refused unless an adverse effect on the integrity of the site can be ruled out beyond reasonable scientific doubt. In Case C258/11 Sweetman, the loss of approximately 1% of the protected habitat was considered to be an adverse effect on the integrity of the site.
29. The Commission reporting framework on which this 25% threshold is allegedly based have not been made available for public scrutiny and submission. It is gravely doubted whether the Commission indicated that there **must** be a 25% impact **before** an effect may be deemed to be adverse. Such a conclusion is contrary to law.
30. Article 6(3) and 6(2) have the same purpose, namely to prevent disturbance or deterioration. They do not permit disturbance or deterioration at all. Disturbance or deterioration of habitats is equivalent to an adverse effect on their integrity.
31. Because the AA considers that a disturbance on up to 15% of the site is permissible, it does not provide sufficient evidence to satisfy the test on absence of adverse effect.

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32. The Report goes on to provide at p4:

*“The first stage of the AA process is an initial screening wherein activities which cannot have, because they do not spatially overlap with a given habitat or have a clear pathway for interaction, any impact on the conservation features and are therefore excluded from further consideration. The next phase is the Natura Impact Statement (NIS) where interactions (or risk of) are identified.*

33. The initial screening document and Natura Impact Statement have not been provided, so it has not been possible to comment on them. All that has been

presented is an AA report which is only prepared after the time for public consultation has expired.

34. If this is indeed an AA, it was prepared in breach of the right of public participation. If it is not an AA, then there has been no subsequent AA

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35. The Report states, still at p4:

*“Mitigation measures (if necessary) may be identified in situations where the risk of significant disturbance is identified. In situations where there is no obvious mitigation to reduce the risk of significant impact, it is advised that caution should be applied in licencing decisions.*

36. Mitigation measures are not provided for in the Habitats Directive. There are conservation measures, which are relevant to Article 6(1), preventive measures, which are relevant to Article 6(2), and compensatory measures, which are relevant to Article 6(4). (Case C-387/15 Orleans, para 31-41<sup>3</sup>) As the purpose of Article 6(2) and 6(3) is the same, preventive measures may be relevant, but they must be genuinely preventive, and not merely an ex post facto compensation for an accepted impact on the SAC / SPA. Certainty must be established at the time of assessment (see above.)

37. The next inaccurate statement is at the bottom of p4:

*“In situations where there is no obvious mitigation to reduce the risk of significant impact, it is advised that caution should be applied in licencing decisions.”*

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<sup>3</sup> 31 As a preliminary point, it must be recalled that Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of that directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation (see, to that effect, judgment of 11 April 2013 in Sweetman and Others, C-258/11, EU:C:2013:220, paragraph 36 and the case-law cited).

32. Accordingly, Article 6 of the Habitats Directive divides the measures into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4), respectively....

40 Accordingly, a preventive measure complies with Article 6(2) of the Habitats Directive only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives (judgment of 14 January 2016 in Grüne Liga Sachsen and Others, C-399/14, EU:C:2016:10, paragraph 41 and the case-law cited).

38. This is wrong in law. Where there is no way to eliminate – not reduce – the risk, the risk remains and the certainty required to eliminate the risk of adverse effects on the integrity of the site is not established.

39. Between p4 and p5 the Report states:

*“Overall, the Appropriate Assessment is both the process and the assessment undertaken by the competent authority to effectively validate this Report and/or NIS.”*

40. Under SI 346 of 2009, it is the Marine Institute that prepares the AA. The AA is the assessment carried out by the Institute. There is no further assessment. The conclusions are in any event vitiated by the objective bias of the Minister as the person putting forward the fisheries Natura Plan.

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41. At p5, the Report purports to exclude a number of species from assessment. It does so on a wrong legal basis:

*“In relation to habitats an initial screening exercise resulted in a number of habitat features being excluded from further consideration by virtue of the fact that no spatial overlap of the culture activities was expected to occur and no likely interactions were identified.”*

42. The exclusion relates to species in the Slaney river. The test applied, “no likely interactions” is legally and factually flawed. The appropriate test is whether such interactions could be excluded on the basis of objective evidence. No such evidence is advanced or apparent. Factually, the Report should at least have considered whether the activities in the harbour area might affect the movement of fish into and out of the river, and might thereby have an indirect effect on protected species in the river. Indirect effects are an essential element of any assessment.

43. The Report continues:

*“Given the nature of the activities proposed for aquaculture in Slaney River Valley, it is unlikely that aquaculture activities will impact on the conservation attributes for Salmon, Sea Lamprey and Twaite Shad. On that basis, Salmon (*Salmo salar*), Sea lamprey (*Petromyzon marinus*) and the Twaite shad (*Alosa fallax*) were excluded from further analysis.”*

44. Again, the correct test is whether such effects could be excluded on the basis of objective evidence.

### **Findings**

45. The findings section contains a list of impacts from pages 8 to 9 all concluding that the evidence is inadequate to justify a finding of absence of adverse effect on the integrity of the sites.
46. At p10 there is a list of further research that is required to reach an adequate level of certainty.
47. It is submitted that the Licences cannot be granted due to these deficiencies and the accepted need for further research.

### **Mitigation Recommendations**

48. At p11 recommendations are made in relation to further research relating to the colony of little terns. It is anticipated that natural factors could lead the terns to move their colony, and that an alternative site would have to be available and that buffer zones would need to be provided to cope with this eventuality. It is submitted that the retention of an alternative site which might or might not be suitable is a compensatory measure to make up for the loss of existing alternative sites which would normally fulfil that purpose but which will be rendered unsuitable by the aquaculture activities. On that basis, it is submitted that there is an established (but unquantified) adverse effect on the integrity of the site, and that the Licences could only potentially be granted (after all other matters above had been addressed) under Article 6(4) of the Habitats in accordance with demonstrated imperative reasons of overriding public interest.

### **Annex I Report**

49. Substantive concerns are outlined in relation to the main report. The errors in the main report also appear in the Annexed sub-reports, including in particular the 15% threshold.

50. It is repeated that there is no rule of law that allows effects to be dismissed as non-significant simply because they will not disturb more than 15% of a site. There is no justification for disturbance of 15% of a site, and no basis for holding that such a disturbance will not have an adverse effect on the integrity of the site.

## **12. References**

51. Specific mention may be made of the References section of Annex I.
52. None of the documents which is cited in part 12 has been made available for public inspection and it is unclear whether they support the conclusions drawn from them, and whether they were taken into account by the Minister.
53. No fair decision can be taken without making these documents available for inspection.
54. No proper public participation can take place unless these documents are made available to the public.
55. These documents are necessary before the Board can determine the appeal, and it should request them under Section 47 of the Act.
56. Fair procedures require that the parties to the Appeal should then have the opportunity to make submissions or observations on them pursuant to Section 46.

## **Grounds Related to Updated Conclusions Statement**

**Report Title:** *Appropriate Assessment Conclusion Statement (Updated) by Licensing Authority for aquaculture activities in: Slaney River Valley SAC (Site Code: 000781) Raven Point Nature Reserve SAC (Site Code: 000710) Wexford Harbour and Slob SPA (Site Code: 004076) and Raven SPA (Site Code: 004019) - (Natura 2000 sites)*

57. The conclusions statement records that the AA was carried out by the Marine Institute. The Marine Institute's statement of why the information was adequate is therefore the final statement on this subject. Accordingly, there is inadequate information to justify a finding of no adverse effect, and the grant of a Licence is precluded.

58. The subsequent conclusions are tentative and contingent, and are also inadequate to satisfy the adverse effects test.
59. The Regulations authorise the Minister to 'finalise' the fisheries Natura plan after receipt of representations, but not to carry out an assessment of it for the purposes of the Directive. The European Court has held in Case C-50/09 that there must be a written legal obligation to carry out the assessment. In the case of these Regulations (SI 346), that obligation arises before the public consultation. The Minister could not carry it out after the consultation because, as the person proposing the plan, the Minister is not independent and is acting as judge in his own case. The Minister had no power to adopt Regulations that in and of themselves fundamentally infringe the rules of natural justice, and as a result the entire application process is invalid and the application is void. Accordingly, ALAB should refuse to grant a licence.
60. Furthermore, on a practical level, though the Conclusions suggest that removal of intertidal areas from the aquaculture sites will eliminate all effects, there is no evidence that this is so. In particular, no allowance is made for natural variations in the location of the intertidal area due to deposit of silt from the river and erosion by the sea. The estuary could evolve so that areas that are not currently inter-tidal become so. The dumping of mussel seed, which contains dredged silt, in the licensed areas will also raise them and may affect their level or the tidal flows in the harbour area. There is no consideration of this possibility whatsoever. Moreover, the harbour is already heavily impacted by ongoing activities, and there is no consideration of the impact of past mussel farming on the natural vegetation of the area. There should be a finding as to what the natural vegetation would be, and what population of wild birds and other protected species it would sustain, against which to measure the effect of the mussel farming projects. It is not enough simply to compare the proposed continuation of mussel farming against a baseline of the present activity. It has not been established that the conservation status of the protected species in Wexford Harbour is not already adversely affected, so it cannot be established that the continuation of the activity would not continue or exacerbate an ongoing adverse effect, and an ongoing deterioration and disturbance of protected species.
61. Nor is there any consideration of the potential impact on the natural fauna and flora of the area from deposit of mussels and sediment onto the mussel beds, or disturbance of that material during harvesting, to impact on tidal flows in the harbour

area, and thereby to affect the location or significance of any sand banks or other inter tidal areas.

62. Further issues with the deficiencies in this assessment are set out in the substantive appeal document above, to which this document is an annex.

### **Grounds Related to Absence of Reasons**

63. There is no further statement of the reasons why An Taisce's submissions on the licence application were not accepted.
64. The Appropriate Assessment was concluded by the Marine Institute, on behalf of the Minister without the necessary public participation, and is thus legally flawed.
65. There is no statement as to whether there were other submissions, or as to the view the Minister took of them.
66. The reasons for the conclusions reached are inadequate to enable An Taisce to make an adequate appeal.
67. For all the above reasons, the Licences should be refused and cannot be granted without infringing Article 6 of the Habitats Directive.

A handwritten signature in blue ink, appearing to read 'Alan Doyle', is positioned below the list of grounds. The signature is fluid and cursive, with a long horizontal stroke at the end.

# Annex I

## Including:

- Annex IA a list setting out all of the applications cross referenced as best we can with the publicised decision in the Wexford people, and showing the dates of applications as far back as 2007, and where there are relatable decisions on the DAFM website.
- Annex IB a copy of the relevant list of the applications appearing on the DAFM website
- Annex IC a copy of the relevant list of decisions appearing on the DAFM website
- Annex 1D & IE copies of the decisions as published in the Wexford people on 17<sup>th</sup> Sep. 2019
- Annex IF a copy of a table finally secured from the Department on September 7<sup>th</sup> in response to requests to clarify publication and determination dates. However the Department's table does not distinguish between refusals and grants.



## Annex I A

**Key:** Granted: **Text in bold green**, Varied: *Text in bold italics*, Refused: **Text in bold red**

Operators with more than two licences – and or where the directors are clearly the same across multiple operations

**Yellow highlight indicates: Wexford Mussels applications,**

**Green Highlight indicates Loch Garman Harbour Mussels applications**

**Grey Highlight indicates Fjord Fresh Mussels, River Bank Mussels, WD Shellfish – all with the same directors**

**Turquoise indicates TL Mussels**

Numbers as on application website where the licence decision published in <i>The Wexford People</i> conforms to an application number on the DAFM website	Additional anomalous licences published in <i>The Wexford People</i> & on DAFM site.	Date stamp of application	Decision not yet on DAFM Site as of 11/10/19
1. <b><u>T03/35 A, T03/35B, T03/35C and T035/F &amp; G</u></b> (pdf 7,251Kb)	<b>T03/35B1? T03/35B2? T035/F &amp; G1 T035/F &amp; G2 T035/F &amp; G3</b>	Aug 2011	
Application Form Wexford Mussels Ltd			
2. <b><u>T03/46A, T03/46B and T03/46C</u></b> (pdf 7,297Kb)		Mar 2012	
Application Form Fjord Fresh Mussels			
3. <b><u>T03/47A, T03/47B and T03/47C</u></b> (pdf 5,543Kb)	<i>Varied</i>	Sep 2011	
Application Form Loch Garman Harbour Mussels			
4. <b><u>T03/48A</u></b> (pdf 3,890Kb)	<i>Varied</i>	Jan 2012	
Application Form Scanlons			
5. <b><u>T03/49A, T03/49B, T03/49C and T03/49D</u></b> (pdf 8,310Kb)	<b><u>T03/49C1?</u> <i>And Varried</i></b>	Mar 2012	
Application Form Riverbank Mussels Ltd			
6. <b><u>T03/52A and T03/52B</u></b> (pdf 4,133Kb)	<i>Varied</i>	Mar 2012,	
Application Form WD Shellfish Ltd			
7. <b><u>T03/55E and T03/55F &amp; C</u></b> (pdf 6,114Kb)	<i>Varied</i>	Apr 2012	
Application Form Crescent Seafood			
Numbers as on application website where the licence decision published in <i>The Wexford People</i>	Additional anomalous licences	Date stamp of	Decision not yet

conforms to an application number on the DAFM website	published in <i>The Wexford People</i> & on DAFM site.	application	on DAFM Site as of 11/10/19
8. <a href="#">T03/71A</a> (pdf 899Kb)		8 Sep 2019	Not on DAFM
Application Form Riverbank Mussels Ltd			
9. <a href="#">T03/72A</a> and <a href="#">T03/72B</a> (pdf 4,061Kb)			
Application Form Wexford Mussels Ltd			
10. <a href="#">T03/74A</a> and <a href="#">T03/74B</a> (pdf 6,645Kb)	<i>Varied</i>	2007	
Application Form Patrick Swords & Florence Sweeney			
11. <a href="#">T03/77A</a> (pdf 3,146Kb)	<i>Varied</i>	2008	
Application Form Riverbank Mussels Ltd			
12. <a href="#">T03/78A</a> (pdf 4,691Kb)		2008	
Application Form Crescent Seafoods Ltd			
13. <a href="#">T03/79A</a> (pdf 4,670Kb)		2008	Not on DAFM
Application Form Paddy Cullen			
14. <a href="#">T03/80A</a> and <a href="#">T03/80B</a> (pdf 4,687Kb)	<i>Varied</i>	2008	
Application Form Billy & Daniel Gaynor			
15. <a href="#">T03/83A</a> (pdf 3,692Kb)	<i>Varied</i>	2009	
Application Form Loch Garman Harbour Mussels Ltd			
16. <a href="#">T03/84A</a> (pdf 3,864Kb)		2009	Not on DAFM
Application Form Andrew Verwijs, Irfish Ltd			
17. <a href="#">T03/85A</a> (pdf 3,113Kb)	<i>Varied</i>	2010	
Application Form Loch Garman Harbour Mussels Ltd			
18. <a href="#">T03/90A</a> (pdf 3,615Kb)		2011	
Application Form Wexford Mussels Ltd			
19. <a href="#">T03/91A</a> (pdf 4,065Kb)	<i>Varied</i>	2012	
Application Form Noel & Sheila Scallan			

20. <a href="#">T03/92A</a> (pdf 6,560Kb)		2013	Not on DAFM
Application Form Paddy Cullen			
21. <a href="#">T03/93A and T03/93B</a> (pdf 5,159Kb)		2013	
Application Form Eugene & Jason Duggan			
22. <a href="#">T03/99A</a> (pdf 4,666Kb)		2017	
Application Form T. L. Mussels Ltd			
23. <a href="#">T03/30A2, B, C, E &amp; F</a> (pdf 12,825Kb)		2018	
Application Form T. L. Mussels Ltd			
24. <a href="#">T03/30/1 (Site D)</a> (pdf 3,608Kb)		2018	
Application Form T. L. Mussels Ltd			

## Annex IB

### Details of New and Renewal Aquaculture/Foreshore Licence Applications for Wexford Harbour from:

<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/>

1. [T03/35 A, T03/35B, T03/35C and T035/F & G](#) (pdf 7,251Kb)
  - [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)
2. [T03/46A, T03/46B and T03/46C](#) (pdf 7,297Kb)
  - [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)
3. [T03/47A, T03/47B and T03/47C](#) (pdf 5,543Kb)
  - [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)
4. [T03/48A](#) (pdf 3,890Kb)
  - [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)
5. [T03/49A, T03/49B, T03/49C and T03/49D](#) (pdf 8,310Kb)
  - [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)

6. [T03/52A and T03/52B](#) (pdf 4,133Kb)

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)

7. [T03/55E and T03/55F & C](#) (pdf 6,114Kb)

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)

8. [T03/71A](#) (pdf 899Kb)

Application Form Riverbank Mussels Ltd

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)

9. [T03/72A and T03/72B](#) (pdf 4,061Kb)

Application Form Wexford Mussels Ltd

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)

10. [T03/74A and T03/74B](#) (pdf 6,645Kb)

Application Form Patrick Swords & Florence Sweeney

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement \(Updated\) for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 311Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)

11. [T03/77A](#) (pdf 3,146Kb)

Application Form Riverbank Mussels Ltd

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
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- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 12. [T03/78A](#) (pdf 4,691Kb)  
Application Form Crescent Seafoods Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 13. [T03/79A](#) (pdf 4,670Kb)  
Application Form Paddy Cullen
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 14. [T03/80A and T03/80B](#) (pdf 4,687Kb)  
Application Form Billy & Daniel Gaynor
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 15. [T03/83A](#) (pdf 3,692Kb)  
Application Form Loch Garman Harbour Mussels Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 16. [T03/84A](#) (pdf 3,864Kb)  
Application Form Andrew Verwijns, Irfish Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)



- [Aquaculture Licence template](#) (pdf 183Kb)
- 17. [T03/85A](#) (pdf 3,113Kb)  
Application Form Loch Garman Harbour Mussels Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 18. [T03/90A](#) (pdf 3,615Kb)  
Application Form Wexford Mussels Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 19. [T03/91A](#) (pdf 4,065Kb)  
Application Form Noel & Sheila Scallan
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 20. [T03/92A](#) (pdf 6,560Kb)  
Application Form Paddy Cullen
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 21. [T03/93A and T03/93B](#) (pdf 5,159Kb)  
Application Form Eugene & Jason Duggan
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
- [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
- [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
- [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobbs SPA, and the Raven SPA](#) (pdf 6,029Kb)
- [Aquaculture Licence template](#) (pdf 183Kb)
- 22. [T03/99A](#) (pdf 4,666Kb)  
Application Form T. L. Mussels Ltd

- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobb SPA, and the Raven SPA](#) (pdf 6,029Kb)
  - [Aquaculture Licence template](#) (pdf 183Kb)
23. [T03/30A2, B, C, E & F](#) (pdf 12,825Kb)  
Application Form T. L. Mussels Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobb SPA, and the Raven SPA](#) (pdf 6,029Kb)
24. [T03/30/1 \(Site D\)](#) (pdf 3,608Kb)  
Application Form T. L. Mussels Ltd
- [Appropriate Assessment Summary Report Wexford Harbour AA](#) (pdf 511Kb)
  - [Annex I Slaney River Valley SAC and Raven Point Nature Reserve SAC](#) (pdf 1,633Kb)
  - [Annex II Wexford Harbour, the Raven and Rosslare Bay AA Report](#) (pdf 6,364Kb)
  - [Appropriate Assessment Conclusion Statement for Aquaculture Activities in Slaney River Valley SAC, River Point Nature Reserve SAC, Wexford Harbour and Slobb SPA, and the Raven SPA](#) (pdf 6,029Kb)



## Annex IC

### Ministerial Determinations for Wexford Harbour, made in 2019 as listed on 11/10/2019 20:20

From

<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

#### **Wexford Harbour (Inner) -Ministerial Determinations made in 2019**

18. [T03/30A2: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 501Kb\)](#)
19. [T03/30B: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 500Kb\)](#)
20. [T03/30C: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 435Kb\)](#)
21. [T03/30E: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 501Kb\)](#)
22. [T03/30F: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 499Kb\)](#)
23. [T03/30/1 \(siteD\): Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 501Kb\)](#)
24. [T03/35A, : Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 500Kb\)](#)
- 25 & 26. [T03/35B1 & B2: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 500Kb\)](#)
27. [T03/35C: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 421Kb\)](#)
- 28,29 &30. [T03/35F&G1, F&G2, F&G3: Determination of Aquaculture/Foreshore Licensing Application – September 2019 \(pdf 608Kb\)](#)
31. [T03/46A: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 504Kb\)](#)
32. [T03/46B: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 504Kb\)](#)
33. [T03/46C: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 503Kb\)](#)
34. [T03/72A: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 502Kb\)](#)
35. [T03/72B: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 607Kb\)](#)
36. [T03/90A: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 601Kb\)](#)
37. [T03/99A: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 498Kb\)](#)
38. [T03/47A: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 501Kb\)](#)
39. [T03/47B: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 609Kb\)](#)
40. [T03/47C: Determination of Aquaculture/Foreshore Licensing Application - September 2019 \(pdf 501Kb\)](#)

41. [T03/48A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 500Kb)
42. [T03/49A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 500Kb)
43. [T03/49B: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 501Kb)
44. [T03/49C: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 502Kb)
45. [T03/49C1: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 500Kb)
46. [T03/49D: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 501Kb)
47. [T03/52A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 502Kb)
48. [T03/52B: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 501Kb)
49. [T03/55E: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 500Kb)
50. [T03/55F&C: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 423Kb)
51. [T03/74A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 603Kb)
52. [T03/74B: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 501Kb)
53. [T03/77A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 501Kb)
54. [T03/78A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 435Kb)
55. [T03/80A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 499Kb)
56. [T03/80B: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 435Kb)
57. [T03/83A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 610Kb)
58. [T03/85A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 609Kb)
59. [T03/91A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 499Kb)
60. [T03/93A: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 439Kb)
61. [T03/93B: Determination of Aquaculture/Foreshore Licensing Application - September 2019](#) (pdf 435Kb)

**Annex 1D & IE copies of the decisions as published in *The Wexford People* on  
17<sup>th</sup> Sep. 2019**

## Annex IF

**Table of decisions determinations and publication dates finally furnished to An Taisce by DAFM further to An Taisce's insistence.**

<i>Reference No.</i>	<i>Applicant</i>	<i>Date of Minister's Decision</i>	<i>Publication Date in Wexford People</i>
T03/030 (sites A2, B, C, E & F); T03/030/1 (site D); T03/099A	TL Mussels Ltd.	04/09/2019	17/09/2019
T03/035 (sites A, B1, B2, C, F & G1, F & G2, F & G3); T03/072 (sites A & B; T03/090A	Wexford Mussels Ltd	04/09/2019	17/09/2019
T03/046 (sites A, B & C)	Fjord Fresh Mussels Ltd	04/09/2019	17/09/2019
T03/047 (sites A, B & C); T03/085A; T03/083A	Loch Garman Harbour Mussels Ltd	12/09/2019	17/09/2019
T03/048A; T03/091A	Noel & Sheila Scallan	12/09/2019	17/09/2019
T03/049 sites A, B, C, C1 & D); T03/077A	Riverbank Mussels Ltd	12/09/2019	17/09/2019
T03/052 (sites A & B)	WD Shellfish Ltd	12/09/2019	17/09/2019
T03/055 (sites F & C, E); T03/078A	Crescent Seafoods Ltd	12/09/2019	17/09/2019
T03/074 (sites A & B)	Patrick Swords & Florence Sweeney	12/09/2019	17/09/2019
T03/080 (sites A & B)	Billy & Daniel Gaynor	12/09/2019	17/09/2019
T03/093 (sites A & B)	Eugene Duggan & Jason Duggan	12/09/2019	17/09/2019

## **Annex II**

**Further and specific legal submission as part of the appeal**

Mary O'Hara,  
Aquaculture Licences Appeals Board  
Kilminchy Court  
Dublin Road  
Portlaoise  
Co. Laois.

Sent by email to:  
info@alab.ie

15th January 2020

Dear Ms O'Hara,

I refer to your letter of 13 January.

Please find attached An Taisce's submission on appeal reference AP36/2019 relating to mussel cultivation in Wexford Harbour. Our original appeal outlines all of An Taisce's points in regard to mussel cultivation in Wexford harbour, as applicable to this licence application, and as such our earlier documentation, as attached, should be read as our observation on this appeal.

An Taisce notes that there is no provision in S45 of the 1997 Act setting out how a submission is to be made: in light of the tight time frame, this submission is being made by email, and a printed copy will follow by post.

Please note this submission is made without prejudice to An Taisce's claim that it is entitled to appeal against all licence decisions for Wexford Harbour, not merely those where licences were refused or where other appellants lodged appeals.

This submission is also made without prejudice to An Taisce's view that the public consultation carried out by ALAB is inadequate. In particular, An Taisce notes that the notice of receipt of the appeals may have been published on ALAB's website on 17 December, more than 2 months after the receipt of the appeals at a time at which An Taisce had concluded that no other appeals must have been filed, and immediately prior to the Christmas break when much

**An Taisce is a membership-based charity | Join at [www.antaisce.org/membership](http://www.antaisce.org/membership)**

***Protecting Ireland's heritage, safeguarding its future***

An Taisce – The National Trust for Ireland | Tailors' Hall, Back Lane, Dublin, D08 X2A3, Ireland | [www.antaisce.org](http://www.antaisce.org)  
+353 1 707 7076 | [info@antaisce.org](mailto:info@antaisce.org)

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**Directors:** Philip Kearney (Chair), Trish O'Connell (Vice-Chair), Eric Conroy (Treasurer), Stuart McCaul (Secretary), Nick Armstrong, Gary Freemantle, Hugh O'Reilly, Olivia Rogers, John Sweeney

of the country shuts down. As such, An Taisce has not had the opportunity to consider what submissions were made, or to reply to them. Finally, An Taisce was only informed of the existence of these appeals by your letter of 13 January. In all the circumstances, An Taisce calls on ALAB to set aside the 30 day time limit for submissions in accordance with the decision of the European Court in Case C-378/17 Workplace Relations Commission v Minister for Justice, and to carry out an effective public participation process to comply with the requirements of the EIA Directive, the Aarhus Convention, and Article 41 and 47 of the Charter on Fundamental Rights of the European Union.

Given the extremely short amount of time provided, An Taisce reserves the right to make further submissions, regardless of any statutory provision purporting to limit such right.

Yours sincerely,

Is mise le meas,

A handwritten signature in black ink, appearing to be 'Elaine McGoff', written in a cursive style.

Elaine McGoff, PhD

Natural Environment Officer, An Taisce- The National Trust for Ireland.

Aquaculture Licences Appeals Board,  
Kilminchy Court,  
Dublin Road,  
Portlaoise,  
Co Laois.  
R32 DTW5

Delivered by hand and emailed to:  
info@alab.ie

[14/10/2019]

**Appeal pursuant to Section 40 of the Fisheries (Amendment) Act 1997  
Aquaculture Licences in Wexford Harbour.**

To Whom It May Concern:

**Matters under appeal:**

An Taisce is making this appeal against the decision, or decisions, to grant approval for applications in Wexford:

T03/30A2, T03/30B, T03/30E, T03/30/1, T03/99A, T03/35A, T03/35B1, T03/35B2, T03/35C, T03/35F&G, T03/72B, T03/90A, T03/46A, T03/46B, T03/46C, T03/47A, T03/47B, T03/47C, T03/83, T03/85, T03/48A, T03/91A, T03/49A, T03/49B, T03/49C, T03/49D, T03/77A, T03/52A, T03/52B, T03/55E, T03/55F&C, T03/74A, T03/74B and T03/80A for which notification of decisions were received by An Taisce on the 10<sup>th</sup> and 16<sup>th</sup> of September 2019, and which were all advertised in Wexford People on the 17<sup>th</sup> September, and given the further considerations on the licence numbers indicated above as set out below.

We additionally wish to request an Oral Hearing on this matter

**In the context of the issues set out below on the identification of the decisions made, our Annex II provides in a further legal submission provided as part of this appeal, the nature and rationale of the appeal being presented here as one appeal and the approach to the fee for the appeal and the Oral Hearing. An Taisce request ALAB to make a Section 58 referral to the High Court on a question of law, as provided for under the Fisheries (Amendment) Act, 1997, if the one appeal and the approach to the fee is disputed.**

In relation to the matters at issue, we would highlight that there are discrepancies between the licence numbers listed in:



- The application process and attendant documentation on the DAFM website as set out in Annex I
- The decisions detailed on the DAFM website as set out in Annex I
- The notices published in *The Wexford People* as provided in Annex ID and IE
- The decision notifications received by An Taisce.

As such it is not reasonably possible for An Taisce to determine which specific sites have been granted permissions and/or varied in the decision process.

Given the delays and difficulties An Taisce has suffered in securing clarifications from DAFM on various matters pertaining to these decisions, it has not been possible to determine which applications have been determined and which remain outstanding, and the implications of the variation or further licence numbers introduced in the decisions

For example:

- The decision notification lists T03/35 F&G1, T03/35 F&G2 and T03/35 F&G3. At no point in the application documentation, available on the DAFM website, is there any mention of site G1, G2 or G3, with a solitary 'G' listed<sup>1</sup>.
- Similarly, the decision documentation refers to a T03/049C1. Once again, this is not listed in the application documentation, with only T03/049C appearing<sup>2</sup>.
- The same applies to sites T03/035B1 and T03/035B2. Only site T03/035B is listed in the application documentation<sup>3</sup>.

As such, An Taisce request that our appeal on the site number listed in the application documentation applies to all the related sites, or sub-sites, the details of which are unavailable to us.

It should be noted that An Taisce have had to repeatedly request information from the Department in regard to the date of publication of these decisions before finally receiving clarification after several days and emails. It was also necessary to request the updated calculation of overlap with a qualifying habitat and the calculation of the overlap with a qualifying community type, neither of which were readily available to the public, but which

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<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/wexfordharbour/4T0335AT0335B310518.pdf>

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<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/wexfordharbour/8T0349AT0349310518.pdf>

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<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/wexford/wexfordharbour/4T0335AT0335B310518.pdf>

are still incomplete, lacking information regarding the overlap with the constituent community types.

Thus out of an abundance of caution, and as a courtesy to ALAB, we append in in Annex I the following in:

- Annex IA - a list setting out all of the applications cross referenced as best we can with the publicised decision in *The Wexford people*, and showing the dates of applications date-stamped as far back as 2007, and where there are relatable decisions on the DAFM website.
- Annex IB - a copy of the relevant list of the applications appearing on the DAFM website
- Annex IC - a copy of a relevant list of decisions appearing on the DAFM website
- Annex ID & IE copies of the decisions as published in the Wexford people on 17<sup>th</sup> Sep 2019
- Annex IF a copy of a table finally secured from the Department on September 7<sup>th</sup> in response to requests to clarify publication and determination dates. However the Department's table does not distinguish between refusals and grants.

An Taisce had to elicit from the Department, the information provided in the table referred to above lack of clarity on determination dates and publication dates – despite the fact statutory deadlines are contingent on such dates. However it serves to introduce a further level of variation and requirement for cross-checking and impossible reconciliation given the deficit in information provided to us.

In the context, we are regrettably obliged to submit that every item listed through the above on which a decision has been made in 2019 for Wexford Harbour, and/or as detailed in Annex I is covered by this appeal and as set out in the supporting legal submission in Annex II, and as set out above.

Further to that, An Taisce had to request a copy of the Conclusion Statement for these sites, as the link to this on the DAFM website was broken. The time required to seek this information, which should be publicly available as provided for under National and EU law, has added to the expense and time incurred by An Taisce in taking this appeal. It has also impacted on our statutorily prescribed window to examine the decision and consider making and prepare for an appeal. This compounded the issue of the timelines pertaining and there is a clear lack of transparency process. The Department have entirely failed to address, or remedy, these issues for the wider public who have been materially disadvantaged, and their access to justice rights impinged upon. We appreciate this may not appear to be a matter of concern directly for ALAB, but we outline it:

- a) By way of establishing the context for the manner of our presentation of this appeal and what it covers, and also

- b) As context for the need for the ALAB to remedy deficiencies in our ability to respond to the Department's decisions and justification in the context of the appeal process.

### **An Taisce's interest:**

An Taisce is an environmental non-Government organisation, eNGO, with an interest in the preservation and protection of the environment. It is a prescribed body for the purposes of the aquaculture licensing at issue.

### **Context for the appeal:**

An Taisce made a detailed submission on these licence applications which was submitted to the DAFM on the 27/07/2018. **This appeal should in general be read in tandem with our original submission, which outlined our arguments in detail.** This appeal letter builds on those issues and sets out our arguments now in the context of the failure of the decision to address those matters, and other issues raised by the decision itself.

A supplementary further legal submission is appended in Annex II which *inter alia* raises some very particular issues with the basis for the decisions as made. The following is submitted notwithstanding those over-arching issues and by way of complementing the issues highlighted within it on the deficits in the assessments made.

### **1. Basic procedural failures: Invalid applications and processing issues.**

Without prejudice to our arguments set out latter below in respect of Environmental Impact Assessment requirements, the following further deficiencies with the applications are highlighted.

S.I. No. 236/1998 - Aquaculture (Licence Application) Regulations, 1998 as amended, set out the requirements for making an application and also the procedure on receipt of an application. Article 4 (2) provides that:

*“Application shall be made on an application form approved by the Minister.”*

A number of the applications are invalid by virtue of altered application forms and incomplete particulars. They should have been refused outright simply on this basis. There is no sound basis on which ALAB can proceed to determine such applications. Given the forms have varied over the extended period of 11 years (since it appears the first and most recent application was lodged in this set of 2019 decisions for Wexford Harbour which have now been decided) it is unreasonable for us to have to resolve the correctness of forms used and to have access to the forms in full. However, it is clear from the sequence of sections in a number of documents that whole sections of forms have been left out. For example in applications made by Fjord Fresh Mussels, WD Shellfish and others.

It is clear in the instances above the prescribed form have been altered, with a number of elements of the prescribed form removed,

The completion of the application form on particulars relevant to a number of matters deemed pertinent by the Minister in prescribing the form have been avoided entirely, and serve to compromise the public and the Department's scrutiny and consideration of an application in the context of the required particulars.

The necessity for completeness and correctness of the application form is further underlined in the regulations by virtue of the requirement for it to be validated under Article 6(1)b of the 1998 Regulations, and in the event it is complete to acknowledge this formally to the applicant, or in the alternate - to seek further information or indeed reject the application pursuant to Article 6(3).

The Department has failed to adequately or at all validate the applications and the Minister has failed to observe his own regulations, and made determinations to grant and or vary licence applications where he was not entitled to do so. Such decisions of the Minister are clearly invalid.

In addition to the applications where the forms have been materially altered, as set out above, certain other of the applications at issue fail to respond to a broad range of questions either clearly in the affirmative or negative or to indicate they are not applicable, including on material matters. Thus in such instances we do not consider that the application has been completed correctly, and provides for ambiguity, and is contrary to the standard of information required in the context.

We submit that all the licences where the particulars were found to be incomplete should have been declared to be invalid / or further information sought in accordance with the Regulations.

It is submitted in the first instance ALAB need to satisfy themselves as to the validity and completeness of the applications, and refuse them outright accordingly, at this juncture.

Additionally, certain of these applications were lodged in the Department back as far as 2007, 2008, 2010 and 2012 and so on (see dates stamps of applications detailed in Annex IA). Such delays have been incurred in cases where there has subsequently been a grant of permission now in 2019. However, given this extended period, the particulars of the applications may no longer be valid. It is not clear whether or when any such further validation has been undertaken, nor has it been transparently done if so.

Additionally, pursuant to Article 8 of the 1998 Licensing Regulations, there is a requirement for the applicant to publish a public notice on the applications, within 2 weeks of an instruction from the Minister. It is entirely unclear if and when this has been done, what attendant documentation was then available, and the effect of the temporal displacement between the application submission, the public notice and the decision and the implications

of this in particular for considerations and argumentation the public will have wished to make.

The Ministers intervention to hold over the licences for decision in some instances up to 11 (eleven) years from when they were applied for has not only served to taint, but to compromise the decision.

It is assumed that the process of application was to leverage ‘the loophole’ of section 19A(4) of the 1997 Fisheries (Amendment) Act which enables a licensee to continue to operate even on an expired licence, where an application has been made.

*“A licensee who has applied for the renewal or further renewal of an aquaculture licence shall, notwithstanding the expiration of the period for which the licence was granted or renewed but subject otherwise to the terms and conditions of the licence, be entitled to continue the aquaculture or operations in relation to aquaculture authorised by the licence pending the decision on the said application.”*

This provision was inserted as follows: (4.04.2006) by Sea-Fisheries and Maritime Jurisdiction Act 2006 s. 101(c), commenced on enactment.

We submit in the context of the timeframes at issue here and the ensuing ‘limbo’, this is an inexcusable practice and has served to:

- Compromise rights of public participation,
- Compromise proper regulation,
- Compromise assessment obligations under both the EIA and Habitats Directive.

Furthermore, it is a perversion of any proper regulation of aquaculture licensing in the context, and has more than exceeded the bounds of any proper discretion the Oireachtas saw fit to extend. However, clearly of more importance given the precedence of EU law, it has served to compromise the effective operation of the environmental protections and rights envisaged in the relevant EU Directives. The Department and the Minister cannot rely on any side agreements in the context of binding EU law obligations.

Without prejudice to this overarching argument, the following further arguments are made.

## **2. Substantive issues**

This should be read in conjunction with the supporting legal submission in Annex II.

In its earlier submission, An Taisce outlined that the proposed aquaculture project lies within or adjacent to, the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710), Wexford Harbour and Slob SPA (site code 004076) and Raven SPA (site code 004019).

We commented on multiple failings and inadequacies in the information furnished to support the conduct of an Appropriate Assessment by the Minister as the Competent Authority, in both the Annex I<sup>4</sup> and Annex II<sup>5</sup> report, for the SAC and SPA respectively. Our main concerns in this regard were:

- a. Exceedance of the **arbitrary** 15% threshold of overlap with Qualifying Interest, QI, habitats and constituent community types, and reliance on this arbitrary threshold.
- b. Lack of data on certain QI species in the SPA, namely the Red-Breasted Merganser and the Little Tern

We clearly outlined that:

- Given the manifold issues highlighted in our submission it was our considered opinion that the licensing of the proposed bottom mussel projects would be in contravention of Article 6(3) of the Habitats Directive.
- Without prejudice to our issue with the Marine Institute's and Departmental and Ministerial reliance on a 15% threshold for disturbance, we submitted that bottom culture mussel cultivation should only be licensed if it did not exceed the 15% threshold of disturbance to an SAC habitats and constituent communities, and that in those areas there must be clear mitigation measures to prevent any adverse impact on the QI species of the SPA. Having reconsidered the matter, we believe the 15% threshold is directly contrary to, and infringes the requirements of, Art 6(3) of the Habitats Directive. In this appeal and attendant annex – we set out the issues with this 15% threshold approach.

In addition:

- We highlighted the lack of data for QI bird species, and the proposed use of an adaptive management plan.
- We submitted that there were multiple failings in the Appropriate Assessment Annex I and II reports, and licensing should not go ahead until these were adequately addressed.

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<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIWexfordHarbourSACsAA270318.pdf>

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<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIIWexfordSPAsAA270318.pdf>

Despite this, the licensing authority has seen fit to licence the majority of these sites. As such, An Taisce would appeal this decision based on the rationale outlined below. But first we establish some context for the application which we hope will assist the ALAB.

### 3. Background Context to assist ALAB

#### 3.1 15% Rule

The 15% rule upon which the Appropriate Assessment conducted for the instant decision relies upon from NPWS materials. The NPWS's Conservation Objectives supporting document<sup>6</sup> outline that:

*'Drawing from the principle outlined in the European Commission's Article 17 reporting framework that disturbance of greater than 25% of the area of an Annex I habitat represents unfavourable conservation status, this Department takes the view that licensing of activities likely to cause continuous disturbance of each community type should not exceed an approximate area of 15%.'*

The source of this 15% threshold is unknown. The Commission framework on which it is allegedly based has not been included in the application documents, and it has not been possible to examine it. More fundamentally, it is not referred to in Article 17 of the Habitats Directive. It is also not referred to in Article 6(3) of the Habitats Directive which sets out the obligation for Appropriate Assessment. And it is not anywhere referred to in the case law of the Eu Court of Justice. On the contrary, several judgements of the Court of Justice set out very clearly very specific requirements in relation to site specific considerations and the thresholds of scientific certainty required for each of the different tests required to be addressed under Article 6(3) as clarified by the CJEU. The courts consideration of the case specific context for how effects need to be considered relies in large part on the specific ecological considerations at issue for the habitat or species at issue, and the nature of impacts. As set out in our Annex II legal submission, at paragraph 28, in Case C258/11 Sweetman, the loss of approximately 1% of the protected habitat was considered to be an adverse effect on the integrity of the site. Furthermore, in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project as clarified by the CJEU in case c-127/02 Waddenzee<sup>7</sup>. So both the project and site characteristics are required

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[https://www.npws.ie/sites/default/files/publications/pdf/000781\\_Slaney%20River%20Valley%20SAC%20Marine%20Supporting%20Doc\\_V1.pdf](https://www.npws.ie/sites/default/files/publications/pdf/000781_Slaney%20River%20Valley%20SAC%20Marine%20Supporting%20Doc_V1.pdf)

<sup>7</sup> 61 In view of the foregoing, the answer to the fourth question must be that, under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national

to be considered which is quite opposite to the very generic approach proposed with this 15% rule by the NPWS. We draw ALAB's attention here to the more indepth consideration of the 15% rule in the further legal argument presented in Annex II to this appeal.

### **3.2 Bottom mussel cultivation**

The following is provided by way of context to assist in the setting out of some wider concerns on the inadequacy of the Minister's decision and the applications made.

The main aquaculture activities applied for within the SACs (and vicinity) are bottom culture of mussels as well as applications to carry out intertidal oyster culture and subtidal suspended mussel culture. As we understand it, the vast majority of seed mussels are sourced off the east coast but not exclusively so and the activity is loosely regulated by the DAFM. The range of seed size sourced is 15-40mm. The practice of mussel seed fishing involves dredging (dragging a metal dredge across the seabed) small immature mussels (spat) from the seabed and transporting them to a calm water area. The seed, and associated materials sourced on the beds is brought back into the harbour on the same day for relaying, where the "seed" mussels are spread on the sea bed. Relaying (effectively sowing) of seed mussels from the boat hold is carried out on the destination site by water jet through holes in the side of vessel. Once relayed it can take from 12-24 months for the mussels to reach market size but the average is around 18 months. Once they reach market size they are dredged up again.

During the on-growing period after relaying of seed, stock can be fished, by means of dredging, for starfish and green crab, although not all producers do this. Some producers also move stock between sites during the ongoing season, again by means of dredging. During harvesting the dredgers move slowly over the site with dredges (heavy metal devices) trailing about 30m behind scraping the sea floor which, when full, are winched in and the contents emptied into the hold.

Most harvesting is carried out from September to April. During the harvesting period sites would be accessed frequently, but this varies considerably among the producers, but is generally from 1 to 6 times per week.

Seabed habitat change may be a consequence of dredging during maintenance and harvesting. The activities associated with this culture practice (dredging of the seabed) are considered disturbing which can lead to removal and/or destruction of infaunal species and changes to sediment composition. Additionally, the deposition of the dredged material to relay the mussel seed also causes disturbance in terms of smothering of the existing fauna; creation of sediment; potential increased risk and exposure of the receiving areas to Invasive Alien

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authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.



Species; in addition to the disturbance occasioned by the vessel traffic and subsequent maintenance and/or re-distribution and harvesting activities.

The commercial cultivation and harvesting of mussels is intrinsically linked and dependent on the seeding process, and consequently on the mussel seed dredging. It all, in fact, constitutes the one project. It is notable, the associated with the granting of these decisions, the Minister also on 17th September 2019, made the following regulations : S.I. No. 464/2019 - Sea-Fisheries and Maritime Jurisdiction (Mussel Seed) (Opening of Fisheries) Regulations 2019.

These come into operation on 20 September 2019 and shall cease to have effect on 22 December 2019.

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#### **4. The 15% Threshold**

An Taisce challenges the legal interpretation by the DCHG of the Habitats Directive, in allowing for 15% of a habitat to be continuously disturbed. In particular we would question how this equates to the objective of restoring the habitat to a natural condition, as specified in the conservation objectives. Further, bottom cultured mussels are licenced for exactly 15%, but that is predicated on the assumption that the other 85% of this habitat type is in a natural and favourable condition.

However, the recent Article 17 report for Ireland found that estuaries were in unfavourable condition, with a declining quality trend. There was no information in front of the Minister to suggest there was any recent and different assessment of these sites.

An Taisce submits that given this national trend indicated in the Article 17 reports published just this year, it is unlikely that the other 85% of estuarine habitat is of sufficiently good status to off-set the guaranteed disturbance to 15%. No survey evidence was provided to support this assumption. Moreover, the Minister would at a very minimum need to have established, with the requisite degree of certainty, that no impacts would occur to the remaining 85% over the licensed period. Clearly we state this without prejudice to the view the 15% rule is entirely inappropriate in the first instance, particularly given it is arbitrarily proposed by the NPWS without any site specific context, and/or maintenance, and fails to consider the broader context of the Article 6 as a whole.

We clearly outlined that Estuary (1130) an Annex I habitat, is a Qualifying Interest (QI) of the Slaney River Valley SAC. According to the NPWS 2011a, the conservation targets for the community distribution within this habitat type are:

*“The following community types should be maintained in, or restored to, a natural condition: Mixed sediment community complex; Estuarine muds dominated by*

*polychaetes and crustaceans community complex; and Sand dominated by polychaetes community complex*<sup>8</sup>”.

The Annex I report referred to NPWS guidance, which outlines that significant continuous or ongoing disturbance should not exceed 15% of the area. Despite this, in the Marine Institute’s Annex I report<sup>9</sup> to support the AA, it is outlined that the proposed bottom mussels will overlap 52% of the estuarine habitat (section 5.1 Annex I report), and from Table 15 of the same report, it is outlined that for Mussels licenced on bottom there will be a 43, 99.9 and 92.6 % overlap with the Annex 1 Estuary (1130) communities: Estuarine muds dominated by polychaetes and crustaceans community complex, Sand dominated by polychaetes community complex, and Mixed Sediment community complex, respectively.

Given the inadequacy of the information provided with the decision, An Taisce was obliged to seek further information from the DAFM. An Taisce notes that from data provided to An Taisce by the DAFM on September 19th 2019, this overlap with estuarine habitats has been greatly reduced, to exactly 15%. However, at the time of writing, An Taisce would note that there is one licence application awaiting a decision (T03/79) which would comprise 22 ha of bottom cultured mussels.

In addition, to date, the figures for the overlap with the constituent community types have not been provided to us. An email dated October 1st from the DAFM outlined that:

*‘Following consultation with our technical advisors, I wish to confirm that access to the information you are seeking is not available’*

An Taisce would highlight that this information is imperative for determining the impact of these aquaculture licences on the SAC. Given we are told the information is not available, the information is not something that either the Marine Institute or the Minister in making his decisions could have relied upon. In short the Minister’s decision is irrational in the context, and also fails to meet the standard of certainty required for the AA. In the event the Minister wishes to assert at some point that there was access to such data, he has both failed to evidence adequate reasoning in the decisions, and additionally failed to provide access to data necessary for us to assess the lawfulness and adequacy of the decision making. We will rely on this in the context of any costs incurred by us.

We would also highlight that the community type Estuarine muds dominated by polychaetes and crustaceans community complex has medium to high sensitivity to Smothering (addition of materials (biological or non-biological) to the surface), while the other two constituent community types, Sand dominated by polychaetes community complex and Mixed sediment community complex have low-medium sensitivity to this pressure (Table 11 of Annex I SAC

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<sup>8</sup> [https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO000781.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000781.pdf)

<sup>9</sup>

<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/AnnexIWexfordHarbourSACsAA270318.pdf>

report). In addition, the latter two also have a low-medium sensitivity to Siltation (addition of fine sediments, pseudofaeces, fish food). An Taisce would highlight that the cultivation and harvesting of these mussels, by means of dredging, will undoubtedly disperse the resultant sediment beyond the boundaries of the licensed areas, thereby impacting on the surrounding communities by means of both sedimentation and smothering. The impacts of this have not been assessed. In addition, the laying of seed stock will result in sedimentation of the water, and An Taisce would question the accuracy of this laying method, given that the licenced area is already at exactly 15%. Any excess area covered will result in a breach of the arbitrary NPWS threshold. The Minister has entirely failed to address this in his decision.

## **5. Lacunae in data for Red Breasted Merganser and Little Tern**

In our submission An Taisce highlighted that there is a clear lack of information on the SPA (Wexford Harbour and Slob SPA (site code 004076) and Raven SPA (site code 004019)) QI species, with particular lacunae for Tern and Red-breasted Merganser. Management Responses / Measures 1, 3, 4, 6 and 7 in the Annex II report all refer to further information gathering. Namely the need for comprehensive information on all bottom mussel-related boat activity; further Red-breasted Merganser disturbance studies; research into the ecology of Red-breasted Merganser in Wexford Harbour; surveys of high-tide wader and tern roosts; and Little Tern research.

There is recognition of the difficulties regarding this in the Annex II report:

*“It should be noted that a lot of the above bird survey requirements will be logistically challenging (e.g., surveying sandbank areas in the middle of the harbour). Therefore, if the research is to be carried out, adequate lead-in time should be allowed to trial methodologies, etc.”*

In our original submission we outlined the legal framework pertaining to the licensing of these sites without addressing these lacunae, further elucidated below.

In regard to the management measures to address the lack of information in regard to Little Tern the Annex II report outlines that there is a requirement for:

*“Surveys of high-tide wader and tern roosts. This research is required to allow assessment of the potential disturbance impact from bottom mussel-related boat activity.”*

It is further outlined that:

*‘There is potential for significant disturbance impacts to the Little Tern breeding colony. However, these can be avoided through an appropriate adaptive management strategy’*

Section 6.215 of the Annex II report outlines the following in regard to the adaptive management plan

*‘An adaptive management strategy to protect the Little Tern breeding colony, and the postbreeding flocks of juveniles in the Hopeland area, should be prepared. This would specify: the buffer zones required to protect the colonies/flocks from disturbance (e.g., 340 m around the Fort Bank colony; see paragraph 6.209); additional measures (such as prohibiting dogs from accompanying workers in the seed collection site); and monitoring requirements.....The monitoring carried out as part of this strategy would help to improve knowledge about the sensitivity of Little Terns in Wexford Harbour to disturbance’*

There are two issues with this. Firstly, under Article 6(3) of the Habitats Directive, it would be considered impermissible to licence these and could not be considered ‘point of detail’ conditions provided for under S.34(5) of the Planning and Development Act 2000 (as amended). In the case *People Over Wind v An Bord Pleanála* (2015) it was argued that, in regard to post consent conditions:

*‘...in respect of which there would be no public consultation or participation, there would be no possibility for the examination, analysis and evaluation under Article 6(3). It would not be possible to establish, in advance of the consent to the development whether such mitigation measures would protect the integrity of the River Barrow and River Nore SAC’ (Para. 202).*

Secondly, an adaptive management plan cannot be considered a mitigation measure, given that the licensing body does not have enough information to determine what it is mitigating for. An *Taisce* would direct the licensing authority to the ruling in *Grace & Sweetman v An Bord Pleanála*

(2018), which raised questions about adaptive mitigation strategies for dynamic ecological systems even with appropriate assessment, where it was argued that:

*"As a general rule, any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future (para 52)*

and that such an approach could not fulfil the reasonable doubt argument ,

*‘It is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out’ [para 51].*

The requirement for this is clearly elucidated in the ECJ ruling for C-404/09<sup>10</sup> [Commission v Spain] which held that:

*“[a]n assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions **capable of removing all reasonable scientific doubt** as to the effects of the works proposed on the SPA concerned.” [An Taisce emphasis]*

In our considered opinion, given the Grace & Sweetman (2018) ruling, an adaptive management plan such as what is proposed for these aquaculture licences, should be classified as compensatory and as such should be considered under Article 6(4) of the Habitats Directive, as opposed to being a mitigation measure under Article 6(3).

This requirement for removing all reasonable doubt is also highly applicable to Red-Breasted Merganser in Wexford Harbour. The Conclusion Statement outlined the following risks for Red-Breasted Merganser

*‘Disturbance from bottom mussel-related boat activity may cause significant displacement impacts to Red-breasted Merganser. The mean area potentially disturbed could amount to around 19-27% of the total area of available habitat. High levels of impact could occur on around 80% of days in the October-December period, for periods of up to 55-66% of daylight hours. The population-level consequences of the displacement impact will depend upon whether the displaced birds can find suitable alternative habitat to feed in while they are displaced, or, if this is not the case, whether the undisturbed portion of the day provides sufficient feeding time for the birds to meet their daily energetic requirements.’*

The Annex II report specifies that:

*‘The following management measures, research and information compilation is **required to complete this assessment**’: [An Taisce emphasis]*

And the management measures outline the following:

*“This information would be required over a period of years to allow..... prediction of impacts from any expansion of the activity. As noted this information would further*

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<sup>10</sup> <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-404/09>

*inform the assessment of impacts on Greenland Whitefronted geese, **Red-breasted Merganser** and other diving species.”*

*“further **Red-breasted Merganser** disturbance studies are required to determine if there is any seasonal, spatial, or other, variation in the nature of the response, and to refine the prediction of the scale of the displacement impact.”*

*“This research is required to allow assessment of the population-level consequences of the displacement of mergansers by boat activity.”*

[An Taisce emphasis]

The explicit requirement for this additional information as a management measure is clearly in contravention of the reasonable doubt argument pertaining to Article 6(3) of the Habitats Directive, as elucidated above. Indeed, the wording of the Annex II report in regard to the management measures which are: ‘*required to complete this assessment*’ is a clear indication that this assessment cannot be considered to be appropriate.

While the conclusion statement includes an argument regarding the disturbance to Merganser:

*‘It should also be noted that the Merganser **are likely to be** there due to the presence of mussels (provision of habitat heterogeneity and therefore, increased fish abundance) and the level of disturbance from mussel vessels is unlikely to increase as the spatial extent of licensed mussel areas are likely to remain static or decrease.’*

[An Taisce emphasis]

This would appear to be based on the following observation in the Annex II report (section 6.85)

*‘Increasing the density of mussels has been demonstrated to cause reduced abundance and diversity of invertebrates. This is due to complete dominance of mussels in terms of space and quite likely filtration (competitive exclusion). There is very little reference to fishes in mussel literature and **speculation** might lead us to assume that tightly packed mussels will result in homogeneous habitat and little provision of refugia for fishes. This scenario would be **more likely** to refer to natural seed beds found intertidally which would not have been subject to any erosion or stratification due to aging of the mussels in the beds and which would be uniform in terms of age and size. However, if an area comprises patches of mussels (of varying densities) among sandy/muddy habitat then this could provide sufficient complexity of habitat to support a diverse fish assemblage. This scenario is **more likely** to apply to cultivated mussel beds (Francis O’Beirn, Marine Institute, pers. comm.).’* [An Taisce emphasis]

We would highlight that upwards of 877 hectares of bottom cultured mussels have been approved in Wexford Harbour, and as such the definition of this being ‘patches of mussels’

as opposed to ‘*complete dominance of mussels*’ should be seriously considered. An Taisce receive hundreds of aquaculture licence referrals annually, and the levels of bottom cultured mussels vary widely between bays. As such, such a definition cannot be applied across the board.

Further to that, although the size of the licences have been decreased in many instances, the number of sites is increasing. From the licensing decisions we have received to date, there are 10 new sites which have been licenced, and the number of renewal sites has decreased by just 1. As such, the number of sites has neither remained static, or decreased. As a result, boat traffic will still be servicing the reduced area sites, in addition to the new licenced sites. As such, it would appear to An Taisce that this argument is both unsubstantiated and moot.

## **6. Environmental Impact Assessment**

### **6.0 Requirement of the s.41(1)(f) of the 1997 Act for the appellant to provide evidence of the aquaculture’s inclusion in the EIA portal**

Section 41(1) of the Fisheries (Amendment) Act, sets out certain requirements in respect of a valid Section 40 appeal, and includes the following:

“(f) where an environmental impact assessment is required under Regulation 3 of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. No. 468 of 2012), include evidence of compliance with paragraph (3A) of the said Regulation 3,”

This was substituted and inserted (27.06.2019) by European Union (Aquaculture Appeals) (Environmental Impact Assessment) Regulations 2019 (S.I. No. 341 of 2019), reg. 2(b). The requirement set out in paragraph 3A of the regulations is as follows:

“(3A) in the event that an environmental impact assessment is required-

(a) under paragraph (2)(i),

(b) where the Minister has determined aquaculture of a class specified in Annex II of the Council Directive would be likely to have significant effects on the environment

the appellant shall Provide a copy of the confirmation notice that the proposed aquaculture subject of the appeal is included on the portal established under Section 172A of the Planning and Development Act 2000 .”

There is no requirement to furnish the portal evidence for the appeal under s.41 as the Minister made no determination as per the above.

## 6. 1 Capture under the EIA Directive

Article 2(1) of the Environmental Impact Assessment or EIA Directive, both the 2011/92/EU Codified version, and as amended by 2014/52/EU, obligates Environmental Impact Assessment, “EIA” and Development Consent for projects defined in Article 4.

While EIA is mandatory for projects listed in Annex I of the Directive, Article 4 sets out a screening requirement for projects listed in Annex II.

For the matter at issue the following Annex II project classification is clearly relevant and remains unchanged from the 2011 codified version of the Directive:

“Annex II

PROJECTS REFERRED TO IN ARTICLE 4(2) 1. AGRICULTURE,  
SILVICULTURE AND AQUACULTURE

...

(f) Intensive fish farming;

...”

However no EIA screening determination is extant on the Department’s website for these sites. In fact the Department has indicated that no screening is required stating in fact that it: “does not apply the EIA Screening process” to the instant applications, as per the statements emailed to us below on: Tue 1 October, 2019 at 14:30 from Mr Gerry Foley, DAFM.

“I wish to confirm that ‘Extensive’ aquaculture does not fall under either Annex I or Annex II of the Directive. The EU regards aquaculture as ‘extensive’ where ***“there is no external supply of feed or medicine and this type of culture depends entirely on natural processes for production and supply of feed”***. Accordingly, **the Department does not apply the EIA screening process in the case of ‘extensive’ aquaculture, such as the applications recently determined by the Minister in respect of Wexford Harbour.**”

This we submit respectfully is a misrepresentation and/or a misunderstanding of the EU Commission’s guidance document: “Interpretation of definitions of project categories of annex I and II of the EIA Directive”<sup>11</sup> - which actually states the following on the interpretation of Annex II (1) f project class: Intensive fish farming, (our emphasis)

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<sup>11</sup> [https://ec.europa.eu/environment/eia/pdf/cover\\_2015\\_en.pdf](https://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf)



**"Intensive fish farming would imply using techniques designed to increase the production of the species in question beyond the natural capacity of the environment or culture stage, up to and including harvesting. Typically,** this practice will involve the input of an additional compound feed to compensate for the lack of naturally available food at the density at which the animals are farmed. Husbandry techniques, which are also applicable to non-intensive farming, including the use of medicines and aeration of the water to meet the needs of the animals and ensure their health and welfare **may** also be used. Waste products should also be managed satisfactorily. It should be noted that since the wording of the EIA Directive is not specific in this respect, this category could be taken to include the farming of fish both in fresh and marine waters.

Questions have arisen in practice as to the use of the term 'intensive fish farming', its relationship with 'extensive fish farming' and the term 'aquaculture'.

**'Aquaculture' refers to the broader cultivation of any aquatic organism in fresh or marine waters. This includes algae, molluscs, crustaceans, and finfish.** The term 'fish farming' is used interchangeably with 'aquaculture' though it typically refers to the cultivation of finfish. 'Intensive fish farming' therefore refers to a subset of aquaculture activities where the biomass produced is beyond that which could be naturally supported without the provision of additional feed. **Many of the species farmed intensively can also be farmed extensively where additional feed is not provided, stocking densities are lower and the enclosures cover a more extensive area to allow for the natural provision of their feed requirements.** This is often the case for fresh water fish such as carp. **Algae and mollusc farming are typically extensive forms of aquaculture<sup>61</sup>.**

The European Maritime and Fisheries Fund Regulation<sup>62</sup> defines 'fisheries and aquaculture area' as 'an area with a sea, river or lake shore, including ponds or a river, basin with a significant level of employment in fisheries or aquaculture, that is functionally coherent in geographical, economic and social terms and is designated as such by a Member State' (Article 3 Definitions).

Some Member States have applied thresholds based on different aspects for this project category, for example, on the area of the farming site (e.g. site area exceeds 5 ha), total fish production output (e.g. yearly production higher than 100 tonnes), fish production output per hectare (e.g. carp ponds with a fish production output higher than 4 tonnes per hectare of the pond area) or feed consumption (e.g. more than 2,000kg of dry feed consumed per year)."

The practice proposed in the instant applications is in fact one of increasing the volume of mussels in the area above the natural stocking density, by bringing in additional mussels, so it is one of intensification, as opposed to extensification, providing a wider area where stocking densities are less.

So in this particular case, there is an activity to artificially increase the production and thus falls under intensification as described in the guidance: “**Intensive fish farming would imply using techniques designed to increase the production of the species in question beyond the natural capacity of the environment or culture stage, up to and including harvesting.**” The practice of additional feeding upon which the Department appear to try and rely, is not a mandatory criteria and is referred to only as indicative having been predicated by the word “typically” as highlighted in the extract above.

We also submit that it is **not** clear from the Commission’s note that, in making a distinction between ‘extensive’ and ‘intensive’ in the extract above, its purpose was to create a distinction between ‘intensive’ and ‘extensive’ aquaculture, such that any activity which might be classified as ‘extensive’ could automatically be excluded from the Annex II 1(f) project class. It is merely a comprehensive summary of the various artificial interventions which can arise falling within the category. If such a distinction exists, ‘intensive’ aquaculture, which would be the inclusive class, would have to be interpreted broadly, while ‘extensive’ aquaculture, which then would be the exclusionary class, would have to be interpreted restrictively in order to ensure that projects which are likely to have a significant effect on the environment are not excluded from assessment (See Case C-72/95 Kraaijveld)

We additionally note, the Commission’s guidance includes molluscs, and indeed all the definitions of fish in both the Fisheries (Amendment) Act 1997 as amended and the Sea-Fisheries and Maritime Jurisdiction Act 2006 do also.

Moreover, in the context of any preliminary reference to the Court of Justice on such a matter, we respectfully state we would expect that the Court will no doubt adopt an expansive and purposive approach to interpreting the directive, focused on the key objective set out in Article 2(1) that: “before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.”, as it has done in cases such as c-72/95 Kraaijveld.

Additionally, in the context of the scale of applications proposed and the direct, indirect and cumulative impacts etc associated with the applications, and the manner in which the Minister has chosen to hold over and process them, it is not possible to exclude EIA in advance of screening: screening is vital to answer the question of whether this is in fact an intensive aquaculture activity.

## **6.2 Project Splitting**

### ***6.2.1 Multiple applications in the same area from the same operators***

It is clear from the colour coded table in Annex 1A of this appeal, on the most cursory glance that certain operators have even clearly applied for multiple licences. Additionally in certain instances the same Directors are applying for applications under multiple company names – for example: Fijord Fresh Mussels, WD Shellfish and River Bank Mussels Ltd all have the same directors: Theunis De Ronde and Adriaan De Ronde. We submit such considerations

have to be addressed in the context of further project splitting implications, the scale of operations being undertaken, including the wider transportation implications, and processing etc. for the purposes of EIA. These companies are but a case in point. An Taisce would draw attention to the decision of the High Court in *EPA v Harte Peat Ltd* [2014] IEHC 308, Barret J., that a project cannot be divided between multiple related companies, with the object or effect of avoiding a proper consideration of the cumulative effects of the project and the assessment obligations. This is in line with the case law of the Court of Justice of the European Union, in particular case: *c-142/07 Ecologistas en Acción-CODA v Ayuntamiento de Madrid*. ECLI:EU:C:2008:445

### ***6.2.2 Mussel Seed dredging***

The proposed mussel farming activity is predicated on the dredging of mussel seed from one location and its deposition in the licenced area. It is an intrinsic part of the operation, and as set out at the outset of the appeal document. In *An Taisce v An Bord Pleanála* on the matter of the Edenderry Power Station, Neutral Citation: [2015] IEHC 633, the Honourable Mr Justice White found that the abstraction of peat for the purposes of burning was an integral part of the operation. By analogy we submit the process of mussel seed dredging is an integral part of the proposed project and there has been a failure to assess and consider it adequately or at all, as the Department has simply incorrectly discounted EIA for the purposes of the applications at issue.

### ***6.2.3 Manner of processing the applications***

The Minister has furthermore, acted to hold and orchestrate the processing of these applications and thus has exempted projects from assessment by not considering the impacts of an integral part of the project, namely the nearby mussel seed extraction. (An Taisce would note that, even if this is not an integral part of the project, it is another project which has been split off and not taken into consideration in considering whether the threshold for assessment is met, and whose cumulative, direct and indirect effects were not taken into account because there was not even any screening carried out for the proposed projects.)

The applications were submitted to DAFM over a period from 2007 – 2018, so over an eleven year period, with a decision some 12 years later. However they were clearly put into a hold and not processed, as has been highlighted earlier.

## **6. 3 Directive 2014/52/EU and its implications including on Conflict of interest.**

### ***6.3.1 Transitional Provisions***

The transitional provisions of Directive 2014/52/EU are particularly relevant in this case in light of the timing of the making and processing of these applications. The transitional provisions provide as follows:

*“1. Projects in respect of which the determination referred to in Article 4(2) of Directive 2011/92/EU was initiated before 16 May 2017 shall be subject to the obligations referred to in Article 4 of Directive 2011/92/EU prior to its amendment by this Directive.*

*2. Projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of Directive 2011/92/EU prior to its amendment by this Directive where, before 16 May 2017: (a) the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated; or (b) the information referred to in Article 5(1) of Directive 2011/92/EU was provided.”*

The Department has furnished no evidence of when it made the determination relevant to paragraph 1 above. It has simply asserted it considered no EIA was required. At best it may be able to argue it made the Article 4 determination prior to 16 May 2017, for certain of the applications for which permission has been granted, but this is far from established given the applications were effectively on hold. The Table in Annex IA outlines the date stamp for applications on which a decision has been made, (albeit as highlighted earlier there are anomalies in the licence numbers). However paragraph 1 of Article 3 above only permits the screening to proceed under the old codified version of the directive. As paragraph 2 above makes clear, it is only if the procedure under Article 5(2) or the information referred to in Article 5(1) of the EIA Directive have been provided before 16 May 2017, that the project as a whole can then continue under the old 2011 codified version of the Directive.

In the context of the arguments above, it is submitted that the Department’s acknowledged failure to screen for EIA is a major issue. Thus the applications need to be considered under the 2014 Directive, which incidentally, Ireland has both incorrectly and incompletely transposed.

### ***6.3.2 Conflict of Interest:***

A further consideration then arises in respect of Article 9A of the EIA directive as amended by 2014/52/EU which addresses the matter of conflict of interest:

*“Article 9a Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.”*

The Department has also asserted in email responses to An Taisce on this issue:

*“The Department’s technical and scientific advisors assess aquaculture licence applications comprehensively in the normal course. Additional information can be*

*requested as necessary from the applicant should an application be deemed to be likely to have a significant effect on the environment.*

*Licensing decisions are made following the fullest consideration of all aspects of each application including environmental, technical and public interest aspects and observations received as part of the statutory and public consultation stage of the process.”*

The Department is responsible for both the promotion of aquaculture activities, and their regulation with both functions under the one Minister, presenting a clear conflict of interest in respect of aquaculture applications in the context of the new Environmental Impact Assessment Directive. This is quite apart from ordinary principles of justice. The Minister has clearly failed to properly direct himself on the obligations pertaining. In this respect, Article 9a of the Directive merely recognises what is already a fundamental rule of Irish administrative law, that someone cannot be a Judge in his own case. It is An Taisce’s view that any submissions or documents prepared by the Minister must be disregarded due to the institutional bias created by the dual role of the Minister in the licensing process.

### **6.3 Requirement to address the obligations of the EIA Directive**

In the event that ALAB proceed to conduct obligations under the EIA Directive, as a public authority, ALAB will be obliged to set aside national law which is not in conformance with EU law – as clarified by the CJEU in C-378/17<sup>12</sup> Irish Ministry of Justice, ECLI:EU:C:2018:979.

Ireland will be additionally obliged, as a precursor to any such execution of EIA obligations, to resolve the conflicts of interest which arise given the Minister’s interests in promoting aquaculture, and his role in the constitution of the members of the Aquaculture Licenses Appeals Board, which are set out in primary legislation, the Fisheries (Amendment) Act 1997, including under Part III.

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<sup>12</sup> “C-378/17 Irish Ministry of Justice, ECLI:EU:C:2018:979

<sup>38</sup> As the Court has repeatedly held, that duty to disapply national legislation that is contrary to EU law is owed not only by national courts, but also by all organs of the State — including administrative authorities — called upon, within the exercise of their respective powers, to apply EU law (see, to that effect, judgments of 22 June 1989, *Costanzo*, 103/88, EU:C:1989:256, paragraph 31; of 9 September 2003, *CIF*, C-198/01, EU:C:2003:430, paragraph 49; of 12 January 2010, *Petersen*, C-341/08, EU:C:2010:4, paragraph 80; and of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraph 54).

<sup>39</sup> It follows that the principle of primacy of EU law requires not only the courts but all the bodies of the Member States to give full effect to EU rules.”

An Taisce request ALAB to make a section 58 referral to the High Court on a point of law, as provided for under the Fisheries (Amendment) Act, 1997 if it disputes the above argument.

## **7.0 Conclusion**

For the reasons set out above, and in the associated legal submission in Annex II, An Taisce submits that there is inadequate information to establish beyond reasonable scientific doubt that the appealed licences will not adversely affect the conservation interests of the Slaney and Raven Point SACs and SPAs, and accordingly ALAB should refuse the licences sought.

Further, the applications as they stand do not conform to national and EU and international law obligations as set out.

Is mise le meas,

A handwritten signature in black ink, appearing to read 'Elaine McGoff', with a stylized, cursive script.

Elaine McGoff, PhD  
Natural Environment Office,  
An Taisce – The National Trust for Ireland

**Incl: Annex I and Annex II**



## SPECIAL NOTICES

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

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to WEXFORD MUSSELS LTD, ROCKFIELD, COOLCOTS, WEXFORD, CO. WEXFORD, REFS: T03/035A, T03/035B1, T03/35B2, T03/035C, T03/035F&G1, T03/035F&G2, T03/035F&G3, T03/072B, T03/090A for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co. Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail [info@alab.ie](mailto:info@alab.ie) or website at <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

[www.agriculture.gov.ie](http://www.agriculture.gov.ie)

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

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

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to, T.L. Mussels Ltd., Clonard Business Park, Whitemill Industrial Estate, Wexford, SITE REF: T03/030C for the bottom cultivation of mussels on a site on the foreshore in Wexford Harbour, Co. Wexford. The reasons for this decision are elaborated on the Department's website at [www.agriculture.gov.ie/seafood/aquaculturelicensing](http://www.agriculture.gov.ie/seafood/aquaculturelicensing)

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

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

The Minister for Agriculture, Food and the Marine has refused to grant Aquaculture and Foreshore Licences to, WEXFORD MUSSELS LTD., ROCKFIELD, COOLCOTS, CO. WEXFORD, SITE REF: T03/072A for the bottom cultivation of mussels on a site on the foreshore in WEXFORD HARBOUR, CO. WEXFORD. The reasons for this decision are elaborated on the Department's website at [www.agriculture.gov.ie/seafood/aquaculturelicensing](http://www.agriculture.gov.ie/seafood/aquaculturelicensing)

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



**St. Peter's College  
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**St Peters College Past Pupils AGM**  
Date: **Wednesday 25th September 2019**  
Venue: St Peters College

Mass celebrated in College Chapel at 7.30 pm,  
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2. Application forms, as well as copies of the school's admission policy, are available from the School Secretary and Receptionist during normal school hours (8.15 am to 4.15 pm, Monday to Friday) and may also be downloaded from the school's website – [www.loretowexford.com](http://www.loretowexford.com)

Billy O' Shea,  
Principal and Secretary to Board of Management.

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### FISHERIES (AMENDMENT) ACT, 1997 (NO. 23) FORESHORE ACT, 1933 (NO. 12) NOTICE OF DECISION TO GRANT/ REFUSE AQUACULTURE AND FORESHORE LICENCES.

The Minister for Agriculture, Food and the Marine has decided to grant (with variations) or refuse to grant Aquaculture and Foreshore Licence applications to the following in the table below in Wexford Harbour, Co. Wexford:

Reference Number	Name	Species	Decision
T03/047 (3 sites A, B & C) T03/083A T03/085A	Loch Garman Harbour Mussels Ltd. 24 Northumberland Road, Ballsbridge, Dublin 4	Mussels (Bottom culture)	Grant Licences (with variations)
T03/048A T03/091A	Noel Scallan, 29 William Street, Wexford Town and Sheila Scallan. Crosswinds, Avondale Drive, Wexford Town	Mussels (Bottom culture)	Grant Licences (with variations)
T03/049 (5 sites A, B, C, D & C1) T03/077A	Riverbank Mussels Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/052 (2 sites A & B)	W. D. Shellfish Ltd. c/o Pricewaterhouse Coopers, Cornmarket, Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/055 (2 sites E, F&C)	Crescent Seafoods Ltd. Mytilus, Ballaghablake, Curraclloe, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/074 (2 sites A & B)	Patrick Swords, Crory Lane, Crossabeg, Co. Wexford and Florence Sweeney, Ballyhoe, Lower Screen, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/080A	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Grant Licences (with variations)
T03/078A	Crescent Seafoods Ltd. Mytilus, Ballaghablake, Curraclloe, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/080B	Billy & Daniel Gaynor, 19 Hillcrest, Mulgannon, Co. Wexford	Mussels (Bottom culture)	Refuse Licence
T03/093 (2 sites A & B)	Mr Eugene Duggan, 141 Belvedere Grove, Coolcotts, Wexford Town and Mr Jason Duggan, 10 Antelope Road, Maudlintown, Wexford Town	Mussels (Bottom culture)	Refuse Licence

The reasons for these decisions are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/wexford/>

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co. Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail [info@alab.ie](mailto:info@alab.ie) or website at <http://www.alab.ie/>

A person may question the validity of the Foreshore Licence determination by way of an application for judicial review, under Order 84 of the Rules of the Superior Court (SI No. 15 of 1986). Practical information on the review mechanism can be obtained from the Citizens Information Board at: <http://www.citizensinformation.ie/>

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## APPOINTMENTS

### BOOK KEEPER WANTED

Book Keeper required for a haulage company near Enniscorthy. Must have minimum 2 years experience in a similar role with strong Microsoft Office skills. Prior use of accounting systems preferred. Should have good organization, problem solving skills & the ability to work unsupervised.

If you are interested, please email [office.adh1@gmail.com](mailto:office.adh1@gmail.com) for further information, or call 085 8637633 between 9am - 1pm Monday to Friday.



### Temporary (Full-Time) Administrator position available at Co. Wexford Education Centre

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Please forward your CV to Lorraine O'Gorman, Director, Co. Wexford Education Centre, Milehouse Road, Enniscorthy, Co. Wexford or alternatively email [director@ecwexford.ie](mailto:director@ecwexford.ie) on or before Friday September 20th 2019.

Co. Wexford Education Centre is an equal opportunities employer.

## SPECIAL NOTICES

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## SPECIAL NOTICES

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

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to T.L. Mussels Ltd., Clonard Business Park, Whitmill Industrial Estate, Wexford, Co. Wexford, SITE REFS: T03/030A2, T03/030B, T03/030E, T03/030F, T03/030/1 (site D) and T03/099A for the bottom cultivation of mussels on sites on the foreshore in Wexford Harbour, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co. Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail [info@alab.ie](mailto:info@alab.ie) or website at <http://www.alab.ie/>

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Food and the Marine

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

The Minister for Agriculture, Food and the Marine has decided to grant Aquaculture and Foreshore Licences (with variations) to FJORD FRESH MUSSELS LTD, C/O O'CALLAGHAN, O'MAHONY CODY & CO., CLONARD BUSINESS PARK, WHITEMILL IND. ESTATE, WEXFORD, CO. WEXFORD, REFS: T03/046A, T03/046B AND T03/046C for the bottom cultivation of mussels on sites on the foreshore in WEXFORD HARBOUR, Co. Wexford.

The reasons for this decision are elaborated on the Department's website at: <http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/>

An appeal against the Aquaculture Licence decision may be made in writing, within one month of the date of its publication, to THE AQUACULTURE LICENCES APPEALS BOARD, Kilminchy Court, Portlaoise, Co. Laois, by completing the Notice of Appeal Application Form available from the Board, phone 057 86 31912, e-mail [info@alab.ie](mailto:info@alab.ie) or website at <http://www.alab.ie/>

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BNI (Business Network International) Menapia Chapter Wexford are holding an Open Evening on Thursday the 26th of September, from 5pm in the Ferrycarrig Hotel, Wexford, providing Wexford Businesses to network with successful businesses with a view to generate more income and build more contacts in Wexford and surrounding areas. Business Network International (BNI) is a membership organisation for small businesses where members network and receive referrals. It is an international organisation around the world and has about 120,000 active members.

We have vacancies in professions such as:

Loss Assessor, Health & Safety Consultant, Trades, Beautician, Make Up Artist, Hair Salon, Interior Designer, Office Supplies, Engineer, Window Manufacturer, Landscape Gardener, Mechanic, Car Hire, Computer Services, Graphic Designer, Printer, Security Firm, HR Consultant, Cleaning Services.

To register, please contact  
Aoife Caulfield, President On 087-0993918  
or email her: [aoife@caulfieldfinancial.ie](mailto:aoife@caulfieldfinancial.ie)



## Transferring the Family Farm Clinic 2019

Teagasc invite you to their popular series of 'Transferring the Family Farm' clinics designed to enlighten & educate you on the many details involved in creating an effective plan for succession.

**Woodford Dolmen Hotel, Carlow**

**Thursday, 26 September | 10:30am**

Attendance free | Pre-booking is essential

Register your place online at  
[www.teagasc.ie/farmtransfer](http://www.teagasc.ie/farmtransfer)



## CONRADH NA GAELGE

Irish Language classes have re started from 11th September, continuing every Wednesday from 8.00-9.30pm at the C.B.S. Secondary School Thomas St. Wexford

Tá fáilte roimh chách All are welcome

For enquires ring **Pádraig 086-8306530**  
Bígí Linn