



Submission re AP13&AP14/2019 Kush Seafarms Ltd.

T06/035 & T06/106

Shamrock Shellfish Ltd.



Ref. AP14/2019

Ref. AP13/2019

To Whom It May Concern:

AQUACULTURE LICENCES
APPEALS BOARD

12 DEC 2019

RECEIVED

First can I say Mr Harrington's appeals has nutting to do with his concern for growth rates in Kilmackilloge Harbour but one which reflects his annoyance at me personally for highlighting all along this licencing process the determination of the department to push forward Kush Sea farms Ltd. licence applications at the expense of all other stake holders .

Mr Harrington's objection is full of inaccuracies and contradictions,

1. Shamrock Shellfish Ltd has no greater or less density of lines than other farms in the harbour,
2. We are happy to accept what the department has offered use by way of a reduction in long line density which will result in a four line reduction for use which is in line with every other farm in the harbour, however this agreement is strictly on the proviso that these line cannot be move to Mr Harrington's site as of course this would be unacceptable and not achieve the goal of improving growth rates.
3. Shamrock Shellfish Ltd. previous licence was a licence for six hector and to farm mussels, it had no restrictions and the new licence proposes to have many restrictions on our capacity and through long negotiations with the department engineer Rayfield Crowley we came to what is now proposed for our site with the understanding it would be across all farms in the harbour and there would be no new sites granted, if any new licence has these restrictions, while at the same time was not applied across the harbour and if new licences were issued as the department now proposes, then this would result in a big decrease in our income

and we would be forced to seek compensation from the state as these six hectors are the only six hectors we have to make a living out of.

4. Mr Harrington talks about overcrowding in Kilmackiloge harbour yet wants more capacity for himself, and this capacity is going to be taken from other farms in the harbour, he also has total disregard for other users of the water, shrimp and scallop fisher men use the ground he has applied for at the mouth of Kilmackiloge harbour and this has been a feature of other applications he's made up Kenmare bay which has resulted in a backlash from the fishing community against mussel farmers and all this was totally unnecessary if more consideration was given to the fishing community, it was made quite clear to the department that Kush's application at the entrance to Kilmackiloge harbour(Ref. T06/513A) was on top of existing fisheries which the department ignored, this ground is used every day by fishermen, the department have been clueless here and only caused upset for the fishing community and more problems for the mussel farming community.
5. Mr.Harrington attached a Google Maps picture of Kilmackiloge harbour and says the box he has drawn is my site, the box he has drawn includes an existing licenced salmon farm that is at present not been used and also includes the site of Patrick Cronin Organic Mussels Ltd, he says I have now covered this site in long lines , this is a blatant LIE and he knows it but it's more disinformation he's putting in to this process all the time, Iv attached a map showing my actual site and also highlighted Mr Harrington's site where his lines are either outside or protruding out of his site,(See Attachment 1), this man beggars belief with the lies he tells.(I assume there will be an Appals board engineer if not the board itself who will go out on the water and see for themselves)
6. I see he too wants an oral hearing, I plead with the board to grant this request as there's a lot of misinformation and untruths been put forward and an oral hearing will expose these.
7. Mr Harrington mentions Garry McCoy's "report" , this is a report I have been trying to get my hands on for over a year and a half now through Freedom of Information and the department is refusing to issue the report, they said firstly that the report was a draft and when the Freedom of Information office ruled against them,(Ref. Attachment 2) they changed to saying the report contained commercially sensitive information which is not the case as this report was presented to all the mussel farmers in Kilmackiloge in a slide show at a meeting in the BIM centre in Casstletown-Bearhaven and it was not sensitive then so how can it be sensitive now, can the board request the department to issue this report as it highlights how unfairly the department has handled this whole process, in a nutshell the report recommended that all operators in the harbour reduce their capacity and that capacity be given to Kush Sea farms Ltd along with 16ha of sites, I believe the department are embarrassed to publish, as it is clear how skewed the Bord lascaigh

Mhara report is towards one company, I would request the board to get the department/BIM to publish the report,

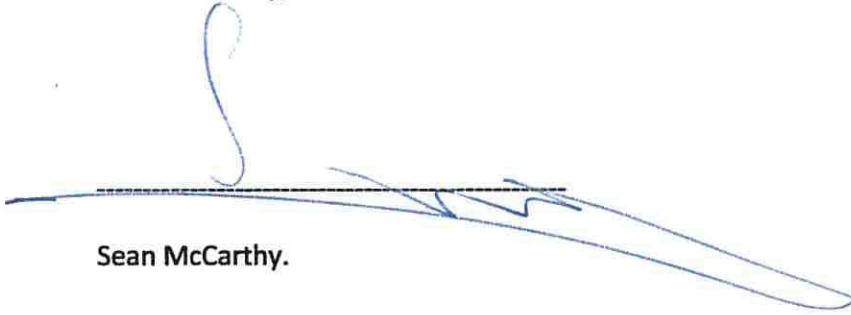
8. The mussel farmers in Kilmackiloge wanted a **caring capacity report** carried out by AQUAFACT, as we believe they would be neutral and more professional but the department refused to do a Caring Capacity Report and instead got BIM to do what was a completely ridiculous report which I have spoken of above.
9. Mr Harrington talks of stocking density's in Ardgroom something he has not adhered to and in fact crams his lines with drop ropes, he also operates his main site illegally in Pollen at the mouth of Ardgroom harbour where his licence states it's a seed collection site to be used for three months, yet he uses the site all year round as a production site, I have spoken to other farmers in Ardgroom and they say there's no enforcement by the department of any of the agreements he mentioned.
10. Mr Harrington includes a picture of my harvesting gear as if there's something wrong with it, yes it's pretty basic but effective, I have had no accidents or injuries in all of my 35 years of mussel farming unlike Kush Sea farms Ltd who have had many very serious accidents, two of which led to court convictions for Health Safety breaches Mr Harrington needs to be aware that just because you have a big boat does not mean your successful in fact in mussel farming with prices been so tight, the market been limited and labour becoming so expensive it's the small family run farms that will survive, Shamrock Shellfish Ltd pays it taxes and operates legally as a company unlike Kush Seafarms Ltd.(Kush's last return to company's office was for 2015)
11. Aquaculture was introduced to Ireland with the intention of bring a sustainable income for rural communities and work hand in glove with other industry's like fishing and farming, what is been proposed in Kilmackiloge runs counter to this.

I felt I had to write up the above as it's what you should do when your licence application is appealed but unfortunately this whole licencing process in Kenmare bay has morphed into something more where the legitimacy of the licencing process is been questioned and undermined, decisions have been taken which benefit one individual company at the expense of all other stake holders with no foundations or data or evidence to back them up.

The new hectars granted to Kush Seafarms Ltd in Kilmackiloge and the licence granted at the mouth of Ardgroom harbour which they blatantly operate illegally, they were REFUSED licences to operate oyster farms at Templeoe which they have operated for 30 years which has exposed the state to hundreds of thousands of euros at least if not more in compensation claims, supposedly due to an Irish Water sewage treatment plant 3km away while strangely a new oyster farm within a couple of hundred meters was approved, Mr. Harrington of course has engaged heavy weight solicitors to deal with the matter as he would, but all he needed to do was sent in what I have included in Attachment 3 to show what a bizarre decision that was.

It is clear that licencing in Kenmare bay is been directed by a private individual at the expense of all other stake holders and it needs to be exposed who within the department is facilitating this.

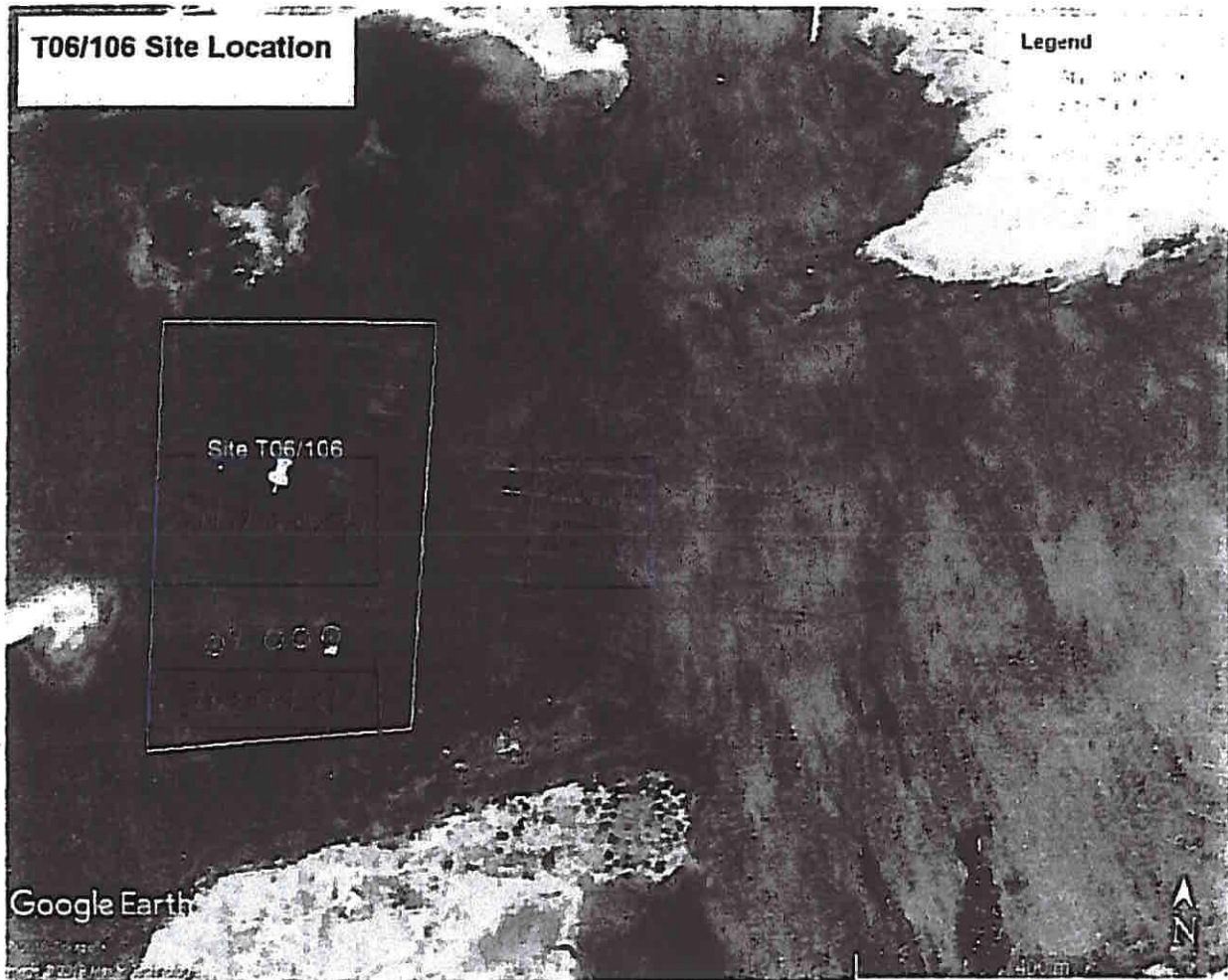
Yours Fatefully,



Sean McCarthy.

STAMERKH SHEAFISH HQ SITE IS
DRAWN IN BLUE PEN

Appendix 2: Google Earth image of site showing very high concentration of long lines.



Note: Image shows site when it featured a salmon farm (circular enclosures). This area has now been covered with long lines. The concentration of so many lines on one site is believed to be unprecedented in Ireland.

FOI/18/107

From : Sean McCarthy <shamrockshellfish@eircom.net>

Thu, 24 May, 2018 21:03

Subject : FOI/18/107

To : foi@agriculture.gov.ie

Hi,

I want to appeal the decision to refuse my application for disclosure of "The Kilmackilloge Carrying Capacity Study" on the following grounds,

1. I do not only want the report to be published to myself but to the general public and sent to all producers in Kilmackiloge Harbour.
2. By not realising the report it adds to the secrecy around the whole licensing process and further leads to a wider opinion of corruption in the process.
3. The report been a draft is no reason for refusal.

Regards,
Sean McCarthy.

Shamrock Shellfish Ltd.,
Limestone House,
Killowen,
Kenmare,
County Kerry,
Ireland.
V93K762.
TEL.00353872592209.

RE: Freedom of Information Requist

From : Brenda Lynch <Brenda.Lynch@oic.ie>

Wed, 06 Nov, 2019 15:22

Subject : RE: Freedom of Information Requist

To : Sean McCarthy <shamrockshellfish@eircom.net>

Dear Mr. McCarthy,

Firstly I wish to apologise for the long delay that has arisen in finalising this case. I have made my recommendation to the Senior Investigator as to the decision in this case.

As you know the statutory consultation process took place earlier in the year, and the report was not made available by the Department as part of this process. This was a change in circumstances which had to be taken into account in relation to your application. My recommendation is that sections 29 and 30(1)(b) of the FOI Act do not apply to the record.

However, the Department also claimed that section 36(1)(b) was relevant i.e. that the report contains commercially sensitive information. In the circumstances, where the report contains information about third parties and in order to ensure that the rights of the third parties under the FOI Act are fully respected, my recommendation is that the decision of the Department be annulled.

I have checked with the Senior Investigator today and he hope to finalise the matter in the next week or so.

Brenda Lynch
|Investigator - Imscrúdaitheoir |

Office of the Information Commissioner, 18 Lower Leeson Street, Dublin 2,
D02 HE97 |
Oifig an Choimisinéara Faisnéise, 18 Sráid Líosain Íochtarach, Baile Átha
Cliath 2, D02 HE97 |

Tel: 01-6395716 | Email/R-phost: brenda.lynch@oic.ie

-----Original Message-----

From: Sean McCarthy [mailto:shamrockshellfish@eircom.net]
Sent: Wednesday 6 November 2019 12:35
To: Brenda Lynch <Brenda.Lynch@oic.ie>
Subject: Freedom of Information Requist

Hi Brenda,

I know it is not you who now deals with my request, so would it be possible to give me the details of who dos so I can get an update on progress,



Oifig an Choimisinéara Faisnéise
Office of the Information Commissioner

Our Reference: OIC-53237-Y3C8G9

Your Reference:

26 November 2019

Mr. Sean McCarthy
Shamrock Shellfish Limited
Limestone House
Killowen Kenmare
Kerry

Re: Application for review under the Freedom of Information Act 2014 (the FOI Act)

Dear Mr. McCarthy,

I refer to the review of the decision of the Department of Agriculture, Food and the Marine on your FOI request for access to the Kilmakilloge Carrying Capacity Report. Enclosed please find a copy of the Senior Investigator's decision in the matter.

Yours sincerely,

Brenda Lynch
Investigator
Office of the Information Commissioner



**Review Application to the Information Commissioner under the
Freedom of Information Act 2014 (the FOI Act)**

- Case Number:** OIC-53237-Y3C8G9 (previously 180402)
- Applicant:** Sean McCarthy
Shamrock Shellfish Limited
Limestone House
Killowen, Kenmare
Co. Kerry
- Public Body:** Department of Agriculture, Food and the Marine (the Department)
- Issue:** Whether the Department was justified in its decision to refuse access to a draft report entitled "Kilmakilloge Harbour Study 2017" under section 29(1), 30(1)(b) and 36(1)(b) of the FOI Act
- Review:** Conducted in accordance with section 22(2) of the FOI Act by Stephen Rafferty, Senior Investigator, who is authorised by the Information Commissioner to conduct this review
- Decision:** The Senior Investigator annulled the decision of the Department. He found that section 29(1) and 30(1)(b) did not apply and that the Department had not properly considered the applicability of section 36(1)(b). He directed the Department to undertake a fresh decision making process in respect of the record.
- Right of Appeal:** Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.

Background

On 8 April 2018, the applicant sought access to all documentation for the last five years on the review of licencing and aquaculture in Kilmakilloge Harbour on Kenmare Bay (the harbour). Following a discussion with the Department in relation to the refinement of his request, he agreed to refine his request to the Kilmakilloge Carrying Capacity Study which was presented to him in Bantry by Bord Iascaigh Mhara (BIM) on 22 March 2018.

On 3 May 2018, the Department refused the request under section 29(1) of the FOI Act. The applicant sought an internal review of that decision on 24 May 2018, following which the Department affirmed its refusal of the record under section 29 and also cited section 30(1)(b) in support of refusal. It stated that the report was a draft report and that it was engaged in a deliberative process of considering options for aquaculture licensing in the harbour.

On 26 September 2018, the applicant sought a review by this Office of the Department's decision. In conducting this review, I have had regard to the correspondence between the applicant and the Department as described above and to the correspondence between this Office and both the applicant and the Department on the matter. I have also had regard to the nature and content of the relevant record.

Scope of Review

This review is concerned solely with whether the Department was justified in refusing access to the draft report entitled "Kilmakilloge Harbour Study 2017" under sections 29(1) and 30(1)(b) of the FOI Act.

Preliminary Matter

It is important to note at the outset that a review by this Office is considered to be de novo, which means that it is based on the circumstances and the law as they pertain at the time of the decision. Certain developments have taken place regarding the aquaculture licensing process during the review which, in my view, are of relevance to the question of whether or not the Department is justified in continuing to refuse access to the record at issue. While the delay in finalising the review is regrettable, I must, nevertheless, have regard to the current position regarding the licencing process.

Analysis and Findings

Section 29 - Deliberative Processes

Section 29(1) provides that a request may be refused if (a) the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations), and (b) the body considers that granting the

public consultation phase had been completed; and that the report had not been made available as part of the public consultation process. It could not say when or if the report would be made available.

While the report at issue remains a draft, the Department stated that there are a number of issues it wishes to discuss with BIM in relation to the report. It stated that it had been decided to proceed with dealing with the licence applications without reference to the report for a number of reasons. It argued that while the draft report is not now relevant to the licensing process, its association with the ongoing licensing process would cause confusion and possibly hinder ongoing analysis of the issues concerned.

It seems to me that while the Department may have had valid reasons for refusing to release a copy of the draft report in advance of the public consultation process, i.e. in order to protect the integrity of the consultation process, this is no longer a consideration as the public consultation process has since been completed.

In essence, its argument for continuing to withhold the record is based on a concern that its release could cause confusion relating to the licensing process and might hinder its ongoing analysis of the issues concerned.

I do not accept that the possibility that the release of the record might cause confusion is a sufficient ground for arguing that release would be contrary to the public interest. It seems to me that the Department should be in a position to clearly explain what issues it has with the draft report and its relevance to the licensing process. Furthermore, the Department has not explained how release might otherwise hinder its ongoing analysis of the issues concerned. In the circumstances, I find that the Department has not justified its refusal of the record on the ground that release would be contrary to the public interest. I find, therefore, that section 29(1) does not apply.

Section 30(1)(b) – Functions and Negotiations

Section 30(1)(b) of the FOI Act is a discretionary exemption that provides for the refusal of a request if the body considers that access to the record concerned could reasonably be expected to have a significant, adverse effect on the performance by an FOI body of any of its functions relating to management (including industrial relations and management of its staff). For section 30(1)(b) to apply, there must be a reasonable expectation that release of the records at issue could have a significant, adverse effect on the performance of FOI body's management functions including industrial relations and staff management.

The Department's position was that release of the report would adversely impact on its ability to carry out its functions in relation to the determination of the aquaculture licence applications for the harbour. In the circumstances, whereby the Department has proceeded with the aquaculture licensing process without reference to the report, I cannot see how release of the report at this time can have any impact on the process or that release of the report could give rise to a significant, adverse effect on the performance by the Department of its functions in this regard. I find that section 30(1)(b) does not apply to the record.

Decision

Having carried out a review under section 22(2) of the Freedom of Information Act 2014, I hereby annul the decision of the Department to refuse access to the draft report entitled "Kilmakilloge Harbour Study 2017". I find that sections 29(1) and 30(1)(b) do not apply to the record. I also find that the Department has not properly considered the applicability of section 36 to the record. I direct the Department to undertake a fresh decision making process in respect of the record.

Right of Appeal

Section 24 of the FOI Act sets out detailed provisions for an appeal to the High Court by a party to a review, or any other person affected by the decision. In summary, such an appeal, normally on a point of law, must be initiated not later than four weeks after notice of the decision was given to the person bringing the appeal.



Stephen Rafferty
Senior Investigator

26 November 2019

1711 ACHN/GV1 1

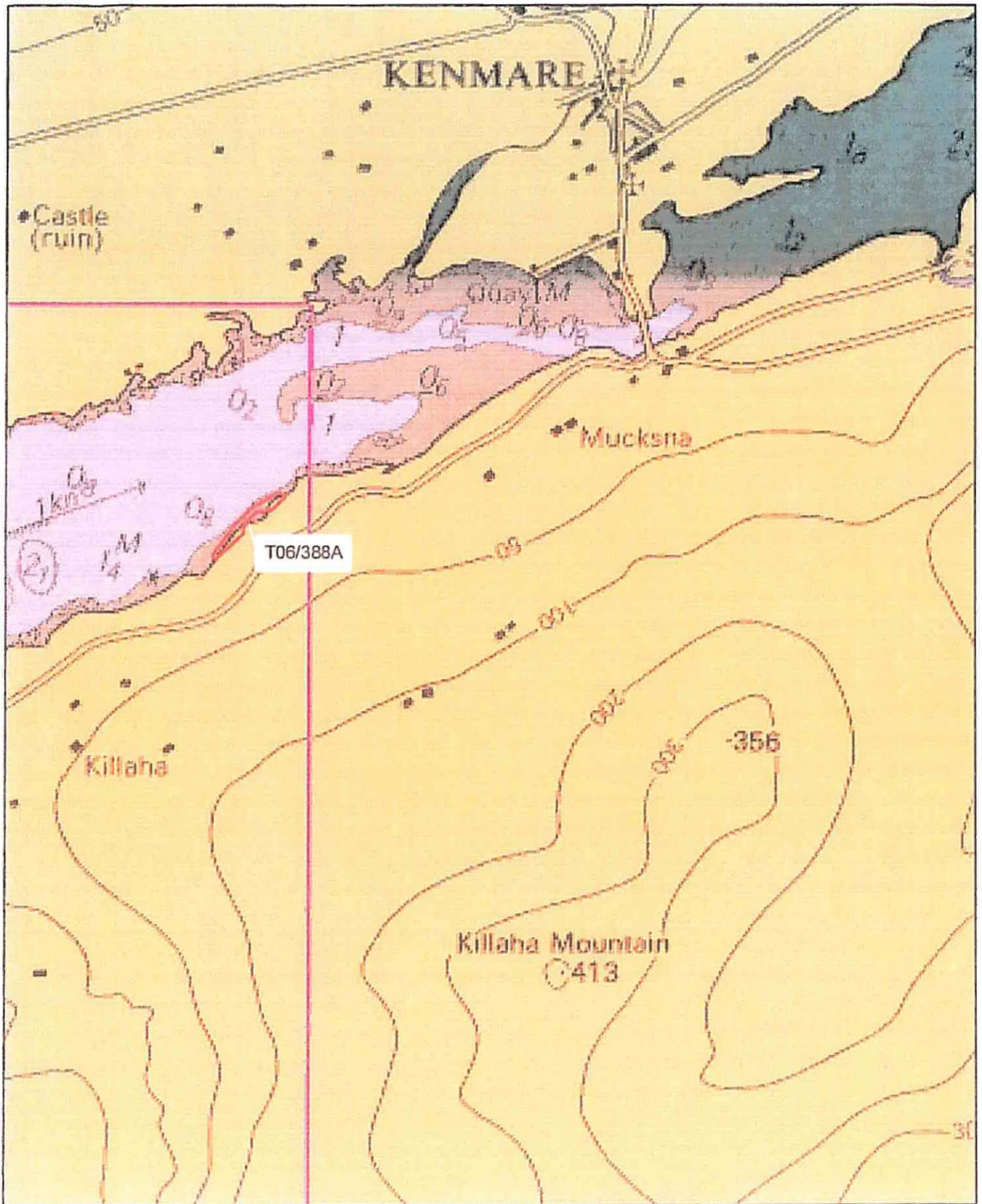
Determination of Aquaculture/ Foreshore Licensing application – T06/388A

Mr. Sam Lowes has applied for authorisation to cultivate mussels and oysters using bags on trestles on the inter-tidal foreshore on a 2.25 hectare site (T06/388A) on the foreshore on the south shore in Kenmare Bay, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that **it is in public interest to grant the licences sought**. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to grant the licences sought: -

- a. *Scientific advice is to the effect that the waters are suitable;*
- b. *Public access to recreational and other activities can be accommodated by this project;*
- c. *The proposed development should have a positive effect on the economy of the local area;*
- d. *All issues raised during Public and Statutory consultation phase were given consideration and addressed as necessary;*
- e. *The possible effects on the man-made environment heritage of value in the area have been taken into consideration;*
- f. *No significant effects arise regarding wild fisheries;*
- g. *The site is located within the Kenmare River Special Area of Conservation. An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC/SPA. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in this SAC/SPA, including this site, are being licensed and managed so as not to significantly and adversely affect the integrity of the Kenmare River SAC;*
- h. *Scientific observations related to the Appropriate Assessment received during the licensing consultation process are addressed in the Licensing Authority's Appropriate Assessment Conclusion Statement;*
- i. *Taking account of the recommendations of the Appropriate Assessment the aquaculture activity at this site is consistent with the Conservation Objectives for the SAC/SPA;*
- j. *There are no significant impacts on the marine environment and the quality status of the area will not be adversely impacted;*

k. The updated Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection now required under EU and National law.



Aqua Culture Sites
 (all other values)
Site Status
 Application
 Licensed
 Suspended
 Revoked

1:24,000

Sites highlighted in red denotes Application
 Part of Admiralty Chart No 2495-0



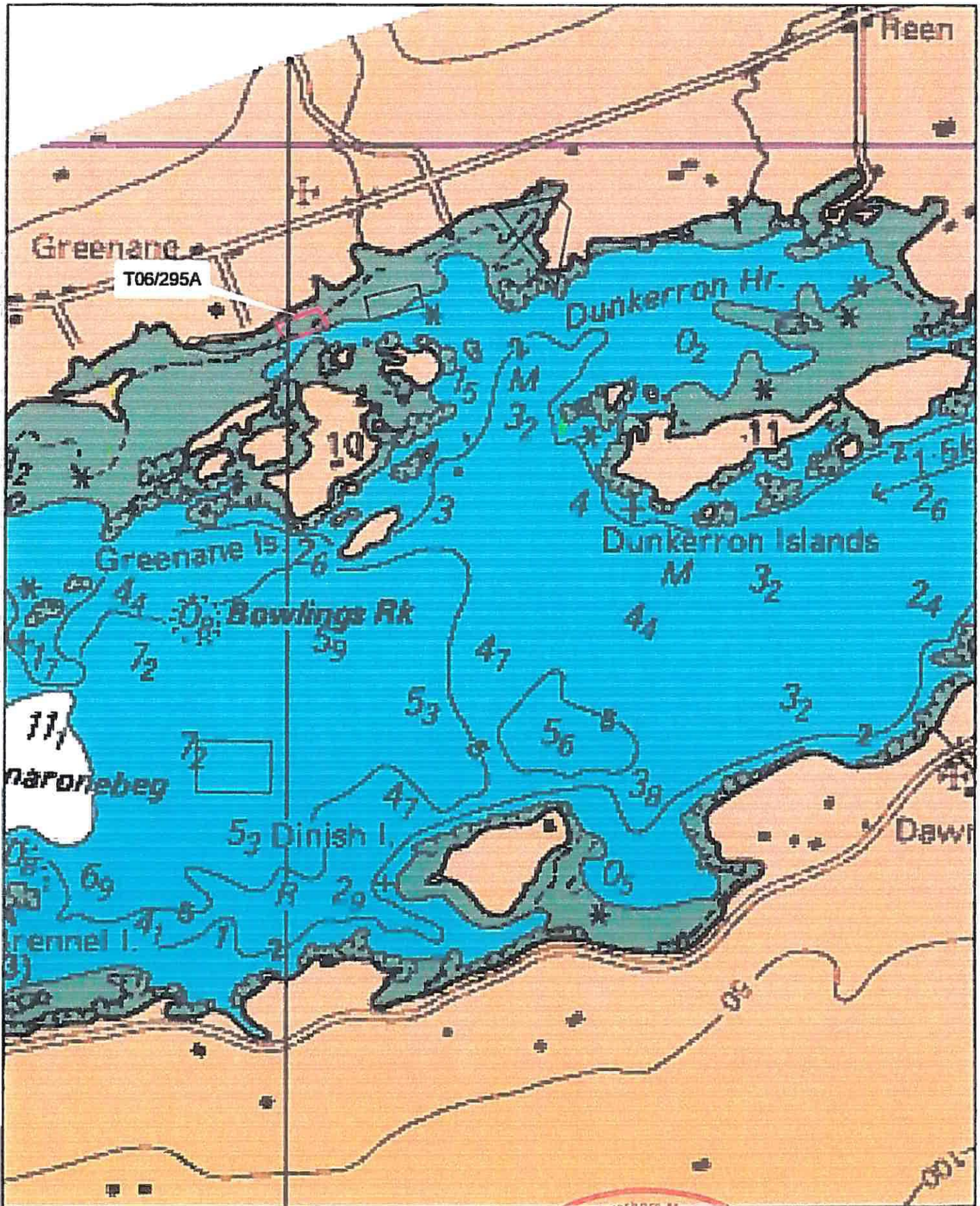
Department of
 Agriculture,
 Food and the Marine
 Táinig
 Talmhaíochta.

Determination of Aquaculture/ Foreshore Licensing application – T06/295A

Templenoe Oysters Ltd has applied for the renewal of an Aquaculture Licence for the cultivation of oysters using bags and trestles on the inter-tidal foreshore on a 1.38 hectares site (T06/295A) within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that **it is in public interest to refuse the licence sought**. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to refuse the licence sought: -

The waters are not suitable due to the site's close proximity to the Kenmare Waste Water Treatment plant. In the circumstances it would not be appropriate for the Minister to licence this aquaculture site at this time due to the potential issues emerging in relation to food safety.



Aqua Culture Sites
 <all other values>
Site Status
 Application
 Lapsed
 Licensed

1:20,000

Sites highlighted in red denotes Application



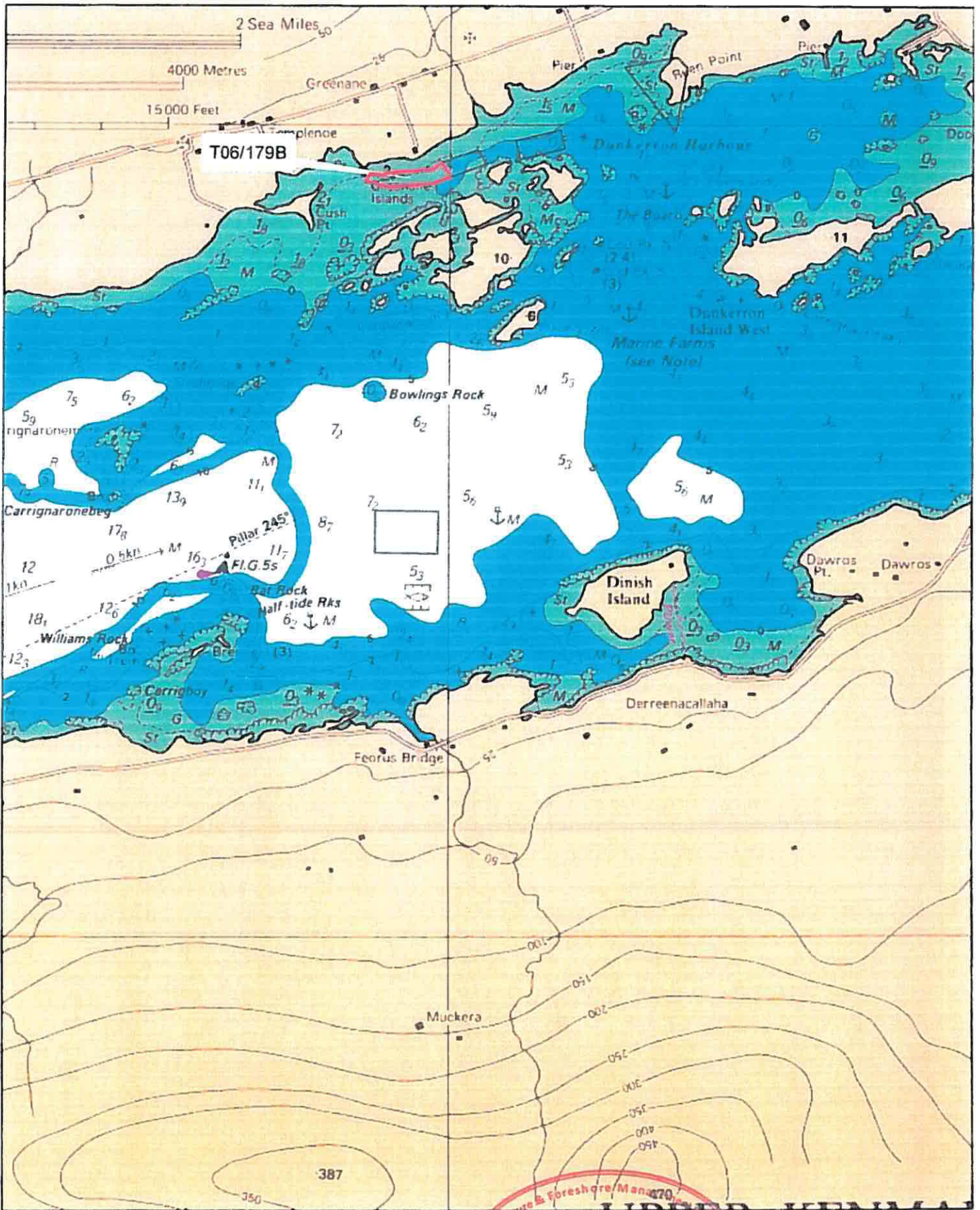
Department of
Agriculture,
Food and the Marine

Determination of Aquaculture/ Foreshore Licensing application – T06/179B

Kush Seafarms Ltd have applied for the renewal of an aquaculture licence to cultivate oysters using bags and trestles on the inter-tidal foreshore on a 2.4 hectare site (T06/179B) within Dunkerron Harbour, Upper Kenmare Bay, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that **it is not in the public interest to grant the licence sought**. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to refuse the licence sought: -

*The waters are not suitable due to the site's close proximity to the Kenmare Waste Water Treatment plant. In the circumstances it would not be appropriate for the Minister to licence this aquaculture site at this time due to the potential **issues emerging in relation to food safety**.*



Aqua Culture Sites
(all other values)

Site Status

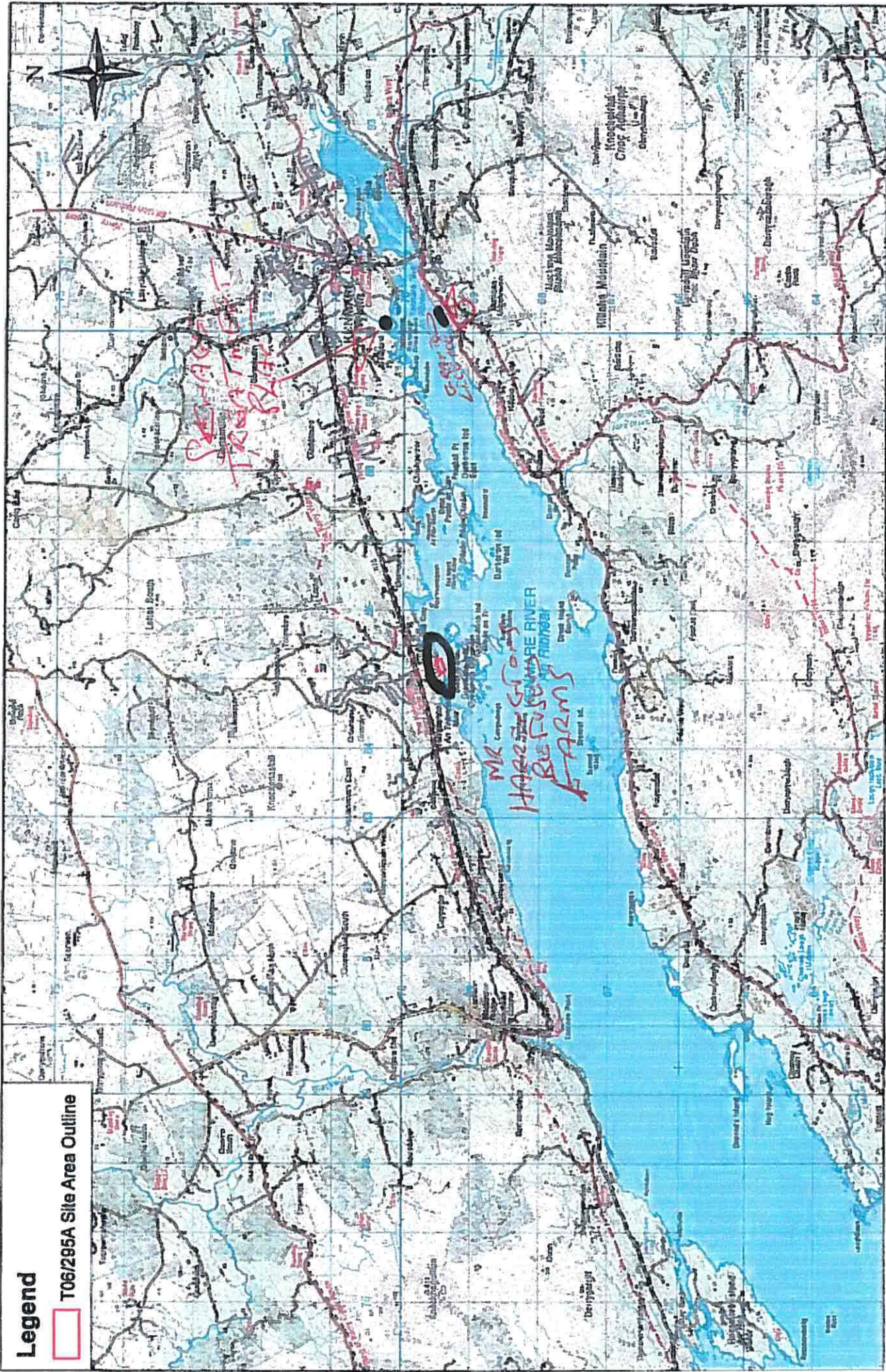
Application
Lapsed
Licensed

1:24,000

Sites highlighted in red denotes Application



Department of
**Agriculture,
Food and the Marine**



Legend

T06/295A Site Area Outline

T06/295A Site Location Map
Templenoe, Upper Kenmare Bay, Co. Kerry

Date: 17/01/2019
 Scale: 1:50,000 (A3)

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