

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



Appeal Form

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Name of Appellant (block letters)	OONAGH DUGGAN		
Address of Appellant	Assistant Head of Policy and Advocacy		
Unit 20, Block D, Bullford Business Campus			
Kilcoole/Greystones,			
Co Wicklow			
Phone:		Email:	
Mobile:		Fax:	

Fees

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

Subject Matter of the Appeal

We are appealing the granting of the aquaculture licenses in Wexford Harbour and Slobs SPA, the Raven Point Nature Reserve SAC and the Raven SPA as the Appropriate Assessment conclusion is fundamentally flawed and in breach of the Birds and Habitats Directives as it fails to definitely rule out 'likely significant effects' on several conservation interests of the Natura sites. In addition, cumulative impacts of the proposed licensed operations have not been assessed in combination with other activities within the area.

In 2007 Ireland was found guilty by the European Court of Justice in C-418/04 (the Birds Case) for failing to adequately transpose and implement the European Union Birds Directive and the European Union Habitats Directive. Amongst other breaches, the fifth complaint found that Ireland :

'did not meet the required standard regarding the level of protection being achieved in SPAs or in areas that should be designated as SPAs, as set out in Article 4 of the Birds Directive or Article 6 of the Habitats Directive, in particular by failing to take all reasonable measures, including targeted action to prevent their deterioration, and by not requiring appropriate assessment for certain types of activities including aquaculture' (Department of Culture, Heritage and the

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Gaeltacht, Birds Case Programme of Measures July 2017).

The Birds Case is still open as Ireland has not completed all the activities required to meet the legal obligations of the Court. We will be raising the granting of these licenses with the Irish desk officer at DG Environment in the European Commission as Article 6.3 process and documentation provided for these licenses is not in compliance with the Birds and Habitats Directives.

Site Reference Number:-
(as allocated by the Department of Agriculture, Food and the Marine)

T03/30A2, T03/30B, T03/30E, T03/30/1, T03/99, T03/35A, T03/35B, T03/35C, T03/F&G, T03/72B, T03/90, T03/46A, T03/46B, T03/46C, T03/47A, T03/47B, T03/47C, T03/83, T03/85, T03/48, T03/91, T03/49A, T03/49B, T03/49C, T03/49D, T03/77, T03/52A, T03/52B, T03/55E, T03/55F&C, T03/74A, T03/74B and T03/80A

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

Our interest lies in the conservation of birds and their habitats and addressing the 40% decline in waterbird species in the last 20 years (such as those that frequent the Wexford Harbour and Slobs SPA) as noted in the research published in 2018 *Burke, B., Lewis, L. J., Fitzgerald, N., Frost, T., Austin, G. & Tierney, T. D. (2018) Estimates of waterbird numbers wintering in Ireland, 2011/12 – 2015/16. Irish Birds No. 41, 1-12.*

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

The Conservation Objectives for the Wexford Harbour and Slobs SPA are found here

https://www.npws.ie/sites/default/files/publications/pdf/4076_4019_Wexford%20Harbour%20and%20Slobs%20&%20The%20Raven%20SPAs%20Supporting%20Doc_V1.pdf:

These Conservation Objectives are the same as those for the Raven SPA.

Conservation Objective 1: To maintain the favourable conservation condition of the non-breeding waterbird Special Conservation Interest species listed for Wexford Harbour and Slobs SPA and the Raven SPA.

To be favourable, there should be no significant decrease in the range, timing or intensity of use of areas by the waterbird species of Special Conservation Interest, other than that occurring from natural patterns of variation. Factors that can adversely affect the achievement of Objective 1 include:

- **Disturbance:** anthropogenic disturbance that occurs in or near the site and is either singular or cumulative in nature could result in the displacement of one or more of the listed waterbird species from areas within the SPA, and/or a reduction in their numbers (for further discussion on this topic please refer to Section 5.4)
- **Ex-situ factors:** several of the listed waterbird species may at times use habitats situated within the immediate hinterland of the SPA or in areas ecologically connected to it. The reliance on these habitats will vary from species to species and from site to site. Significant habitat change or increased levels of disturbance within these areas could

result in the displacement of one or more of the listed waterbird species from areas within the SPA, and/or a reduction in their numbers (for further information on this topic please refer to Section 5.2).'

Several of the Conservation Interests of the SPAs including, but not limited to, Goldeneye, Bar-tailed Godwit, Knot have unfavourable conservation status according to the Conservation Objectives Supporting Document while Red-breasted Merganser, Greenland White-Fronted Goose, Common Scoter, among others, have intermediate (unfavourable) conservation status. The utmost assurance is required to ensure no likelihood of significant impacts on these species.

The Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture report (28th July 2016) concludes by stating that:

1. Disturbance from bottom mussel-related boat activity may cause significant displacement impacts to Red-breasted Merganser.
2. There is insufficient evidence to rule out significant impacts beyond reasonable scientific doubt in relation to
Bottom mussel culture impact on Greenland White-fronted Goose
Bottom mussel culture impacts on Scaup, Goldeneye, Red-breasted Merganser and Great Crested Grebe
Bottom mussel culture impact on intertidal mussel beds
Bottom mussel culture impact on high tide roosts
Intertidal oyster culture impact on Golden Plover, Grey Plover, Knot, Sanderling and Bar-tailed Godwit
Intertidal oyster culture impact on Little Tern

The authors of this report conclude that significant additional information is required in order to complete the appropriate assessment including:

1. Research into the impact of the bottom mussel culture seed collection method on the long-term dynamics of intertidal mussel beds is required to fully assess the impact of this method on habitat quality for Oystercatcher, Knot, Curlew and Redshank in Wexford Harbour.
2. In parallel to the recording of patterns of vessel activity, 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. Placement of observers on the dredgers would allow more accurate estimation of distances. These studies could also record the disturbance responses of the other potentially sensitive species (Scaup, Goldeneye and Great Crested Grebe).
3. Research into the ecology of Red-breasted Merganser in Wexford Harbour. This research is required to allow assessment of the population-level consequences of the displacement of mergansers by boat activity. The scope of the research should include mapping the spatial distribution of mergansers throughout the Harbour Zone, determining their activity budget and how this varies seasonally and with the intensity of vessel activity, and recording their diet.
4. 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. The scope of the research should include recording the distribution of the roosts, and their sensitivity to disturbance by boat activity, and how these vary seasonally, and with the neap-spring tidal cycle.
5. Surveys of the low tide distribution of Golden Plover, Grey Plover, Knot, Sanderling and Bar-tailed Godwit. This research would be required to allow assessment of the potential impact of displacement by intertidal oyster cultivation in site T03/092A.
6. Little Tern research and monitoring.

BirdWatch Ireland staff have reviewed the information provided in the Appropriate Assessment report and conclusion documents and we state the following:

1. The Appropriate Assessment conclusion is inadequate, incomplete, unscientific, flippant and does not meet the standard of ensuring that, *beyond reasonable scientific doubt*, there is no likelihood of significant impacts on

conservation interests of the SPAs and SACs impacted by the aquaculture licenses and is in breach of Article 6.3 of the Habitats Directive.

2. The authors of the Appropriate Assessment Report state additional information is needed to complete their assessment and this has not been provided. The ECJ ruling for C-404/092 [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 .*"
3. Significant impacts cannot be ruled out and these threaten the achievement of the conservation objectives of the sites.
4. In the case of Article 6(3) the aim is to avoid the authorisation of any plans or projects that could '*adversely affect the integrity of the site*'.
5. In particular we are most concerned with potential impacts to Red Breasted Merganser, Little Tern and Common Scoter:
 - a. The Appropriate Assessment report from the Marine Institute:
'Disturbance from bottom mussel-related boat activity may cause significant displacement impacts to Redbreasted 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 (however, note the assumptions set out in paragraphs 6.63-6.76 regarding predicted levels of boat activity). 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. There is no site-specific data available that can be used to address these questions, and we are not aware of any comparable studies in the literature that can be used. There is a very serious risk of population level impacts to Red Breasted Merganser from the activities in Wexford Harbour.
6. The uncertainties listed in the appropriate assessment report for the range of species and the failure to rule out disturbance and displacement concerns to populations is a very serious concern. These uncertainties must be ruled out in order to meet the legal standard of the Birds Directive and the Habitats Directives.
7. We are also concerned that there has been inadequate assessment of how the SCIs for the SPAs use the mudflats and other habitats within the Slaney SAC due to the fact that IWeBs survey coverage has been limited at this site. Additional monitoring is required of how the waterbirds use this SAC as an ex-situ site outside of the Rave and Wexford Harbour SPAs and in line with Conservation Objective 1. This assessment must be undertaken.

8. Cumulative impacts are not adequately assessed

The Appropriate Assessment (July 2016) report states: '*This report does not include assessment of the potential cumulative impacts of the aquaculture activities in combination with other activities. The cumulative impact assessment can only be prepared when there is a reasonable level of certainty about the likely impacts arising directly from the activities being assessed, which is not the case for the present assessment. There are likely to be significant impacts arising from the cumulative impact of hunting pressures in combination with impacts from aquaculture activities. Detailed information on the scale of hunting activities in Wexford Harbour and environs were not available to the authors for consideration at the time of writing.*'

No cumulative impacts have been assessed between the different aquaculture license activities or in combination with other activities in these Natura sites breaching the requirements of Article 6.3 of the Habitats Directive.

9. Little Tern

In relation to Little Tern (Annex 1 species of the Birds Directive) there has been inadequate monitoring of Little Tern in

the Wexford Harbour and Slob and Raven SPA. Little Tern is present and breeding on at least two sandbanks from May to early August and the population estimate is 100-200 pairs. It is possibly the most important/joint largest colony in country alongside the colony at Kilcoole, Co Wicklow that BirdWatch Ireland monitors annually. These two sites probably support about 60% of the national population. Little Tern nests are very cryptic and vulnerable to trampling if people visit sandbanks; vulnerability to disturbance by intertidal and subtidal aquaculture activities is unknown. The breeding success of Little Tern is often poor, with tide/storm surges destroying nests at the egg stage on a regular basis. There is little comprehensive monitoring of Little Tern in Wexford Harbour area with NPWS Rangers usually attempting to access the sandbanks 2-3 occasions per breeding season. Therefore the proposal to suggest an adaptive management plan as a means to mitigate impacts on this species is not adequate as there is no solid baseline information on which to base a management plan. BirdWatch Ireland does not accept this as a sufficient mitigation option for this species. The possibility of likely significant impacts on this species cannot be ruled out and therefore the conclusion of the Appropriate Assessment is open to challenge. Instead monitoring of the species and its breeding success/productivity should be undertaken immediately possibly by drone to understand the population of Little Tern at this site.



Signed by appellant: _____

Date: 8th October 2019

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

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

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

Extracts from Act

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

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person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.

(2) A notice of appeal shall be served—

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

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

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

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

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

(a) be in writing,

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

(c) state the subject matter of the appeal,

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

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

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

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