

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



Appeal Form

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

Name of Appellant (block letters)	SAVE BALLYNESS BAY S.A.C. ACTION GROUP		
Address of Appellant			
Killult,			
Falcarragh,			
Co. Donegal F92 N6X6			
<p>John Connaghan, Baile Chonaill, Brian Farrell, Falcarragh, Caitlín Ní Bheirn, Josapine McNeil, Magheroarty, Alexandra Alcorn, Killult, John Boyle Magheroarty, Cathal Mc Monagle Cashel, Mary Attenborough, PhD, DIC, BSc, ARCS, Falcarragh. Michael Gallagher, Falcarragh, Robert Wasson, Dunfanaghy, Tomaslav Vulcan, Ballina, Marcán Mag Riada, Cill Ulta, Michele Crilly, Drumnatinney, Michael Crilly, Drumnatinney, Joe Friel, Killult, Sarah Sayers, Baile 'n Atha, Gerard Connaghan, Drumnatinney, Máire Ní Bhaoil, Cill Ulta, Anne Shepherd, Drumnatinney, Kevin Shepherd, Drum., Adrian Doohan, Drumnatinney, etc, etc.</p>			
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

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:

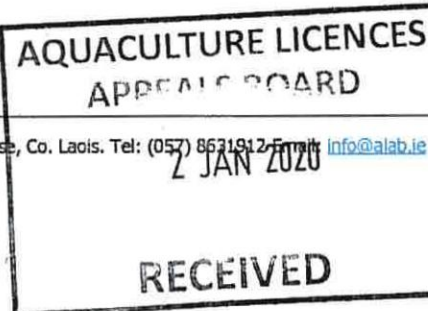
IE89AIBK93104704051067

BIC: AIBKIE2D

Subject Matter of the Appeal

The determination of the Minister for Agriculture, Food and the Marine to grant Aquaculture and Foreshore licences in Nov.2019, for the cultivation of Pacific Oysters using bags and trestles and for the cultivation of Clams at fourteen sites in Ballyness Bay, County Donegal.

T12/407B,



Please forward completed form to: Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois. Tel: (057) 8631912 Email: info@alab.ie

Signature / Sig. Reg.

RL 6745 0314 81E



T12/409 A & B,
T12 /441 A, B, C.
T12/455 A, B.
T12/500A
T12/502A
T12/510A
T12/514A
T12/515A T12/516A

Site Reference Number:-

See above

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

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

The Save Ballyness Bay Action Group was formed in response to proposals to use Ballyness Bay SAC and SPA for aquaculture purposes. The Action Group represents a wide range of local citizens and organisations, including, Falcarragh Tourist and Traders, Tidy Towns Committee, C  iste Glan & Glas, Local schools, Solas group, Cloughaneely Angling Association, Nerosa Surfing Group, Peter Hart Windsurfing, Cloughaneely Golf Club etc. A petition circulated locally supporting the Action Group and opposing the proposals was signed by 5,100. Our Facebook page has 1,981 people supporting our efforts and our website: www.SaveBallynessBay.com has had 2,400 sign in support of our group. Two full-to-capacity Public Meetings gave unanimous support to the Action group's campaign to protect their environmental heritage.

Ballyness Bay is a local beauty spot along the Wild Atlantic Way. It is also a safe haven for native and migratory wildlife. Locals and an increasing number of visitors each year benefit from walking, swimming, kayaking, windsurfing, birdwatching, angling etc, in the surroundings of the bay.

Increasing numbers of tourists bring economic and employment benefits to the area. These health-giving and economic benefits are sustainable long-term by protecting the bay's present environmental status.

The local community, through the Action Group, see protecting the bay in its natural state as a guarantee of a sustainable and eco-responsible way into the future.

The introduction of industrial shellfish production into Ballyness Bay, on any level, for private commercial gain, would jeopardise the aims and efforts of this whole community.

The introduction of commercial aquaculture into Ballyness Bay would, undoubtably, undermine the huge State investment presently being put into the development of sustainable tourism in coastal areas through the Wild Atlantic Way project.

It is our view that the introduction of commercial aquaculture into Ballyness Bay, on any level, would undermine the aspirations of the whole Ballyness Bay community and in their chosen desire to protect the bay SAC and SPA environment into the future, in line with EU Directives.

The economic spin-off of eco-tourism to the area, all based on the natural scenic beauty and environmental preservation of the bay, is an asset that is sustainable.

In the community's view, that is how we want our area to develop.

The licensing of aquaculture in Ballyness Bay will only degrade the scenic value of the area and damage the high quality environmental status of the SAC. It will be a serious obstacle to efforts to co-ordinate local environmental protection and sustainable local employment for many into the future.

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):

See accompanying documentation.

Signed by appellant: John Connaghan Date: 30/12/2019

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

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

Please forward completed form to: Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois. Tel: (057) 8631912 Email: info@alab.ie

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

(2) A notice of appeal shall be served—

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

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

SAVE BALLYNESS BAY S.A.C. ACTION GROUP

SUBMISSIONS ON APPEAL

CONTENTS

	<u>Paragraphs</u>
<u>INTRODUCTION</u>	<u>1 – 5</u>
<u>INEFFECTIVE PUBLIC CONSULTATION</u>	<u>6 - 10</u>
<u>FLAWS / MISDIRECTIONS</u>	<u>11 - 14</u>
 (i) Exclusion of Habitats (ii) Unresolved Issues (iii) Spatial Overlap (iv) Access (v) Access – new route (vi) Disruption of Otter Population (a) to (f) (vii) Seals (viii) Physical and biological effects which impact specifically upon Ballyness (ix) Reproduction of Non-Native Triploid Oysters (x) Manila clam (xi) Fishing Activity (xii) Cumulative Effect (xiii) Inadequate Consideration of Physical Effects of Aquaculture (xiv) ‘Lumping’ (xv) Bathymetric Survey (xvi) Residual Impacts (xvii) Accommodation for Access and Recreation (xviii) Environmental Impact Assessment (xix) Dispensing With Need For EIS (xx) Facilities for packing, storing and transportation (xxi) Public Access (xxii) Negative Effect on the Economy	
<u>CONCLUSION</u>	<u>15 - 18</u>

INTRODUCTION

1. We invite the Board to uphold this appeal against the Minister’s decision to grant aquaculture licenses in Ballyness bay pursuant to section 40 of the 1997 Act for the reasons detailed below. We defer to the Board’s vast experience of these matters but we have been unable to find any comparable mobilisation of the community than that

of the people in the wider locality around Ballyness bay in response to the proposed licenses. The reaction of the entire community is one of shock and dismay.

2. The Board's consideration of this appeal will effectively be the first time that any objections to these licenses will be considered by any decision-maker. The Minister was unable to consider the Appellant's objections as the community were unaware of existence of these applications until after the consultation period had closed.
3. The procedure for putting the community 'on notice' of such applications was not 'effective' and is therefore not compliant with the State's legal obligations as set out below and in the attached documentation (particularly at Appendix 12).
4. Primarily, we ask the Board, for the substantive reasons set out below, to allow this appeal, the Minister plainly having fallen into error. Alternatively, we suggest that the Board 'recommend' that the Minister, having wrongly determined that there had been an 'effective' consultation, reconsider these applications with the benefit of detailed representations on the well-substantiated objections to such development in Ballyness bay.
5. It is accepted on behalf of the Appellant that concerns about the destruction of habitats and the disruption of areas of natural beauty are common themes in the objections filed to such licenses; however, in the present case the Minister has plainly misdirected himself on law and fact in several key respects, as well as failed to adhere to the relevant statutory provisions.

1 INEFFECTIVE PUBLIC CONSULTATION

6. Domestic and international legal provisions ensure that in most matters of public importance there should be proper consultation with the public, particularly with those most effected. This is especially so and most keenly felt in the context of planning. In the international context, The Aarhus Convention requires statutory authorities to ensure that:

"The public concerned shall be informed either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and **effective** manner." **(Ref. Aarhus Convention: Article 6).**

7. The Minister conspicuously failed to comply with this obligation as evidenced by the response of the local community when they eventually became aware of the proposals in respect of Ballyness Bay SAC/SPAs.
8. The Minister then adopted an inflexible approach to the issue of 'consultation' when those affected attempted to make representations. It is a fundamental principle of public and administrative law that proposed significant alterations to public or protected areas benefit from a consultation process which ensures that decision makers acting in good faith have access to the best possible information upon which to found their decision. The sensitivities and views of the local population who

- habitually use such amenities as Ballyness bay should of course carry significant weight when set against the private, commercial interests of a small group of people.
9. The public consultation in the present case was simply and very plainly not effective. This is very clear from the vociferous reaction of the community once they were made aware of the existences of the applications in question.
 10. A submission has been made to the Aarhus Compliance Committee in relation to the ineffective public consultation. That submission is attached hereto, rather than simply repeating the contents of same: Appendix 12.

2 FLAWS / MISDIRECTIONS CONCERNING:

(i) “Report supporting Appropriate Assessment of Aquaculture in Ballyness Bay SAC” (“the Report”), and;

(ii) “Final Conclusion Statement by the Licencing Authority” (“FCS”).

11. The Minister’s reasons and considerations for granting the licences disclose that assumptions have been made by the Minister that there would be no effects or no significant effects on the local environments, in particular on the Natura 2000 network of ‘Sites of Community Importance’. These assumptions are far reaching but they are not substantiated in any way.
 12. This is supplemented and reinforced by the fact that Ballyness Bay is not listed as a Designated Shellfish Area.
 13. Neither the Report nor the FCS are supported by adequate, sufficiently detailed scientific evidence, and they are replete with errors. These Reports are wholly inadequate, in terms of detail and quality, to ground important decisions concerning permissions for such extensive commercial activity which require multiple aquaculture licences, over such a large area. This is especially so given the potential for significant impact on the Natura 2000 network.
- 14. The Appellant invites attention to the following areas where the Reports conflict with the requirements relating to Natura 2000:**

(i) **Exclusion of Habitats.** The Report provides, in relation to the Ballyness Bay SAC, at Section 2.5, “An initial screening exercise resulted in a number of habitat features being excluded from further consideration.” This bald statement is not elaborated upon in any or any sufficient detail given the importance of the subject matter. This is a significant error given that reliable scientific evidence exists to suggest that these habitat features should not have been excluded. Five neighbouring SPA/SACs were also excluded without sufficient regard to ex situ and cumulative effects. For example: to loss of feeding and roosting habitat; to cumulative eutrophication impacts; and, to site disturbance in adjacent SPAs.

The National Parks and Wildlife Guidance Notes require that there must be an examination of what Natura 2000 sites might be affected. (Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities, Environment, Heritage and Local Government 2010). These sites should be identified and listed, bearing in mind the potential for a plan or project, whether it is within or outside a Natura 2000 site, to have **direct, indirect or cumulative effects**, and taking a **precautionary approach** so that a site is included **if doubt exists**. Plans or projects that are outside the boundaries of a site may still have effects on that site.” There should be **no reasonable scientific doubt as to the absence of effects**. (Ref. Index 13). In the present case licenses have been granted despite, at best, the existence of scientific doubt in relation to such effects.

(ii) **Unresolved Issues.** Specific potential impacts on the Natura network have been identified in the Report but have not been resolved nor has detailed mitigation been proposed and/or assessed. The report by its own findings does not exclude the risk of damage to the Natura network beyond reasonable scientific doubt. (Ref. Index 9, 13)

(iii) **Spatial Overlap.** There has been inadequate consideration of ex-situ effects (cf. repeated reliance on lack of spatial overlap as evidence of no impact). (Ref. Index 13). No consideration is given to disturbance due to noise, human activity, machinery operation. The over-reliance upon an absence of spatial overlap is wrong. This approach is not consistent with the Guidance Notes’ directions on Assessment of Likely Significant Effects. The Board will be acutely aware that the ‘precautionary approach’ is fundamental. Furthermore, in cases of uncertainty, it should be assumed that the effects could be significant.

(iv) **Access.** The Report minimises the impact of industrial traffic by confining consideration to the limited physical spatial overlap of the route. Noise, disturbance, compaction, lighting and erosion due to traffic and vehicle parking, and the potential for hydrocarbon/chemical spills are not addressed especially in relation to the Corncrake SPA. (Ref. Index 5,6 ,10 and Appendix 2). It should be noted that all the routes (i.e. rural roads which often would not allow two cars to pass without pulling over) to the proposed aquaculture locations traverse corncrake nesting sites in the SPA. (Appendix 11)

(v) **Access – new route.** Due to the likelihood of habitat loss within the priority habitat Grey Dunes (2130) a new access route has now been proposed. This new route has not been subject to the further rigorous appropriate assessment required. The route runs directly through an SPA site designated for the globally endangered and red listed corncrake, Site Code 004149 (Ref. Index 4, 5, 6, 8, 10,14 and Appendix 2) and no assessment on the potential impact on the breeding corncrake population has been made. No reference is made to Curlew breeding

sites within the Corncrake SPA nor to the Chough nesting site at Ballyness Pier. The impact on eelgrass beds, which are close to the proposed sites, is mentioned in passing but not addressed.

(vi) **Disruption of Otter Population.** The report discounts any impact on the otter population on the grounds that their activity is typically crepuscular. This is not supported by the evidence.

The following criticisms are made in respect of the assessment of the impact upon the otter population:

(a) Otters are frequently observed actively foraging and moving in Ballyness Bay in daylight hours. (Ref. Index 28, Appendix 7).

(b) Furthermore, evidence from other currently operational aquaculture sites shows a significant level of work being carried out during night hours, since this work is dictated by tidal conditions.

(c) Assertions are made at paragraph 8.4 regarding habitat extent, “net input” of fish biomass, couching sites and holts, disturbance and encounter rates. However these assertions are not supported by evidence or verifiable materials.

(d) The report bases its statements regarding “no disturbance” of the otter population on the observation of otters in Gweedore bay and the islands. There is no explanation as to how this can be a reliable indicator on the population at Ballyness bay. No data are offered for Ballyness bay. The Report’s assertion that interaction with the otter population is likely to be minimal is unsupported by any evidence.

(e) The otters’s foraging areas stretch along the channel and the foreshore from the Black Rock area below Ballyness Pier to Killult pier. They are also frequently observed crossing the bay from Killult to the Dooley peninsula. The potential impact on the species from aquaculture sites 510A, 455A, 455B, 441B, 441C, 516A has not been addressed.

(f) The FCS map fails to display the access routes to sites 441C, 441B and 516A. Based on the licence application documents, access to 516A is via the foreshore between sites 441C and 455B and then continues on the foreshore in excess of 800 metres to site 516A.

(vii) **Seals.** The Report states [para. 8.5] “Risk posed by the proposed aquaculture activities in Ballyness bay to Seal conservation features cannot be discounted.”

Proceeding on this basis is a breach of the precautionary principle (Ref. Index 13). Furthermore, the report states there is only one haul out location. This conflicts with the evidence. There are at least eight such sites commonly observed. (Ref. Index 29, Appendix 8).

Licence site 508A has been refused a licence because of proximity to an accepted seal haul out location. (Appendix 8, Map 1). Sites 455A, 455B and 409B are within the same radius distance of that haul out location and by the same logic should therefore also have been refused a licence. (Appendix 8, Map 2).

Furthermore, the main channel used by seals for passage through the area, and an important feeding area and avenue of travel for them at lower tide levels, runs directly beside sites 510A, 455A, 455B, 441B and 441C and 409B (Appendix 8, Map 3). The impact of shellfish farming on this activity has not been recognised or addressed. The FCS summary of mitigation measures and management actions relies on treating the channel as a protective barrier between seals and aquaculture activity. There is no basis for this assumption. The channel is constantly used by seals at lower tide levels for passage and foraging.

(viii) Physical and biological effects which impact specifically upon Ballyness. Many physical and biological effects of aquaculture have been cited in the Natura Impact Report (NIR), principally in Chapter 6. However, these are not addressed at all, or are not addressed in any meaningful way. They include (the following list is not exhaustive):-

NIR 6:1. Biological Effects

- ☐ "deposition can accumulate on the seafloor beneath aquaculture installations (suspended and intertidal culture) and can alter the local sedimentary habitat type" (Ref Index 18). Low tidal flow rates in many of the sites will exacerbate this problem. (Ref. Index 12).
- ☐ "enrichment can lead to a change in sediment biogeochemistry (e.g. oxygen levels decrease and sulphide levels increase) which can result in a reduction in species richness and abundance"
- ☐ "anoxic conditions may occur where no fauna survives and the sediment may become blanketed by a bacterial mat"
- ☐ ☐ Baffling effects of structures can increase or decrease water flow resulting in scouring of the seafloor or causing local deposition of material that "can lead to change in the composition of the benthic infaunal community".

NIR 6:1. Seston Filtration

- ☐ "Suspension feeding bivalves such as oysters have a large filtration capacity and in confined areas, have been shown to alter the phytoplankton and zooplankton community abundance and structure and therefore potentially impact on the production of an area".

NIR 6:1. Shading Suspended Culture

□□ "The structures associated with suspended culture (e.g. trestles & bags etc.) can prevent light penetration to the seabed and therefore potentially impact on light sensitive species such as maerl, seagrass and macroalgae".

NIR 6:1. Fouling/Habitat Creation

The structures associated with aquaculture , and the culture organisms themselves, provide increased habitat for fouling species to colonise" (Index 18, 19, 20).

NIR 6:1 Introduction of Non-native Species

□ "The introduction and establishment of non-native species can result in loss of native biodiversity due to increased competition for food and habitat and also predation and/or disease". (Ref Index 15, 18, 23, 24, 25).

NIR. 6:1 Nutrient Exchange

□□ "Intensive bivalve culture can cause changes in ammonium and dissolved inorganic nitrogen resulting in increased primary production". (Ref Index 18).

NIR 6:2 Surface Disturbance

□□ Dredging activity (associated with clam production) "physically disturbs the seafloor and the organisms therein, and has been demonstrated to cause habitat and community changes".(Ref. Index 15).

□ "The intertidal (and coastal) habitat can be affected by ancillary activities on-site i.e. servicing, vehicles on shore; human traffic and boat access lanes, causing an increased risk of sediment compaction resulting in sediment changes and associated community (infaunal and epifaunal) changes".

No hydraulic data is presented to assess the limited scouring effect of waste materials in the bay due to its narrow exit or to deposition of waste products on the substrate in the area of oyster trestles.

(ix) **Reproduction of Non-Native Triploid Oysters.** The assertion that non-native triploid oysters will not reproduce and impact local native fauna and habitats is in conflict with evidence from multiple other sites (Ref. Lough Swilly Wild Oyster Society Ltd. Appeal. (Index 22, Appendix4). The potential impact of this on native communities and on the integrity of the SAC has not been addressed. The FCS states that the risk of Pacific oysters naturalising in Ballyness bay cannot be discounted , and then proceeds to discount it. This is a breach of the precautionary principle which should apply (Ref. Index 13. Appendix 10). The FCS also acknowledges a “minimal risk” of introduction of hitchhiker species from use of hatchery seed (page 4, par. 3. (Ref. Index 21,22,23,24,25 and Appendix 4) but gives no evidence of risk assessment nor proposes any Mitigation measures. This is a breach of the precautionary principle, especially in view of the fact that wild populations have already developed in Lough Swilly.

(x) **Manila clam.** The report says that the risk of naturalisation of this species is considered low but should be kept under surveillance. This is not in compliance with the precautionary principle espoused by appropriate assessment. (Ref. Index 13,15)

The FCS (pages 3 & 4) acknowledges high disturbance from clam production but makes no proposals for mitigation. Clam production will occupy nine hectares of the SAC area. The AA admits that the associated dredging activity has been demonstrated to cause habitat and community changes but then ignores it. (Ref Index 15, pps 93-107).

(xi) **Fishing Activity.** The Report provides that there is no fishing activity in Ballyness bay (para. 9.1). This is rebutted in a letter (see Appendix 13) from Inland Fisheries Ireland to Minister Creed:

“Page 5 of the report (Assessment of in-combination effects of aquaculture, fisheries and other activities) states that “There are no fishing activities within Ballyness bay SAC and are therefore no likely combination effects.” This statement is in fact inaccurate. Ballyness bay contains a valuable and highly scenic wild sea trout fishery which forms an integral part of Ireland’s recreational and tourism sea trout angling resource. Documentary evidence of this is provided (as enclosed) by the enclosed angling guide produced by Inland Fisheries Ireland – *Sea Trout Angling on Ireland’s North West Coast*. It should also be noted that a commercial salmon draft net fishery still remains in existence at the base of the Tullaghobegley river, which drains to Ballyness bay. The draft net fishery hasn’t operated in recent years due to conservation reasons, but may open again in the future depending on the annual available harvestable surplus. (The Tullaghobegley river had a modest salmon surplus in 2019 and was listed as open for angling).”

Members of the Ballyness Bay Action Group include 5 individual proprietors of lands adjoining the estuary comprised in Land Registry Folio DL18638 and Folio 10903. The said proprietors and their predecessors in title have been paying rates to Inland Fisheries Ireland and their statutory predecessors for upwards of forty years in respect of Several Fishery rights. The proposed licensed aquaculture sites would prevent these proprietors from exercising their fishing rights throughout Ballyness Bay. (Index 30, Appendix 9).

Again, as a result of the deficiencies in the consultation process, no account whatsoever was taken of this. Indeed, it is clear that the Minister proceeded on an erroneous basis. This issue highlights the difficulties presented by a consultation process which, whilst adhering in **some** respects to technical requirements, failed in fact, to provide an **effective** consultation. The Board is respectfully invited to pause and consider whether it is remotely conceivable that the proprietors of these fishing sites would not have registered their objections, if these license applications had been properly/effectively publicised.

The said proprietors object to any trespass on their lands by persons engaged in aquaculture. Adjoining members and owners of land at both Ballyness Pier and Killult Pier similarly object to trespass over their lands by persons engaged in aquaculture. There is real scope for community tension arising out of the licenses being granted and a disruption in harmonious relations.

(xii) **Cumulative Effect.** As touched upon above at (i) (under the heading of ‘**Exclusion of Habitats**’) there has been inadequate consideration of in-combination effects of the grant of these licenses. Contrary to National Parks and Wildlife Service guidelines, the Report does not clearly indicate what plans/projects have been taken into consideration. Other proposed and current projects in the area that have not been assessed include Irish Water waste water treatment plans, MOVI salmon hatchery, Donegal County Council coastal erosion and flood defence plans.

The ‘**Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities**’ offers helpful guidance on this. We invite particular attention to the following passages:

Section 3.2.3 Natura 2000 Sites [p31]

The second element is an examination of what Natura 2000 sites might be affected. These sites should be identified and listed, bearing in mind the potential for a plan or project, whether it is within or outside a Natura 2000 site, to have direct, indirect or cumulative effects, and taking a precautionary approach so that a site is included if doubt exists. Plans or projects that are outside the boundaries of a site may still have effects on that site.

[p33 & 34]:

As the underlying intention of the in-combination provision is to take account of cumulative effects, and as these effects often only occur over time, plans or projects that are completed, approved but uncompleted, or proposed (but not yet approved) should be considered in this context (EC, 2002). All likely sources of effects arising from the plan or project under consideration should be considered together with other sources of effects in the existing environment and any other effects likely to arise from proposed or permitted plans or projects. These include ex situ as well as in situ plans or projects. The screening report should clearly state what in combination plans and projects have been considered in making the determination in relation to in combination effects. Simply stating that “there are no cumulative impacts” is insufficient.

Section 3.3.3 Impact Prediction [p37]

Prediction of impacts should be addressed in the NIS, but the competent authority, in considering the information submitted needs to carry out the AA within a structured and systematic framework that is evidence-based. Conclusions should be objective and scientifically grounded. This requires that the types of impact be identified, e.g. direct and indirect effects; short- and long-term effects; construction, operational and decommissioning effects; noise, light pollution and disturbance; hydrological effects; pollution, including diffuse pollution; habitat degradation and loss; and isolated, seasonal interactive and cumulative effects.

We respectfully ask the Board to consider that, in light of the above guidance:

- (a) **The examination of ‘what Natura 2000 sites might be affected’** was, at best, cursory.
- (b) **The Report and the FCS recurring theme of absolving any impact upon wildlife and sensitive sites by referring to the lack of ‘overlap’ is firstly wrong intuitively and as a matter of common sense. Secondly, it is incompatible with the Guidance which provides that** “These sites should be identified and listed, bearing in mind the potential for a plan or project, whether it is within or outside a Natura 2000 site, to have direct, indirect or cumulative effects, and taking a precautionary approach so that a site is included if doubt exists. Plans or projects that are outside the boundaries of a site may still have effects on that site.” [emphasis added]
- (c) Furthermore, the Guidance makes clear that “... the underlying intention of the in-combination provision is to take account of cumulative effects” and that “...All likely sources of effects arising from the plan or project under consideration should be considered together with other sources of effects in the existing environment and any other effects likely to arise from proposed or permitted plans or projects. These include ex situ as well as in situ plans or projects.”
- (d) The Report and the FCS abjectly fails to “... state what in combination plans and projects have been considered in making the determination in relation to in combination effects. Simply stating that “there are no cumulative impacts” is insufficient.”
- (e) Section 3.3.3 requires that “... the AA [needs to be carried out] within a structured and systematic framework that is evidence-based. Conclusions should be objective and scientifically grounded. This requires that the types of impact be identified , e.g. direct and indirect effects; short- and long-term effects; construction, operational and decommissioning effects; noise, light pollution and disturbance; hydrological effects; pollution, including diffuse pollution; habitat degradation and loss; and isolated, seasonal interactive and cumulative effects.” The Board is asked to determine that the Report and the FCS, when judged against these criteria, falls very far short of what it should contain. It is of course accepted that the scope and intensity of review required in the Reports will, to some extent, be fact specific by reference to the particular developments in question. In this instance the Board is asked to consider that the Report and FCS in the present case should have been much more far-reaching and should have adhered more faithfully to the Guidance provided.

(xiii) **Inadequate Consideration of Physical Effects of Aquaculture.** The assertion (at Report para 6.2) that pressures resulting from aquaculture activities relate primarily to sediments disturbance has no scientific basis. The assessment must consider many other factors including issues such as: (i) biomass produced, (ii) nutrient levels released (especially sources of Nitrogen, organic loads and BOD impacts). The conclusion that in-combination effects with aquaculture activities are considered to be minimal is, firstly, not supported by the evidence (Ref Index 15, 18, 19, 20); and, (ii) does not harmonise with common sense given the sheer extent of the area that these licenses cover.

(xiv) '**Lumping**'. The Report supporting Appropriate Assessment of Aquaculture in Ballyness Bay SAC considers eighteen individual proposed aquaculture projects in a single overarching appropriate assessment. As such the description of individual projects is wholly inadequate to allow for a meaningful assessment of potential impact.

Lumping of multiple individual proposed aquaculture projects ignores the potential for their in-combination effects and prevents adequate consideration and assessment of the potential cumulative impacts of such extensive multiple aquaculture developments within Ballyness Bay.

In particular, no assessment is made of:

- (a) in-combination hydrological impacts of the multiple individual aquaculture developments;
- (b) the total cumulative nutrient load arising from multiple individual aquaculture developments;
- (c) the total siltation load arising from multiple individual aquaculture developments;
- (d) duration of disturbance due to the multiple, independent individual aquaculture venture operations that will require repeated trafficking of vehicles and personnel across features of Community conservation interest and through the adjacent corncrake SPA.
- (e) fragmentation of habitats within Ballyness Bay due to multiple individual aquaculture developments.

Page 19 of the Guidance states

'In addition, where projects require more than one authorisation (e.g. planning permission, waste permit and foreshore lease/licence), each consent authority must treat the separate applications as projects.'

This also brings in to sharp focus the issue of Foreshore Consents and where the consented projects are in relation to this process. This was not addressed in the material before the Minister and again this absence both calls into question the quality of the material before the Minister and the level of scrutiny that these applications have received.

(xv) **Bathymetric Survey**. There is no evidence that any bathymetric survey was undertaken despite the increased shallowness of the Bay in recent years, due to the erosion of the "largest unvegetated dune in the country" (NPWS Ballyness Bay Site Synopsis 2013) (see Appendix 14) on Dooey – much of that sand is now within the Bay. Observation of the tides within the Bay suggests that oysters on raised trestles would be exposed to the air for more than 4 hours per tidal cycle. (Ref Index 12). Examination of the various maps and photographs applying to these licences will show constantly shifting channel patterns over time. Such shifting substrate in itself signifies that Ballyness Bay is unsuitable for oyster trestle farming.

(xvi) **Residual Impacts.** The Report concludes that there are some residual impacts remaining and suggests that these be addressed at some later stage. Deferral of the collection of information required for a screening or for an appropriate assessment, or the completion of a screening or an appropriate assessment until after the consent has been given is not permissible. Until any potential mitigation is proposed and rigorously assessed the statutory authority may not allow the proposed development to proceed. “It is entirely unacceptable for a planning authority to approve a plan or project conditional on the undertaking or completion of surveys, research or data-gathering of relevance in assessing the likely effects.” (Guidance Notes: Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities, Dept of Environment, Heritage and Local Govt). (Ref Index 13).

(xvii) **Accommodation for Access and Recreation.** The Minister’s reasons for granting licences include – “Public access to recreational and other activities can be accommodated by this project.” The Minister provides no indication as to how this will be achieved. Nor is any indication given as to what planning, steps or guidance will be (or even **could** be) given to all of those who regularly or occasionally use the bay for boating, paddling, swimming and fishing purposes. The Health and Safety of those who will be engaged in normal recreational activities in the areas where steel trestles are situated will be greatly compromised.

(xviii) **Environmental Impact Assessment.** The Minister erred in granting these licenses in the absence of an EIS. Accordingly an appropriate assessment was not carried out with the necessary factual and scientific information in relation to the developments. No reasons were given by the Minister for dispensing with the need for an EIS despite the fact that such a significant aquaculture development in such a sensitive area of outstanding natural beauty with such rich bio-diversity plainly met the threshold for same. The assessment presented cannot be taken as appropriate for the projects proposed at Ballyness bay SAC since it is overly constrained in its scope, lacks sufficient detail, contains inaccuracies and has lacunae. It is incomplete in its analysis and inaccurate in its facts. Firstly, the scientific data it contains is extremely limited – this data is presented in Tables 8.2 and 8.3. Secondly, of the 50 categories addressed 43 of those are labelled: **“Low Confidence”** [see Table 8.2]. Table 8.3 lists 7 species and 25 pressures and of these 175 categories, 110 are **“Low Confidence.”**

‘Low Confidence’ data cannot be cited as proof of beyond reasonable scientific doubt. (Ref. Index 13).

The Board is respectfully invited to consider that the Minister has erred and misdirected himself by relying upon such a large volume of ‘low confidence’ material to satisfy himself to the requisite standard i.e. beyond reasonable scientific doubt.

(xix) **Dispensing With Need For EIS.** As touched upon above, the Minister erred in dispensing with the need for an Environmental Impact Statement (EIS) in relation to the applications. In this regard the Minister acted unreasonably (or ‘irrationally’ in the public law sense) and failed to comply with the requirements

of the Habitats Directive and the State's EU law obligations in relation to the conservation and improvement of European sites such as Ballyness Bay SAC and SPAs.

Even from the available materials the Minister ought to have determined that the grant of the impugned licenses would have a serious negative impact on the conservation value of the SAC and SPAs. This failure is exacerbated (and in some ways explained) by the absence of any voice or input on behalf of the local community and those with a concern about the impact of such relatively large commercial/industrial activity in Ballyness bay.

Such input is a crucial check and balance in this important process.

(xx) Facilities for packing, storing and transportation. No account has been taken nor measures specified for the control or provision of facilities for packing, storing and the transportation of shellfish on the type of scale that these licenses will entail.

This is especially so since so many licenses have been granted which will therefore mean separate, independent facilities required for each manufacturer.

Shockingly, no conditions as provided for at section 7(3) Fisheries (Amendment) Act, 1997, have been imposed. Such conditions should have been imposed to regulate *inter alia* the following issues,:

- (i) Annual or season limits on stock inputs, outputs and standing stock on site.
- (ii) Operational practices, including the fallowing of sites.
- (iii) The reporting of incidences of disease and the presence of parasites.
- (iv) The disposal of dead fish, empty shells and farm produced debris.
- (v) Measures for preventing naturalisation of imported species.
- (vi) Monitoring and inspection of aquacultural activities.
- (vii) Maintenance of records by the licensees.
- (viii) The protection of the environment and the control of associated waste product.
- (ix) Appropriate environmental, water quality and biological monitoring.
- (x) Control of the provisions for the hardening off of oysters.

(xxi) Public Access. In the stated reasons for granting licences, the Minister asserts that public access to recreational and other activities can be accommodated by these developments. No indication is provided as to how this can be accomplished. Indeed, our understanding of the terrain and topology of the area is such is that it is very difficult to envisage how this can in fact be accomplished without **serious** inconvenience being caused to those in the community and indeed the many thousands of tourists who visit the area. Ballyness Bay is extensively used for a wide variety of watersport activities, including a long established annual international school of windsurfing which

attracts participants from all over the world. No consideration has been given to the danger of the physical impediment and threat of thousands of oyster trestles, hidden under water at certain states of tide, to those participating in these activities.

The bay is very popular with locals and tourists for walking, bird watching, seal and otter spotting, angling and family recreation. It is used by the Donegal SOLAS group as a key element of their mental health promotion programmes.

(xxii) **Negative Effect on the Economy.** The Minister's assertion that the proposed aquaculture developments will have a positive effect on the economy of the local area is a prime example of the assistance that decision makers lose when the consultation process is so ineffective as to be non-existent. Firstly, there is no evidence provided of any cost/benefit analysis carried out to assess the alleged benefits of aquacultural development versus the certain damage to local tourism related income. Secondly, and contrary to the unsubstantiated assertions set out above, a far-reaching survey carried out of local businesses in Cloughaneely demonstrates that, of a total of 378 jobs in the local economy, 214 were directly dependent on tourism related income, in which the unspoiled natural environment was the dominant factor. Indeed, after many years of well-publicised government neglect and lack of investment in the Donegal region (especially the Gaeltacht area) the only 'asset' that the local economy has is the stunning, unspoilt landscape.

CONCLUSION

15. The Local community has had no meaningful, effective opportunity to have any say in the process that led to the granting of these licenses.
16. One of the ways in which community acceptance of such invasive work over such a large, protected area of unspoilt natural beauty is by allowing them to participate democratically in the process that leads to it. That has not occurred and the community are aggrieved and finding it very difficult to come to terms with the decision that has been made.
17. Furthermore, even on the material available to the Minister and for the reasons set out above, the licenses were wrongly issued and Minister acted unlawfully in so doing.
18. We respectfully contend that the Board would benefit from an oral hearing of this matter. There are relatively high levels of public interest in these particular licenses. We respectfully defer to the Board's experience of these matters, but our own researches have not found any other developments where the reaction of all facets of the local community has been so widespread, vociferous and sustained. It is not an overstatement to refer to the fact the Ballyness / Magheroarty bay areas are areas of

stunning natural beauty which have inspired artists and writers for generations. Any interference with this hitherto unspoilt landscape should benefit from the highest possible public scrutiny. We welcome any opportunity to clarify any matters set out above, should be Board deem that appropriate.

Index to Sources and Appendices Referenced in the Appeal Document.

1. Aquaculture Licences site:
<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/donegal/>
2. Aquaculture Licences decisions for Ballyness Bay:
<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/donegal/>
3. Designated Shellfish Area
<https://www.housing.gov.ie/water/water-quality/shellfish-waters/Donegal>
4. Conservation objectives for Falcarragh to Meenlaragh SPA [004149]
5. NPWS Corncrake project. Ballyness Bay SPA:
<https://www.npws.ie/protected-sites/spa/004149>
<https://www.npws.ie/sites/default/files/protected-sites/conservation/objectives/CO004149.pdf>
6. SITE SYNOPSIS SITE NAME: FALCARRAGH TO MEENLARAGH SPA
SITE CODE: 004149
7. Ballyness Bay SAC 001090 Regs 2018
8. EUROPEAN COMMUNITIES (BIRDS AND NATURAL HABITATS)
REGULATIONS 2011 S.I.477 of 2011
9. Guidance -Aquaculture – Natura 2000
10. Map showing proposed access routes as presented in Final Conclusion Statement. Appendices 1 & 11.
11. Combined map showing proposed aquaculture locations as shown on DAFM website map, proposed revised access routes as shown in Final Conclusion Statement, and seal haul out locations numbered. Appendix 2
12. Hydrographic Survey Falcarragh Sewerage scheme. SMG Doyle King 2004
13. Notes on the Precautionary Principle and Mitigation requirements as outlined in EU Habitats law. Appendix 10
14. ALAB Briefing Note: Bird impact assessment. Dr Tom Gittings. Report 13 Feb. 2018
15. A Review Of The Ecological Implications Of Mariculture and Intertidal Harvesting in Ireland, ML Heffernan, Irish Wildlife Manuals No.7, ISSN1393 – 6670. Duchas, Dept. Arts Heritage, Gaeltacht. Pps. 77 – 92, Pacific Oysters Summary p.89

Intertidal Harvesting in Ireland, ML Heffernan, Irish Wildlife Manuals No.7, ISSN1393 – 6670. Duchas, Dept. Arts Heritage, Gaeltacht.
 Pps. 77 – 92, Pacific Oysters, Summary p.89.
 Also pps. 93 – 107, Clams, summary p. 106. PPs 69-70 and 72, P.75
 (Summary) Effects of Dredging (Clams)

16. Historical Environmental and Cultural Atlas, Donegal, Edit.
 McLaughlin and Beattie. “Ballyness Bay.... sand constantly changing
 under the influence of tides waves and sea currents...”.pps. 53, 88, 90.
17. DEVELOPMENTS IN RELATION TO PROTECTED AREAS.
*Conor Linehan, Environmental Law Unit, William Fry, Solicitors,
 Dublin.*
18. *Ecological Consequences of Oysters Culture.* Ahmed and Solomon,
 Aquaculture and Fisheries Management, University of Ibadan, Nigeria
 International Studies in Aquatic Tropical Ecology, University of Bremen,
 Germany.
19. The Dynamics of Environmental Sustainability and Local
 Development: Aquaculture A study for NESC by Dr Patrick
 Bresnihan Assistant Professor of Environmental Geography No.
 143 April 2016
20. Biodeposition from oysters Sustainable Aquaculture in New
 Zealand. Review of Ecological impacts of Farming Shellfish...Keeley and
 others.
21. Triploidy and Reversion Chap. 7 Oyster Aquaculture (2004)
[www. nap.edu/read/10796/chapter /8.](http://www.nap.edu/read/10796/chapter/8)
22. Lough Swilly Wild Oyster Society Ltd Appeal. AP2/2018.
 also
 “Into the Wild: Documenting and Predicting the Spread of Pacific Oysters in
 Ireland”, Kochmann 2012. Appendix 4.
23. An investigation into the detection and identification of OshV-1
 μ var virus and associated risk factors causing mortalities in *Crassostrea gigas*
 in Ireland. Teresa Morrissey, BSc. Submission for Master of Science by
 Research Galway-Mayo Institute of Technology (GMIT)
24. Oyster mortality in France. Fabrice Richez.
25. Infestation due to Gigas in Ireland
 TWO EXOTIC COPEPODS IMPORTED INTO IRELAND WITH THE
 PACIFIC OYSTER
26. Views, Ballyness Bay. Appendix 5.
27. Examples of wildlife found in Ballyness Bay. Appendix 6.

- 31 Document submitted to the Aarhus Compliance Convention Office.
Appendix 12.
- 32 Letter from Inland Fisheries Ireland to Minister Creed regarding fishing
activities in Ballyness Bay.
- 33 NPWS Ballyness Bay SAC Site Synopsis 2013

LIST OF APPENDICES.

- 1 Map showing proposed access routes as presented in Final Conclusion Document.
- 2 Combined map showing proposed aquaculture locations as shown on DAFM website map, proposed revised access routes as shown in Final Conclusion Statement, and seal haul out locations numbered.
- 3 Extract from “Historical Environmental and Cultural Atlas, Donegal.”
- 4 Lough Swilly Wild Oyster Society Ltd. Appeal.
and
“Into the Wild”: Kochmann 2012.
- 5 Views of Ballyness Bay S.A.C.
- 6 Examples of wildlife found in Ballyness Bay S.A.C.
- 7 Daylight observations of otter activity in Ballyness Bay S.A.C.
- 8 Maps and photographic evidence of seal haul out locations in Ballyness Bay S.A.C.
- 9 Charges payable in respect of Ballyness Bay S.A.C. Several Fishery.
- 10 Notes on the Precautionary Principle.
- 11 Map showing proposed access roads to aquaculture sites through key corncrake nesting sites in SPA.

- 12 Document submitted to the Aarhus Convention Compliance Office.
- 13 Letter from Inland Fisheries Ireland to Minister Creed regarding fishing activities in Ballyness Bay.
- 14 NPWS Ballyness Bay Site Synopsis 2013

APPENDIX 1

Map showing proposed access routes as presented in Final Conclusion Statement.



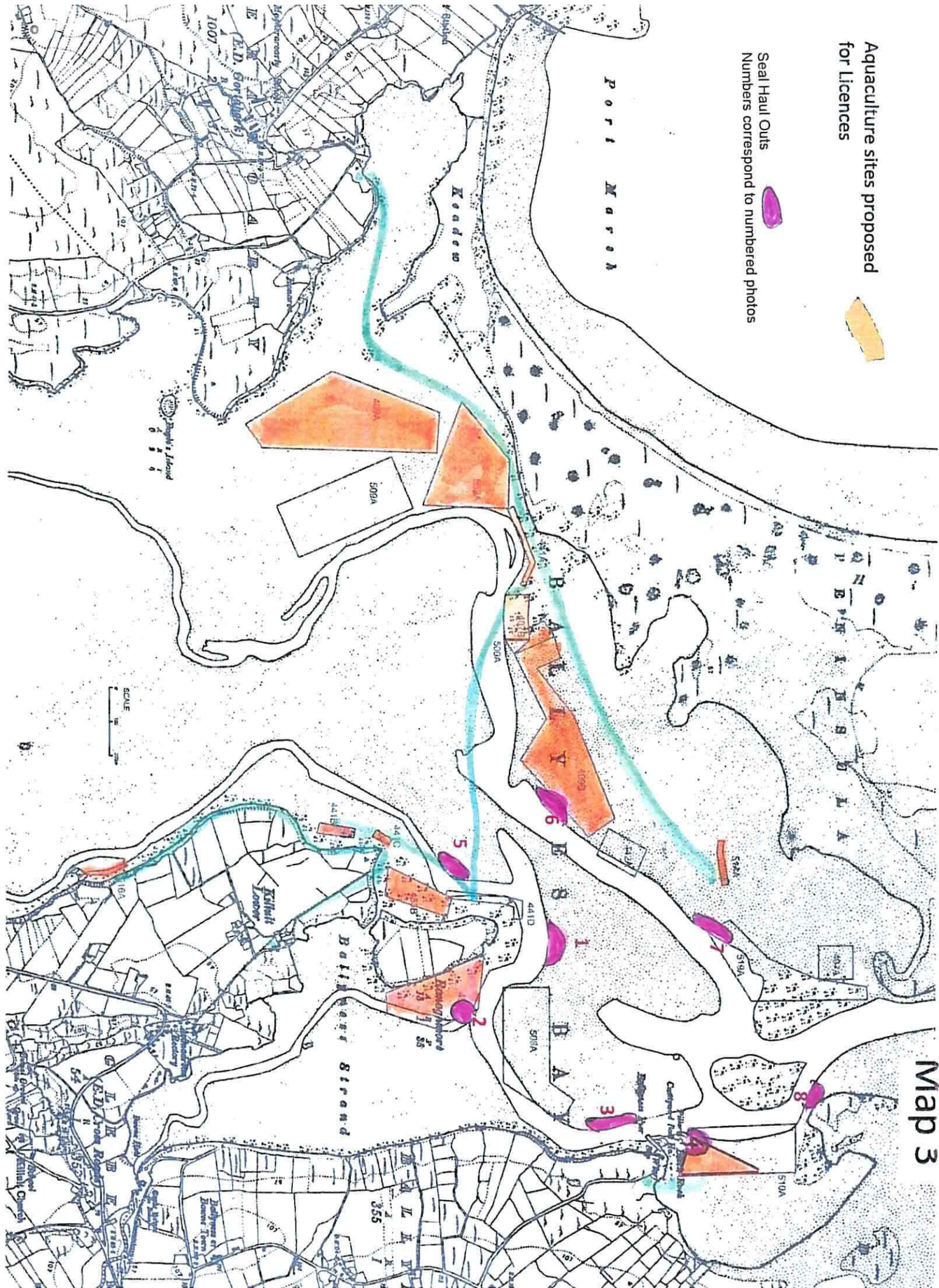
Hand-drawn map
of the area
around the
river

APPENDIX 2

Combined map showing proposed aquaculture locations as shown on DAFM website map, proposed revised access routes as shown in Final Conclusion Statement, and seal haul out locations numbered.

Aquaculture sites proposed
for Licences

Seal Haul Outs
Numbers correspond to numbered photos



APPENDIX 3

Extract from “Historical Environmental and Cultural Atlas, Donegal.”

that have been gradually formed through mud and sand that accumulates close to high water, creating a flat surface near to the shoreline. Indeed, these can harbour a rich variety of vegetation. However, in coastal Donegal, as in other Irish counties, they have frequently been used for grazing for cattle, with the result that the biodiversity of salt marshes can be seriously reduced. In the case of Donegal, extensive salt marshes and tidal flats in the past, and intensive cattle grazing in recent years, has greatly reduced the size and threatens the size of the county's salt marshes.

Stability

Along the coast of Donegal Bay, a series of wide sand and shingle dunes are present in small embayments at Malinbeg and Murvagh. They are separated by cliffs composed chiefly of glacial sediment, and contribute at least a proportion of their sediment to the beaches. These beaches have been little studied, but Rosnowlagh show the shoreline to be eroding at about sixty centimetres per year. The eroded cliffs contribute sediment that has closed Durness Bay, cutting off its connection to the sea. The shoreline along the coast of Donegal Bay and past Malinbeg is composed of hard rock, with small sandy beaches in small embayments along this coast. The elevation of the coast undulates considerably and the Slieve Donard cliffs stand in stark contrast to the low-lying shore of St John's Point. Along St John's Point, the small beaches made up of broken shells and glacial sediments, which provide them with a covering of rounded pebbles.

From St John's Point to the south shore of Sheephaven, the coast is predominantly rocky and has an extremely rugged profile, with several deep embayments and numerous offshore islands. In this environment, the waves have driven sand from the seabed into the small coves where it forms sand and gravel beaches and rock outcrops. Locally, the erosion of the glacial cliffs continues to add sediment to the coast, but very substantial volumes of sand, however, are not found in several large estuaries on this stretch of coastline. At the mouths of these estuaries, the beaches are typically backed by high and vegetated

cliffs. Donegal, which comprises sizeable sand spit that encloses Ballyness Bay. In each of these estuaries, the sand is constantly changing under the influence of tides, waves and sea currents. Since no fresh sediment is being supplied to the beaches here, any adjustments in their configuration involve the movement of sand from one part of the system to another.

From Horn Head to Inishowen Head, the three large bays of Sheephaven, Mulroy Bay and Lough Swilly dominate the coastline. These bays contain less sand than the estuaries in the south of the county, although their shorelines comprise a mixture of rock outcrop, sandy beaches and occasional salt marsh, particularly toward their upper reaches. The ocean shorelines on Horn Head, Rosguill, Fanad and Inishowen are mainly rocky and contain examples of many high cliffs, but small sand and pebble beaches, derived from erosion of glacial sediments are present in the many small coves on this stretch of coast.⁹

People and the coast

The beauty of the Donegal coast lies mainly in its unspoiled nature. Located at latitude fifty-five degrees north, and having a wet and windy maritime climate, beaches here are mainly valued not for sunbathing or even swimming, but for the scenic value of the coastal landscape. For that reason, they are considered good places for coastal walking, and as places to be admired from a distance. The regular beach visitors quickly realise that, in their natural state, beaches are highly adaptable landforms. The loose sand and gravel can easily move and change the shape of beaches as they adjust to storms and fair weather in winter, or summer and in wet or dry conditions. The same is true where the coastal estuaries of Donegal meet the sea.¹⁰ Thus tidal channels here are constantly migrating through sandbars and sandy shoals that constantly change as a result of alterations in tides, winds and wave action.¹¹ Paradoxically, while humans appreciate these natural features of the coast, the sheer mobility of many beaches causes them to be regarded as a nuisance by some. Shifting sand can impede navigation and result in periodic or long-term land loss. This means that some beaches can be wide or narrow, and that some can have sandy surfaces while others may be stony or covered with pebbles. In attempting to control the dynamics of beaches and dunes, we can destroy the very attributes required for their survival, and contribute to a deterioration of the very qualities for which they are most admired.



Fig. 5 (top) Corncrake. Commonly heard but seldom seen in the small fields of Donegal up to the 1970s, these birds are now confined to a handful of protected sites in the county. In 2003, less than a hundred of these birds were recorded in the county. **Fig. 6** (bottom) Black-throated diver, a rare winter visitor which occasionally turns in bays and coastal inlets from Aran Island to Lough Foyle. (Photo: John Rafferty)

The bulk of those that winter in Donegal originate in Iceland. Significant numbers of barnacle geese, also from summer breeding stations in Greenland, frequent the remote islands off the west and north coast of Donegal from November to April. In 2003, Ireland hosted around 56,000 Greenland barnacle geese. There were an estimated 9,000 birds scattered across rocky headlands and remote islands all along the north and west coast of Ireland, and large flocks regularly winter around Malin Head, Bloody Foreland and Gweebarra Bay. The much smaller brent goose is found all around the Donegal coast, from the muddy shores of Lough Swilly to the shallow waters of Ballyness Bay. It is particularly common in coastal estuaries where *Zostera marina*, or eel grass, is locally abundant. More than 20,000 birds from Arctic Canada wintered in Ireland in 2002, and Waterford, Wexford, Dublin, Donegal, Antrim and Sligo regularly record large flocks. In Donegal, brent geese are a common sight at many muddy shores, and they

also feed along the tideline, on *machair* grassland, and on sports fields and low-lying coastal land. They upend when plucking seaweed and eel grass in shallower waters around the Donegal coast.

Each spring and autumn, coastal locations from Malin Head to Donegal Bay also function as important landfalls for scarce migrants and wintering wildfowl from all corners of the northern hemisphere. Wintering flocks of redwings, fieldfares and small numbers of extremely rare Lapland buntings from breeding grounds in Scandinavia, Iceland and Greenland arrive along the north coast of Donegal from October onwards. The county also plays host to small flocks of snow buntings, which arrive here in late autumn or early winter. With a circumpolar breeding range that includes Greenland, Arctic Canada and northern Siberia, this is the most northerly breeding bird on the planet. In Donegal, small flocks of five to thirty or more of these birds generally seek out the most windswept and exposed places in which to spend the winter months. In Orkney, snow buntings have been given the name 'snowflake' on account of their brown and white winter plumage, which helps to camouflage the bird on snow-capped mountains.

The chough, another comparatively rare cliff-dwelling bird that is locally common throughout the county, thrives in areas of low-intensity farming, undisturbed rough pasture and *machair* grassland. Chough numbers have been in decline since the end of the nineteenth century, and they were almost entirely gone from all inland sites in the county by the 1940s. Ireland now accounts for around three quarters of the northwest European population of this species, and today their greatest concentrations occur in the southwest of the country, especially at the outer edges of the long sea peninsulas of west Cork and Kerry.⁹ Donegal held over twenty-five per cent of the national breeding population in the early 1960s, and still harbours an estimated 100 breeding pairs. Cliff-top habitats around the Donegal coastline provide excellent breeding habitats for this attractive, red-billed member of the crow family. Recent studies have revealed that regular grazing on close-cropped pastureland near cliff tops, especially in areas where chemical fertilisers are absent, provides the birds with an abundance of leatherjackets, spiders and staphylinid beetles on which these long-billed birds feed.¹⁰ However, in recent years their numbers have declined in areas where fencing of coastal grassland has occurred. The largest concentrations of choughs in Donegal are still to be found in our ecologically important dune systems and high coastal hills, especially around Slieve League, Slieve Tooey, Sheskinmore, Portmoo, Gweebarra River, Dooley Island, Rutland Island, Dunfanaghy, Bloody Foreland, Bunbeg, Glencolumbkille and Lagg Beach near Malin town.

A great variety of pelagic seabirds also visit the coastal



Fig. 9 Goldfinch. Perhaps the most colourful of the county's finches, and once confined to open farmland and hedgerows, they now feed at bird tables in towns and villages throughout east Donegal in particular. (Photo: John Rafferty)

1978, an estimated 1,500 male birds could still be heard calling throughout Ireland. Ten years later that number was down to 903, and in 2003 there were only 132 male-bird records in the entire country. Together with the golden eagles of Glenveagh, the corncrake is an emblematic bird of nature conservation in Ireland today. Their numbers have been depleted drastically since the 1970s, and they now linger chiefly only on offshore islands, including Tory, and in remote coastal districts from Ballyness Bay to Malin Head. Tory Island and Inishbofin recorded 46 birds in 2004, which was almost half of the total of the estimated 90 corncrakes in the entire county. Here, as in a small number of other small offshore islands along the west coast of Donegal, well-managed conservation measures, especially when accompanied by low levels of human interference and the absence of mechanised farming, may yet save corncrakes from outright extinction in the county. It is now recognised that the preservation of the species will require more proactive habitat management, and the identification of suitable new breeding sites outside the core areas of Donegal, Connemara and the Shannon Callows. This is all the more urgent since the corncrake is a short-lived species that produces large numbers of young. As Corncrake Project officer Brian Caffrey has warned,

'proactive habitat management on these north and west coast islands is essential if numbers are to continue to increase, and the need for effective conservation work on adjacent mainland areas is also key if the range of this globally threatened species is to expand'.¹²

While localised conservation efforts for the protection of individual species like corncrakes, choughs and linnets may appear insignificant when measured against much larger projects for preserving national biodiversity, they are of enormous local and regional importance. While species such as song thrushes, yellowhammers and cuckoos were common throughout the county, they are now much less common, and today yellowhammers in particular have a very localised distribution in Donegal. More frequent in western counties than in the east of Ireland, the cuckoo generally arrives in Donegal in the second half of April. Their numbers appear to be dependent on the numbers of meadow pipits, their main host in whose nests they commonly lay their eggs. An estimated 3,000–6,000 cuckoos visit Ireland each year, mostly from Africa, and parent birds usually depart in late June, to be followed by younger birds in July and August. The song thrush, a far more retiring bird than the blackbird, is widely distributed on farms and in gardens throughout Donegal. The national popula-

APPENDIX 4

Lough Swilly Wild Oyster Society Ltd. Appeal

and

“Into the Wild” : Kochmann 2012

APPENDIX 5

AP2/2018

Lough Swilly Wild Oyster Society Ltd Appeal

Cuirt Choill Mhinsi, 136thar Bhalle Atha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5
Guth3n/Telephone: 057 8631912 R-phost/Email: info@alab.ie LJOrOn Gr6as3in/Website: www.alab.ie

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

Name and address of Appellant: Lough Swilly Wild Oyster Society Limited

Telephone:	Fax:
Mobile Tel:	E-mail
Subject matter of the	address:
appeal:	

1. The Minister for Agriculture, Food and the Marine ought to have refused the licences sought by the Applicant due to the illegal fishing carried out by the Applicant and was Statutorily obliged to cause the application of the Applicant to fail.
2. The invasion of natural oyster areas (containing *Ostrea Edulis*) by the Pacific Oysters affecting the natural fishing rights of the Appellant.
3. The loss of income to the Appellant due to the erosion of the natural oyster area due to the invasion on the said area by the Pacific oysters.

Site Reference Numbers:-

T12137 A 1
T12/37 A 2
T12/37 B 1
T12/37 B 2
T12/37 B 3
T12/37 B 4
T12/37 C
T12/343

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

Appellant is engaged in fishing in the neighbouring terrestrial waters to the Applicant
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 Applicant's original Fish Culture Licence was granted by the Minister for Marine on the 20th October 1994 for a ten-year period. The Applicant submitted an application to renew the aforementioned licence on the 23rd September 2004. As is made overtly clear by the cover sheet of the application for a licence for renewal it is strictly prohibited for a Licensee to continue his operations without a licence. In the present circumstances, the Applicant continued his licensed operations after the expiration of his licence and therefore was patently in breach of the Department's own guidelines in relation to foreshore licences. This may or not be controverted by the Applicant, but should this matter proceed to oral hearing we have witnesses available to attest to the Applicant continuing his operations in the licensed areas during the period when he held no licence. Therefore, pursuant to Section 4 of the Fisheries and Foreshore (Amendment) Act, 1998 the application of the Applicant for a licence should have failed. Despite any contention by the Applicant, or for that matter, the Minister for Agriculture, Food and the Marine, that the Sea Fisheries and Maritime Jurisdiction Act 2006 and the inclusion of any such representation in his application that the Act should be applied, it is submitted that at the time of the Applicant's renewal application the law applicable was that of the Fisheries and Foreshore Amendment Act, 1998. It is further submitted that a change of law in 2006 (commenced by Commencement Order dated the 4th April 2006), does not entitle the Department of Agriculture, Food and Marine to deviate from the law as it then was when this application for a renewal was made on the 23rd September 2004. In this regard, the Applicant submitted a letter dated 26th October 2006 in support of his application from Mr Deelan O'Rourke of the Coastal Zone Management Division, the first paragraph of which appears to have been materially doctored by the insertion of the digit 3 over the digit 6 in the final line of the first paragraph.

2. Following a epidemiological investigation which was carried out in Lough Swilly in Autumn 2006 carried out by the Marine Institute where there *Bonamia ostreae* disease was detected, in their report the Marine Institute stated that the disease may have been brought to Lough Swilly by the imports of the Pacific oysters (*Magallana gigas*) from France which is the oyster predominately fished by the applicants in this area. Further farming of the Pacific Oyster could result in further spread of the

Bonamia ostreae disease throughout Lough Swilly. Please refer to the Maria institute report attachment 1.

3. This area of Lough Swilly where the applications have been made are predominately native oyster areas. This is illustrated by attachment 2 and will be supported by written statements from experienced fishermen who have been fishing these areas for years. The fishing of the Pacific oyster would detrimentally effect the native oyster because of it being highly sensitive to smothering and sensitive to organic enrichment and to activities associated with suspended culture. The native oyster is also highly sensitive to the introduction of non-native species and also parasites which can be transferred by the Pacific oyster. The Environmental Protection Agency compiled a report on "Sectoral Impacts on Biodiversity and Ecosystem Services" in which they cited that invasive oysters may alter ecosystem functioning not only directly, but also indirectly by affecting microbial communities vital for the maintenance of ecosystem processes. The report also made a number of recommendations for decision makers one of which is that Pacific oysters can pose a considerable threat to native biodiversity and ecosystem functioning and that action should be taken at an early stage to restrict or eliminate the spread of Pacific oysters before dense reefs are formed and they are unable to be removed and are no longer commercially viable. The granting of an extensive area for Pacific oyster and Mussel bottom Culture would go against the recommendations of this report and the scientific findings of the report. This report can be found at attachment 3. This report is followed by a more up to date joint Oireachtas committee- Agriculture Food and Marine meeting in 2015 where the Inland Fisheries Ireland made a number of submissions to the committee one of which acknowledged that the Pacific Oyster had become feral in Lough Swilly and that provision should be made to remove the Pacific Oysters again this information was not taken into account when the decision to grant the licenses was being made.
4. We would also like to reference the Coastwatch article by Karin Dubsky in which it states that all Pacific oyster farmers should undertake a site audit and remove old pacific oysters before they spread any further and effect the native oyster further. This doesn't appear to have been a consideration when making the determination to grant a license. This article can be seen at attachment 4.
5. The Department is relying on an EIA screening assessment in the granting of the license yet-we are unable to find the -assessment-or-its findings and- we would be anxious to read the findings in the assessment.
6. The determination notice mentions that the areas in T12/343 is licensed and managed we have not seen any management plan and would be very concerned that none exists and for this reason the sprawl of the Pacific oyster has occurred having a detrimental effect of the native oyster population.

7. Site T12/37B1 will encroach on a natural mussel spat fall area. This area is essential for the regeneration of mussel stocks and spawning of mussels. To disturb this area would have a negative effect of the mussel population. This area is outlined in black in attachment 5.

8. Numerous areas including T12/37AI, T12/37132 and T12137C are least affected by Pacific Oysters and would make an ideal native oyster nursery and to introduce Pacific Oysters and mussel bottom culture would make this area unfeasible for the native oysters nursery and further diminish their stocks.

9. Site T12/37132 is encroaching on a native oysters area and the activities of dredging for these mussels will have a negative effect on the native oyster population with regard to dredging and propulsion from boats.

10. There is a serious risk that the native oyster could become extinct if immediate action is not taken to remove the Pacific oyster from the areas abovementioned, should the farming continue of Pacific oyster to the point that the Pacific oyster become the dominant species then it will almost certainly wipe out the native oyster which has been fished and sold in Lough Swilly for generations. The Lough Swilly Wild Oyster Society Limited have provided a Fishery Natura plan for native oysters in Lough Swilly in which it proposes a number of steps that can be taken to revive the native oyster population while containing the Pacific oyster population. Please note that changes to this plan were necessary because of the effect of the Pacific oyster has had on the ecosystem and spawning grounds of the native oysters this is most relevant in relation to p14 of the report where the spawning ground is no longer viable and has had to be moved to the north/east of Lough Swilly. This report can be seen in attachment 6.

11. As recently as 6th of December 2017 areas in Fahan Creek which have been granted the farming of the Pacific Oyster have tested positive for the Native Oyster. To allow the farming of the invasive Pacific Oyster would drastically effect the native oyster. The sample was taken by the Marine Institute and the results of these findings were published on 11th December 2017. This report can be seen in attachment 7.

12. T12137C is a predominantly Native Oyster area and this decision to allow Pacific Oyster farming and bottom culture mussels would appear to contradict the decision in T12/297 where it was determined that "Site T12/297 completely overlaps an 'Ostrea edulis (native oyster) dominated community' area. The impact of suspended oyster culture on the Ostrea edulis dominated community is considered disturbing and cannot be discounted for the following reasons:

- The dominant species *Ostrea edulis* is highly sensitive to smothering and sensitive to organic enrichment and to activities associated with suspended culture (e.g. compaction)

- Native oyster beds (*Ostrea edulis*) are considered scarce
- The community is highly sensitive to the introduction of non-native species and also parasites/pathogens"

We will be relying on the Marine Institutes own report in attachment and to signed statements by generational fishermen that this area is predominantly a native oyster area

Fee enclosed: @1218.96 plus E609.44 =£1829.03

(payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998)) (See Note 2)



Into the Wild

Documenting and Predicting the Spread of Pacific Oysters (*Crassostrea gigas*) in Ireland

Judith Kochmann
(B.Sc., M.Sc.)

The thesis is submitted to University College Dublin in fulfilment of the requirements
for the degree of

Doctor of Philosophy

School of Biology and Environmental Science

Head of School: Dr. Thomas Gallagher

Principal Supervisor: Dr. Tasman P. Crowe

Doctoral Studies Panel Membership:

Advisor: Dr. Mary Kelly-Quinn

Chair: Dr. Jan-Robert Baars

Dublin, August 2012

2.4 Results

2.4.1 Distribution, densities and sizes of feral Pacific oysters

Pacific oysters occurred at 18 of the 69 sites (Figure 2.1). No oysters were found at sites in the south. Most oysters were found in the large estuaries of Lough Swilly, Lough Foyle and the Shannon, with many sites scored Common or Frequent for the abundance of oysters. Oysters were Occasional or Rare at five sites in Galway Bay and single individuals of oysters were found at one site in Tralee Bay and another site in Ballynakill Harbour, which therefore scored Rare on the SACFOR scale.

Oyster densities in the different habitats varied from single individuals (ind.) to 8.5 ind./m² (Table 2.2). Sites in Lough Swilly and Lough Foyle had the highest densities whereas sites in the Shannon Estuary, Galway Bay, Tralee Bay and Ballynakill Harbour oysters were found in lower densities (Table 2.2). Pacific oysters were mostly found in the lower intertidal. During an exceptionally low spring tide, a subtidal mussel bed could be accessed at Rathmelton in Lough Swilly, where densities were estimated at 12.5 ind./m² (not listed in the Table 2.2).

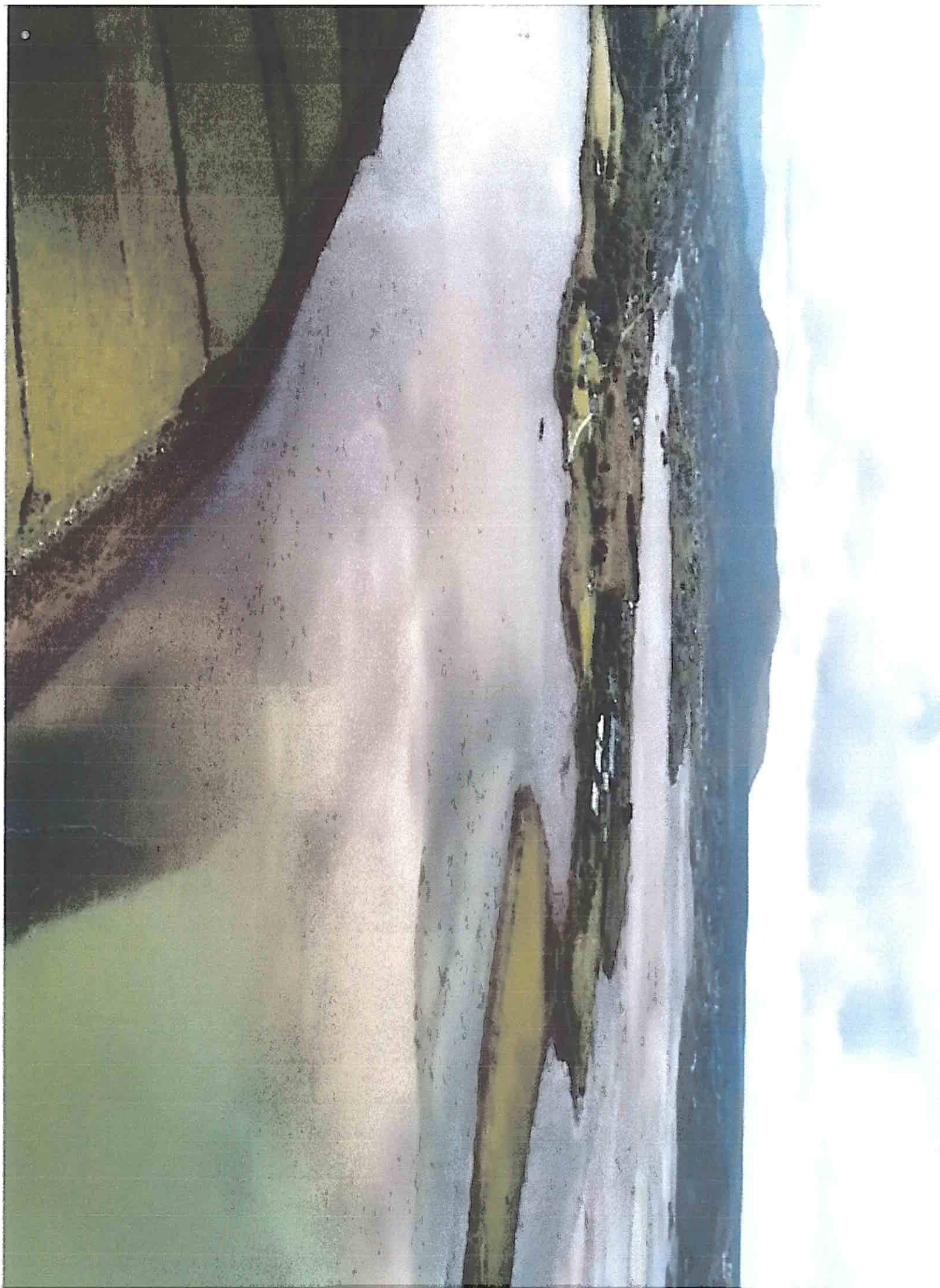
At all of the sites with oysters > 0.1 ind./m², the range of sizes of oysters found exceeded 120 mm (Figure 2.2). In Lough Swilly, oyster sizes ranged from 13.8 mm – 125.7 mm (n = 147) on a mussel bed and from 25.3 mm – 135.0 mm (n = 182) on a rocky shore. Similar sizes of oysters from 23.0 mm – 135.5 mm (n = 182) were also measured on a mussel bed in Lough Foyle. In the Shannon Estuary slightly larger oysters were found, with the smallest and largest oyster measuring 43.4 mm and 146.2 mm (n = 125) respectively at Loughill. At Glin, oyster sizes ranged from 40.4 mm – 123.0 mm (n = 101). Four, six and eight modes were found in the size distributions except on mussel beds in Lough Foyle and Lough Swilly where only one mode was identified (Figure 2.2).

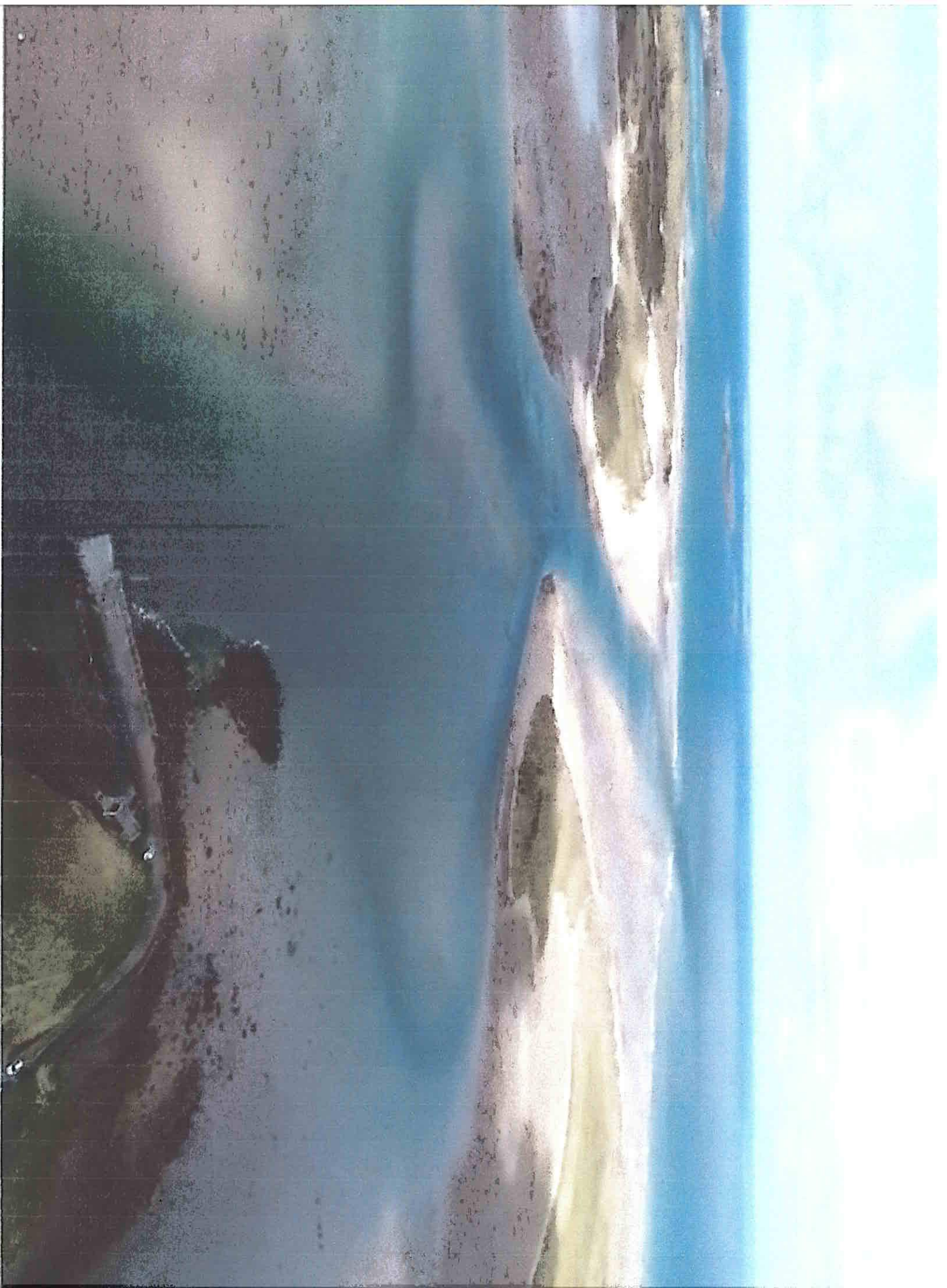
APPENDIX 5

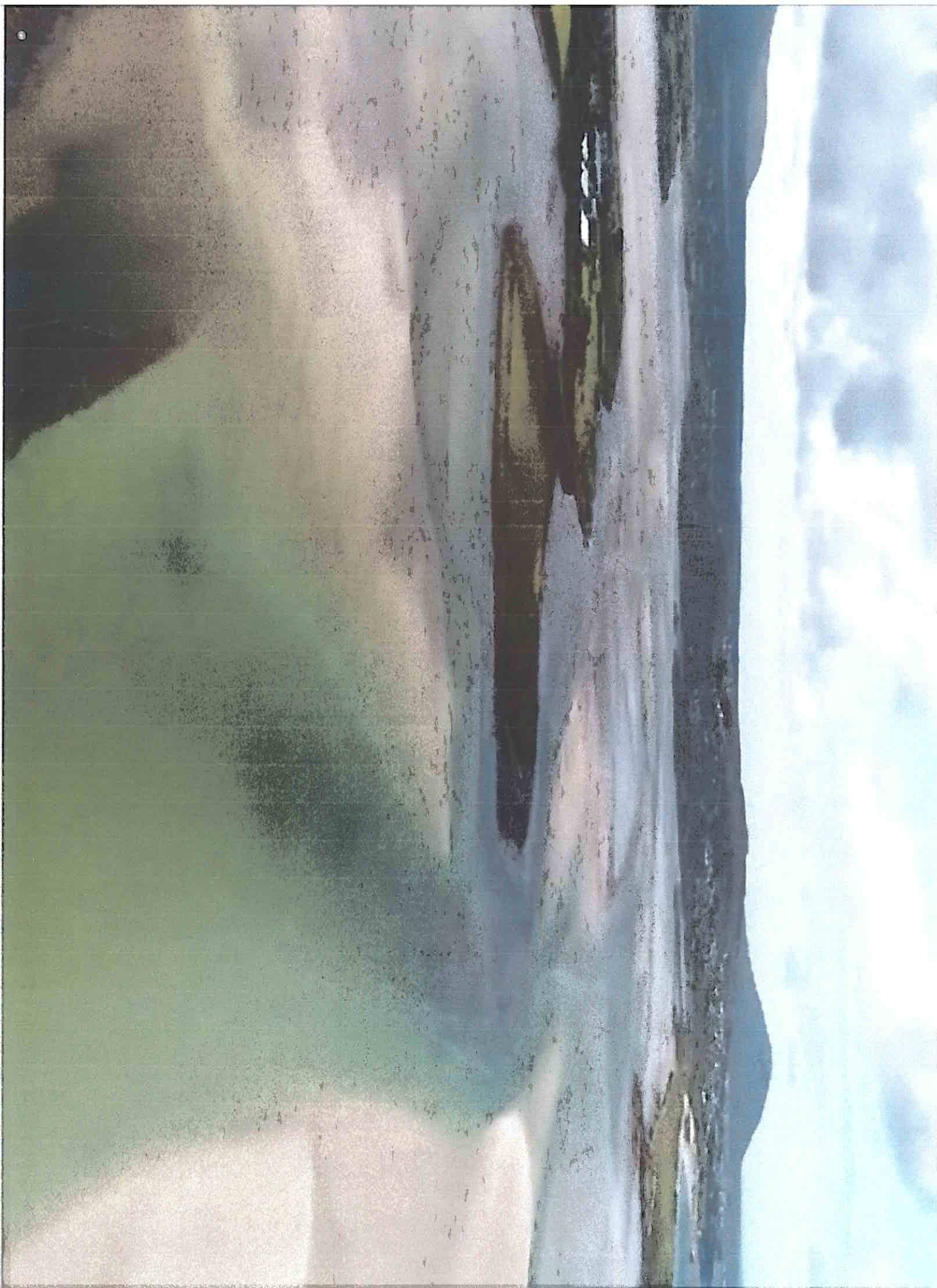
Views of Ballyness Bay











Sortahork

Killult pier

Killult Middle

Killult Lower

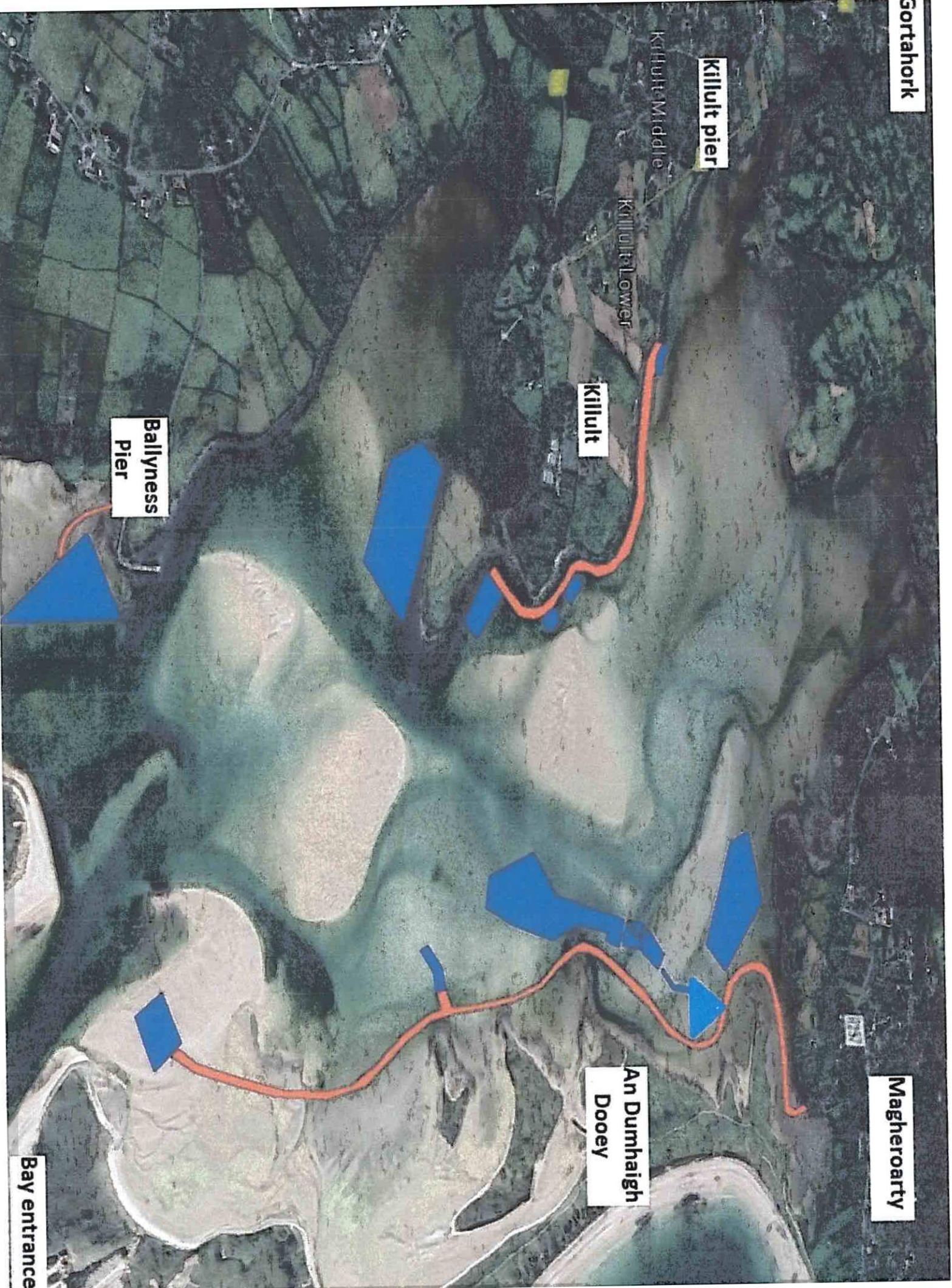
Killult

Ballyness
Pier

Magheroarty

An Dumhaigh
Dooey

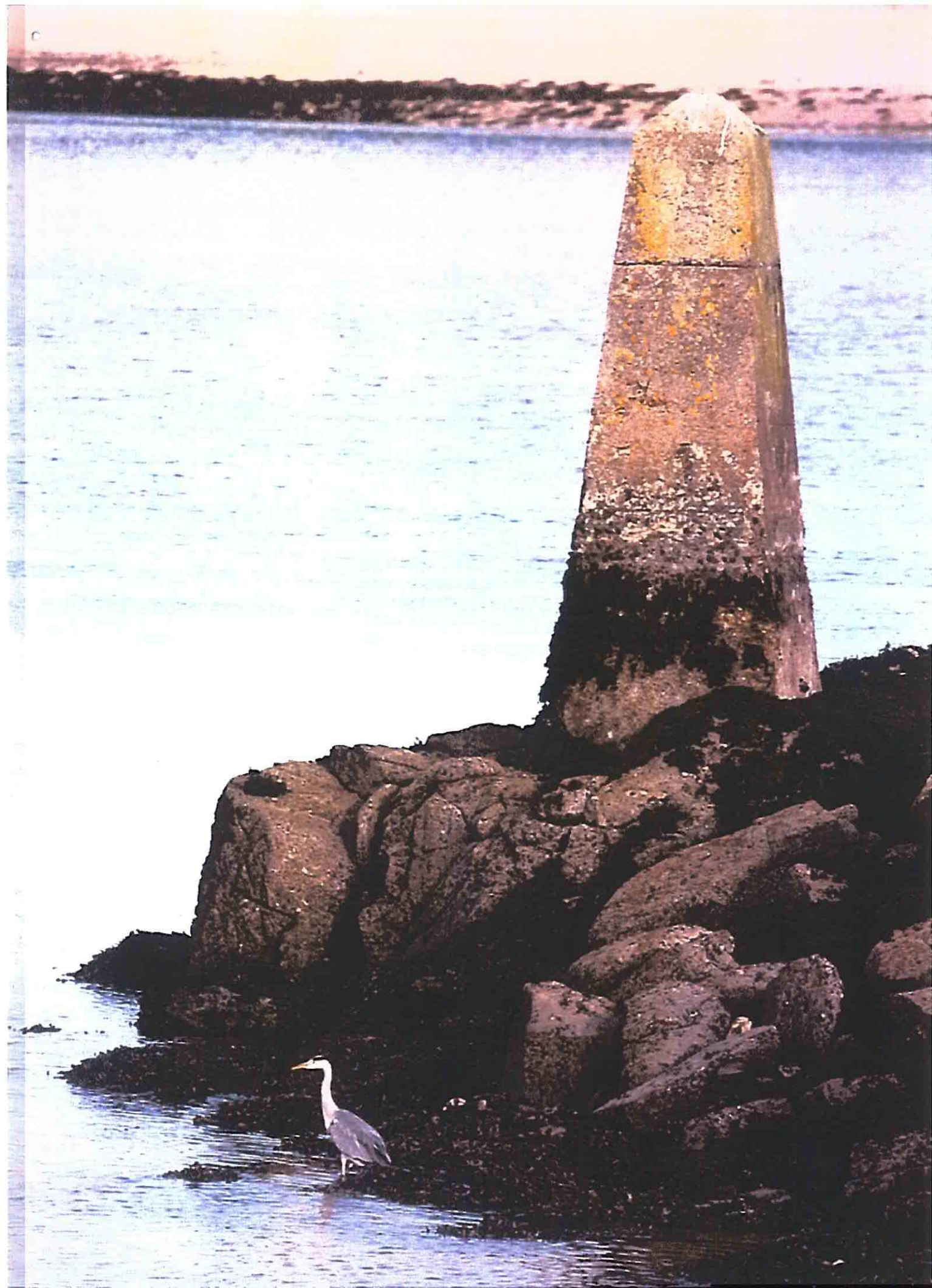
Bay entrance



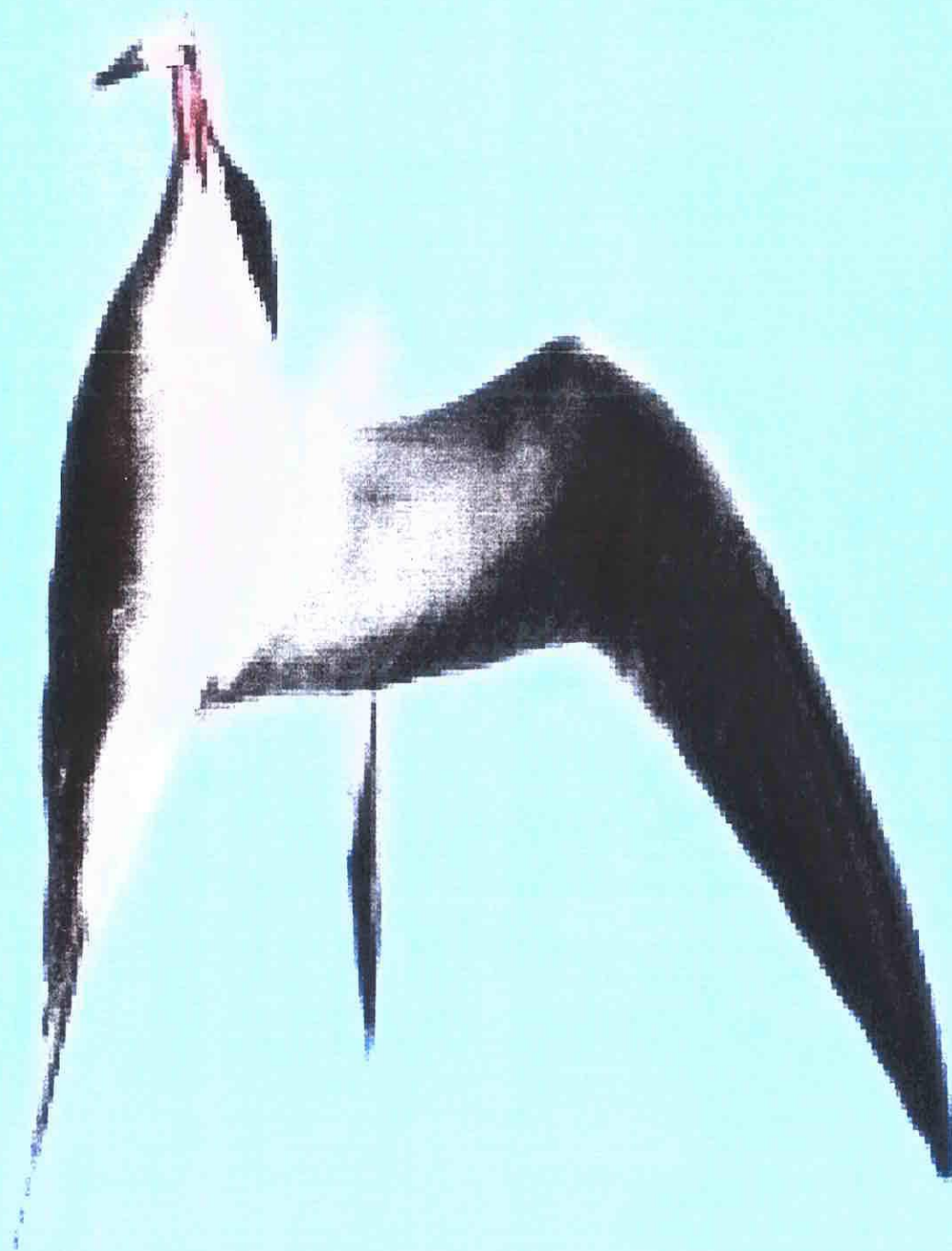
APPENDIX 6

Examples of wildlife found in Ballyness Bay.

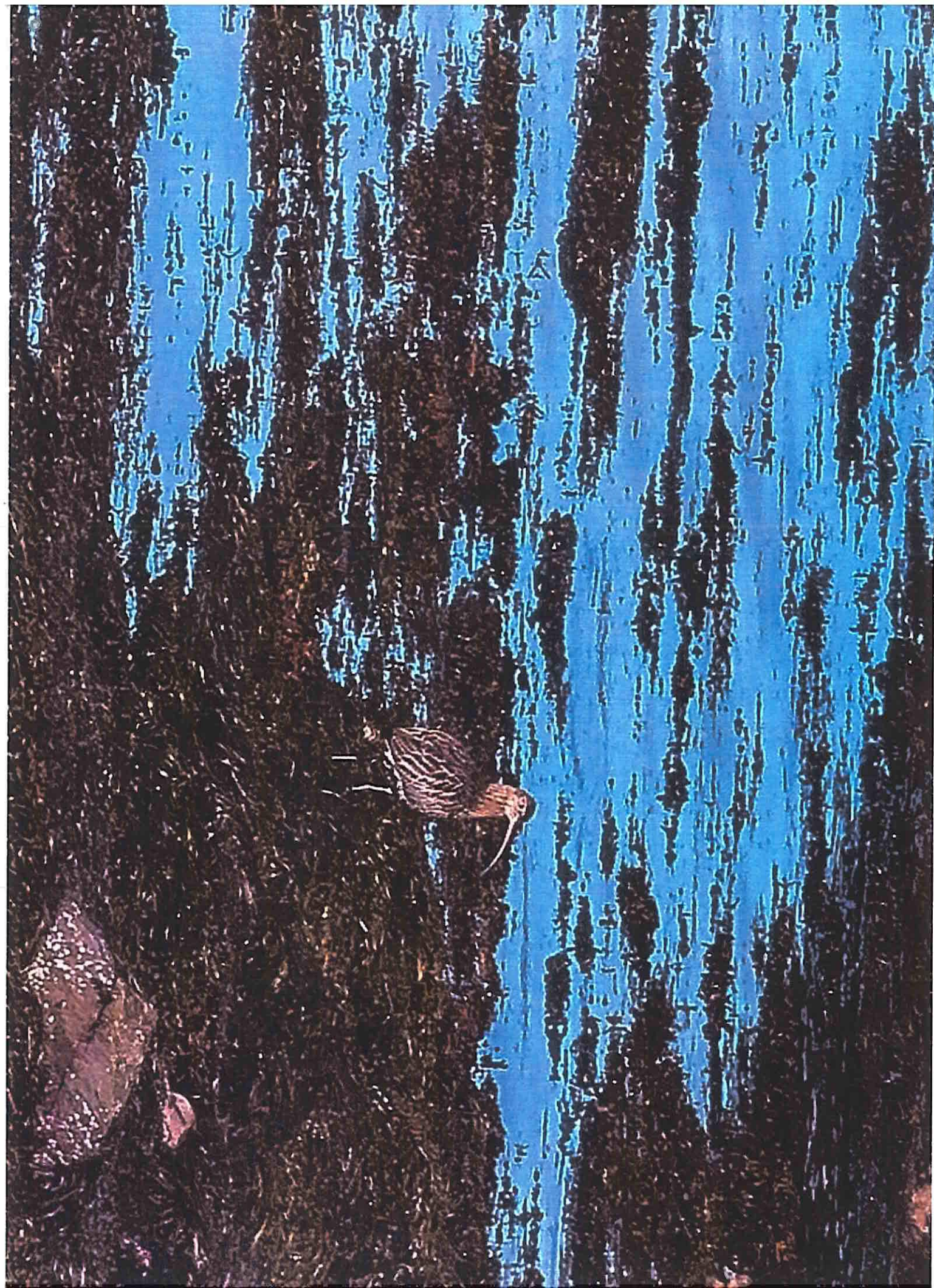










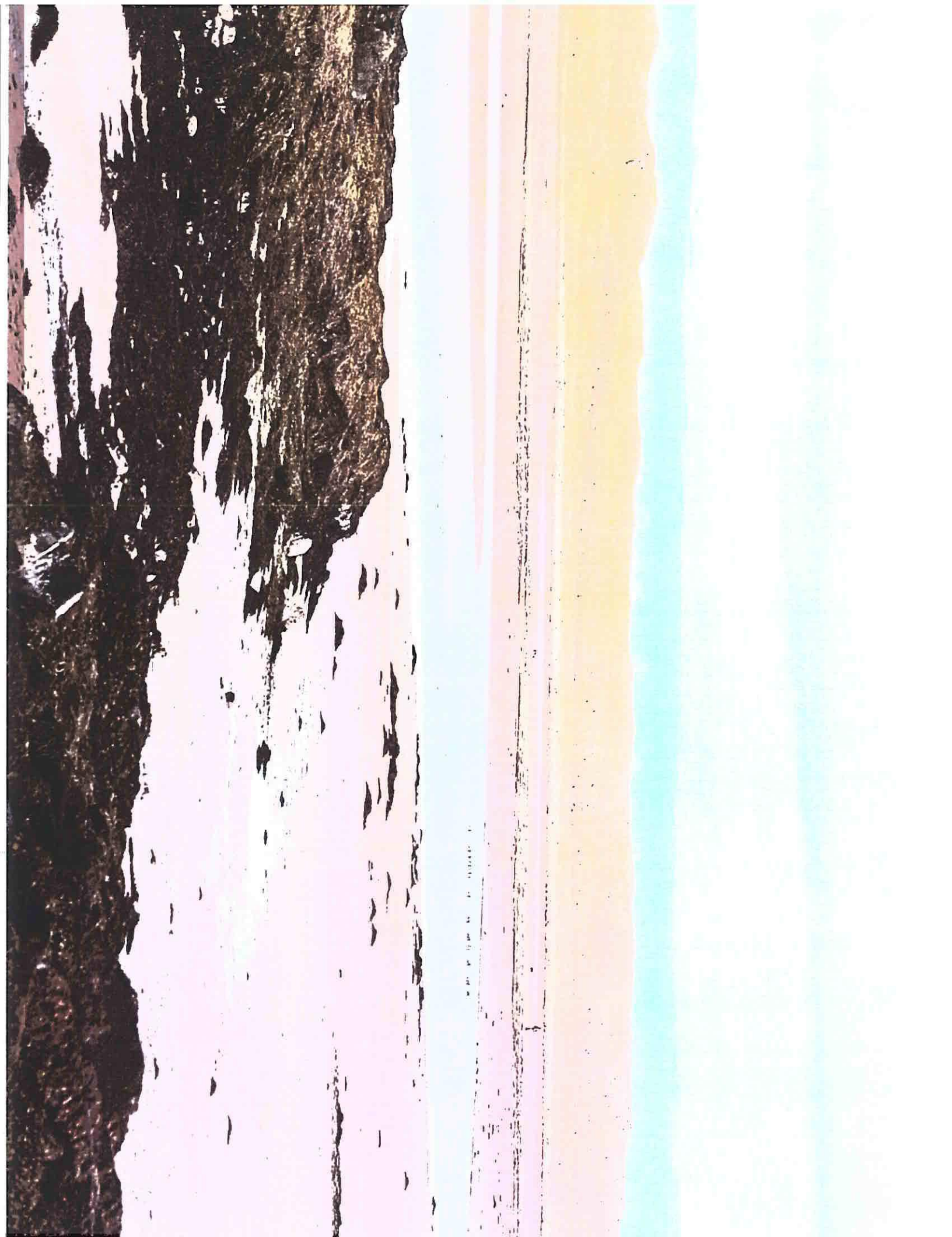




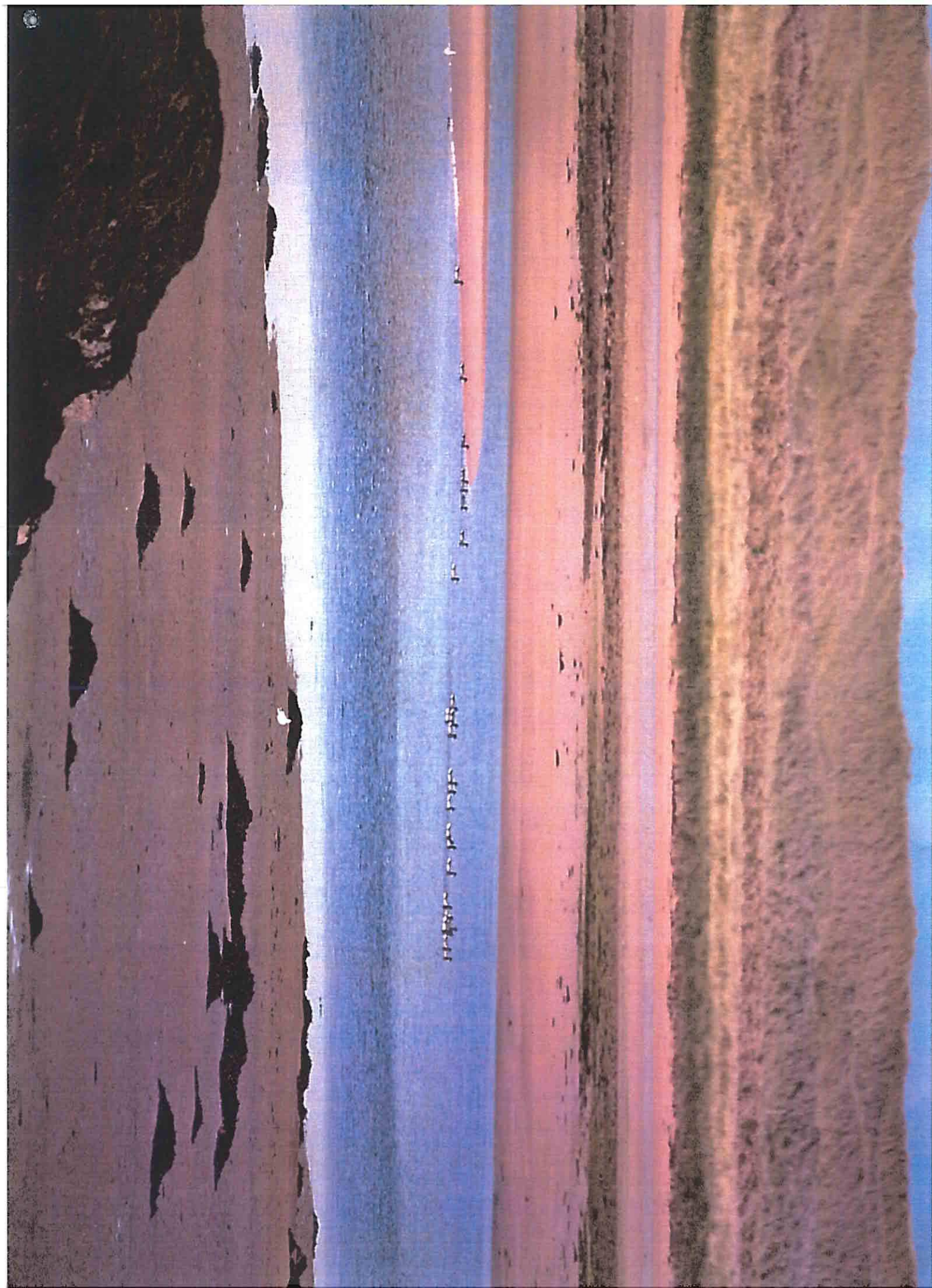












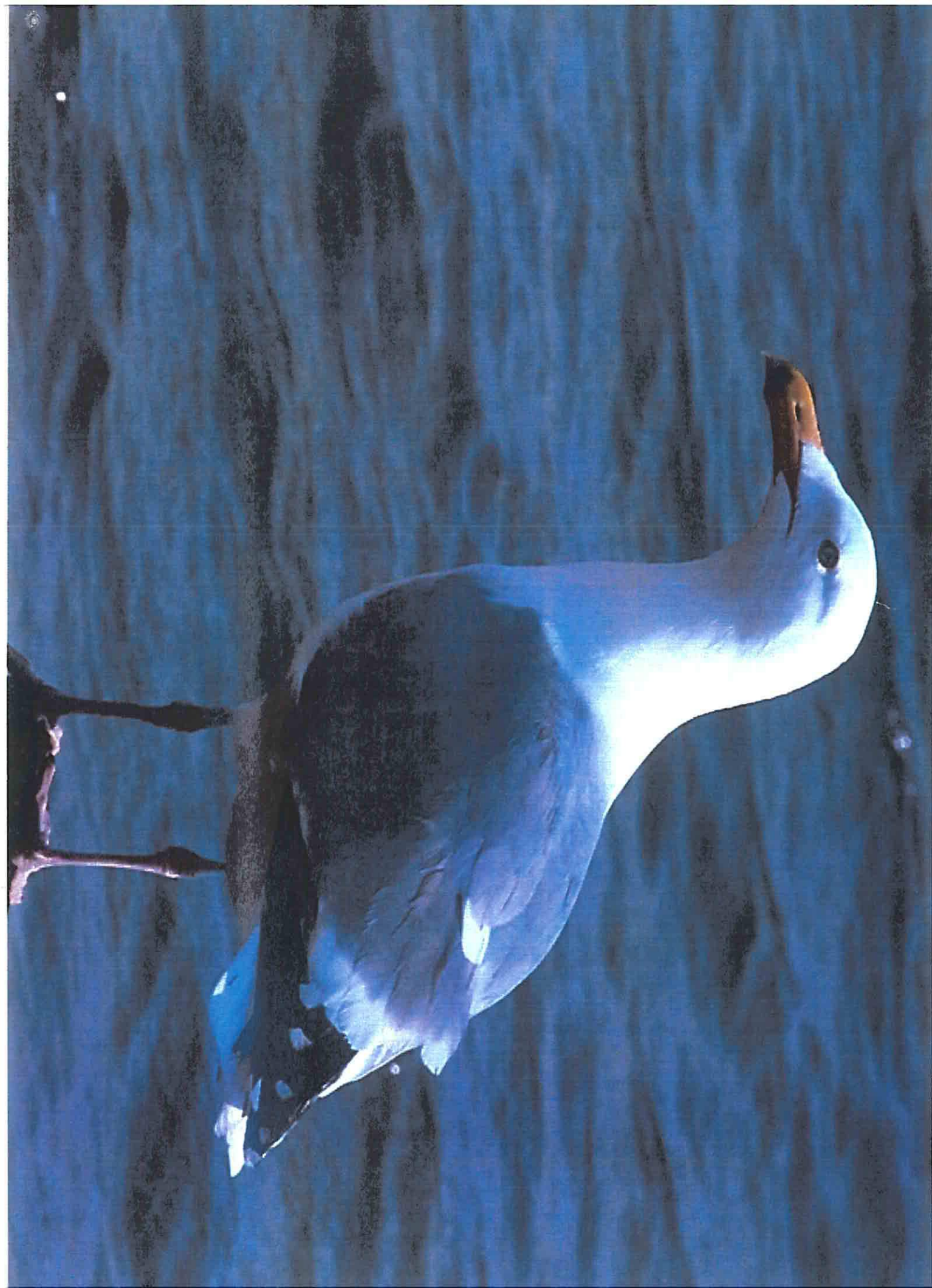












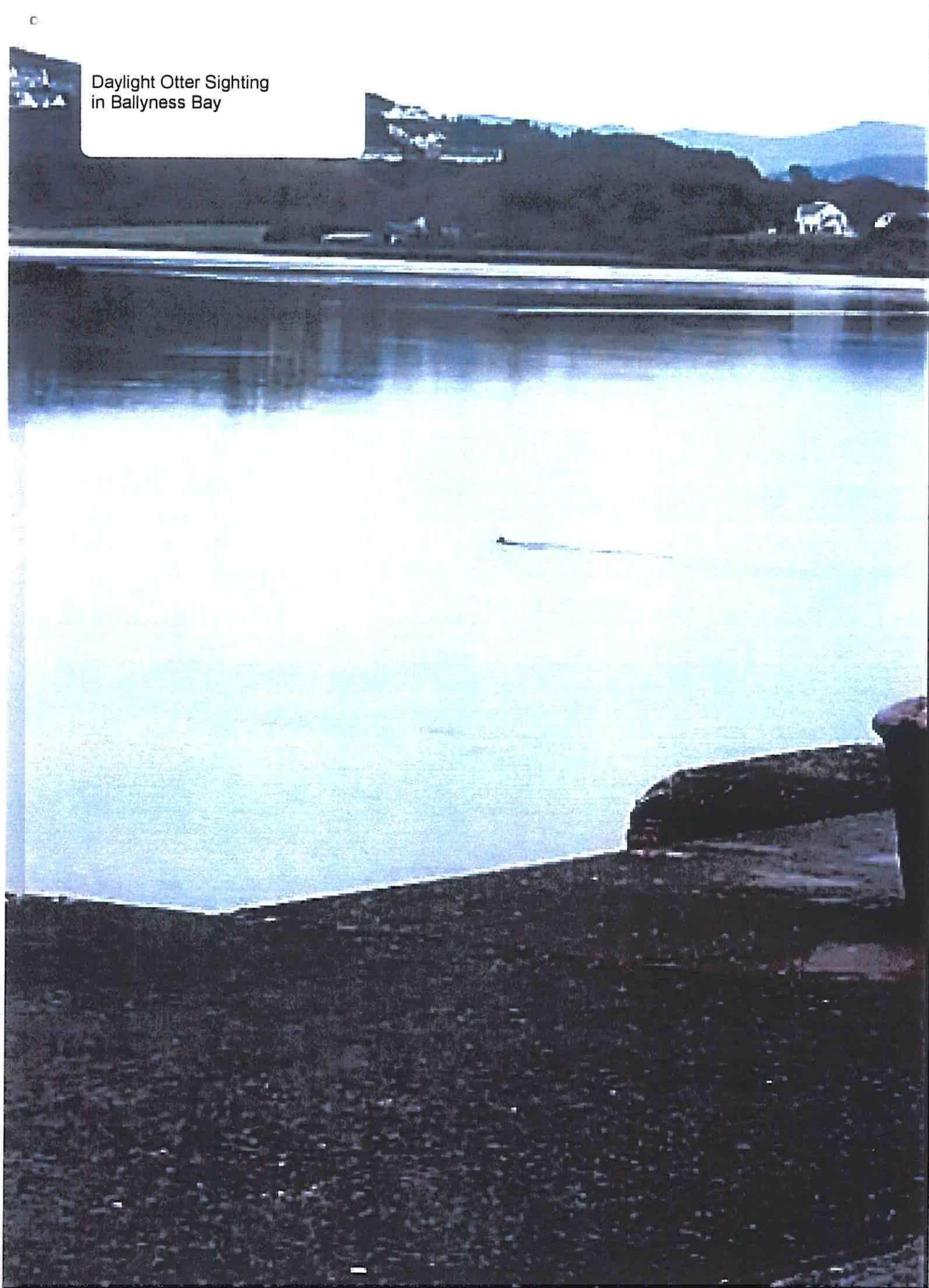
APPENDIX 7

Daylight observations of otter activity in Ballyness Bay.

Daylight Otter Sighting
in Ballyness Bay



Daylight Otter Sighting
in Ballyness Bay



Daylight Otter Sighting
in Ballyness Bay



APPENDIX 8

Maps and photographic evidence of seal haul out locations in Ballyness Bay.

Seal Haulout location

Map used in "Report" to support refusal of licence for

Map 1

- Oyster and Clam Applications
- Oyster Applications

Observed seal haul-out location.

508A

0 0.25

Kilometers



Seal Haulout location

Seal haul out sites not listed in
Appropriate Assessment.

Map Showing radial distances between
seal haul out points and approved sites

Map 2

Observed seal
haul-out location.

— Oyster and Clam Applications
■ Oyster Applications

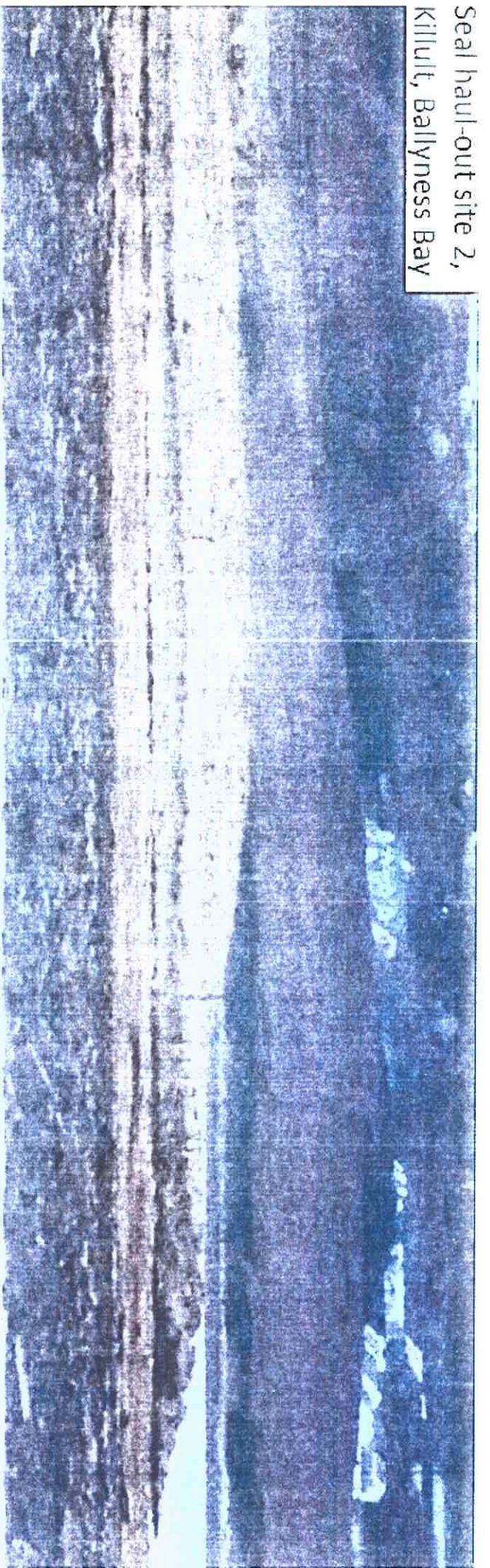
0 0.25
Kilometers



Seal haul out sites, Ballyness Bay Map 3

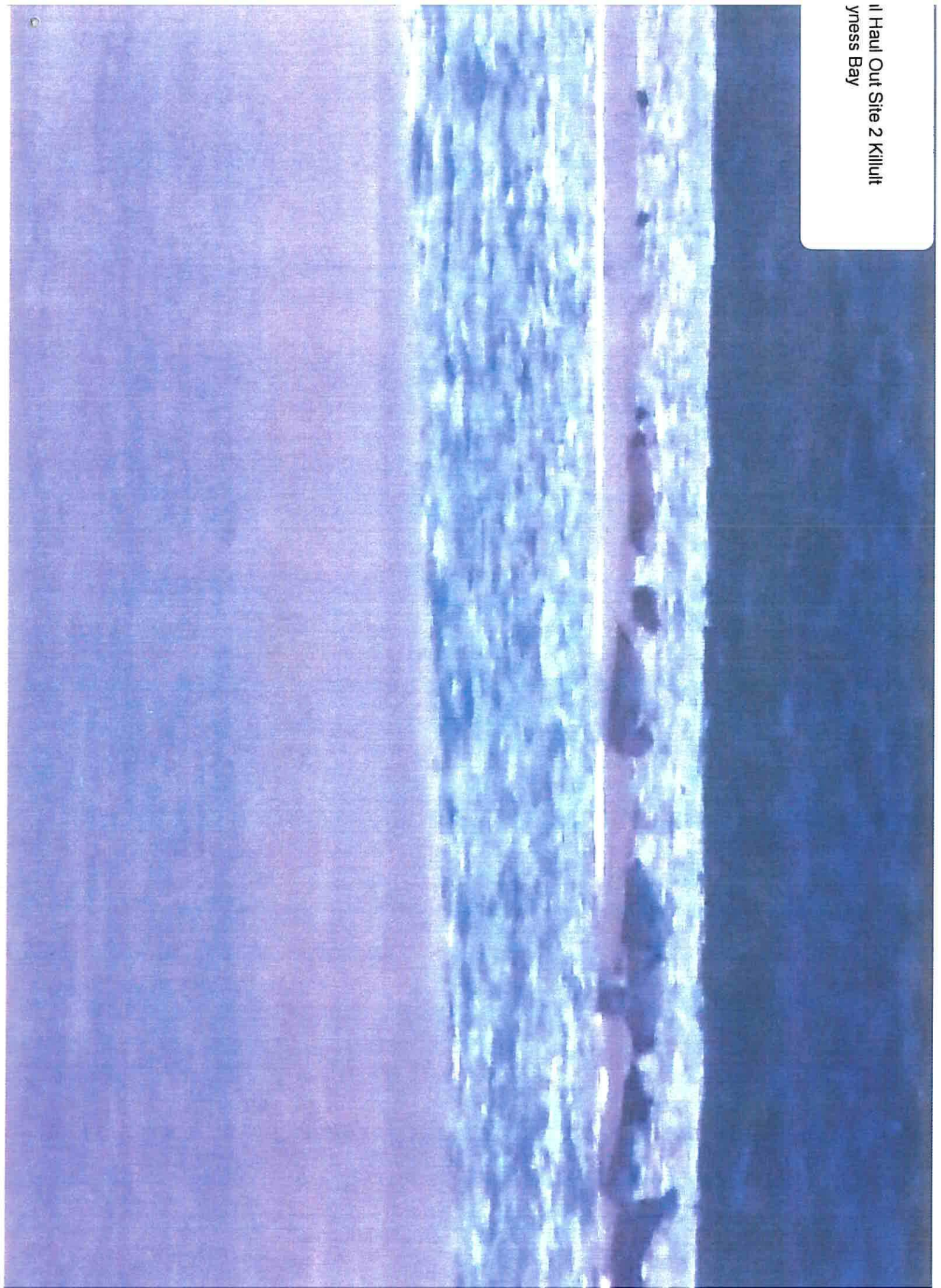


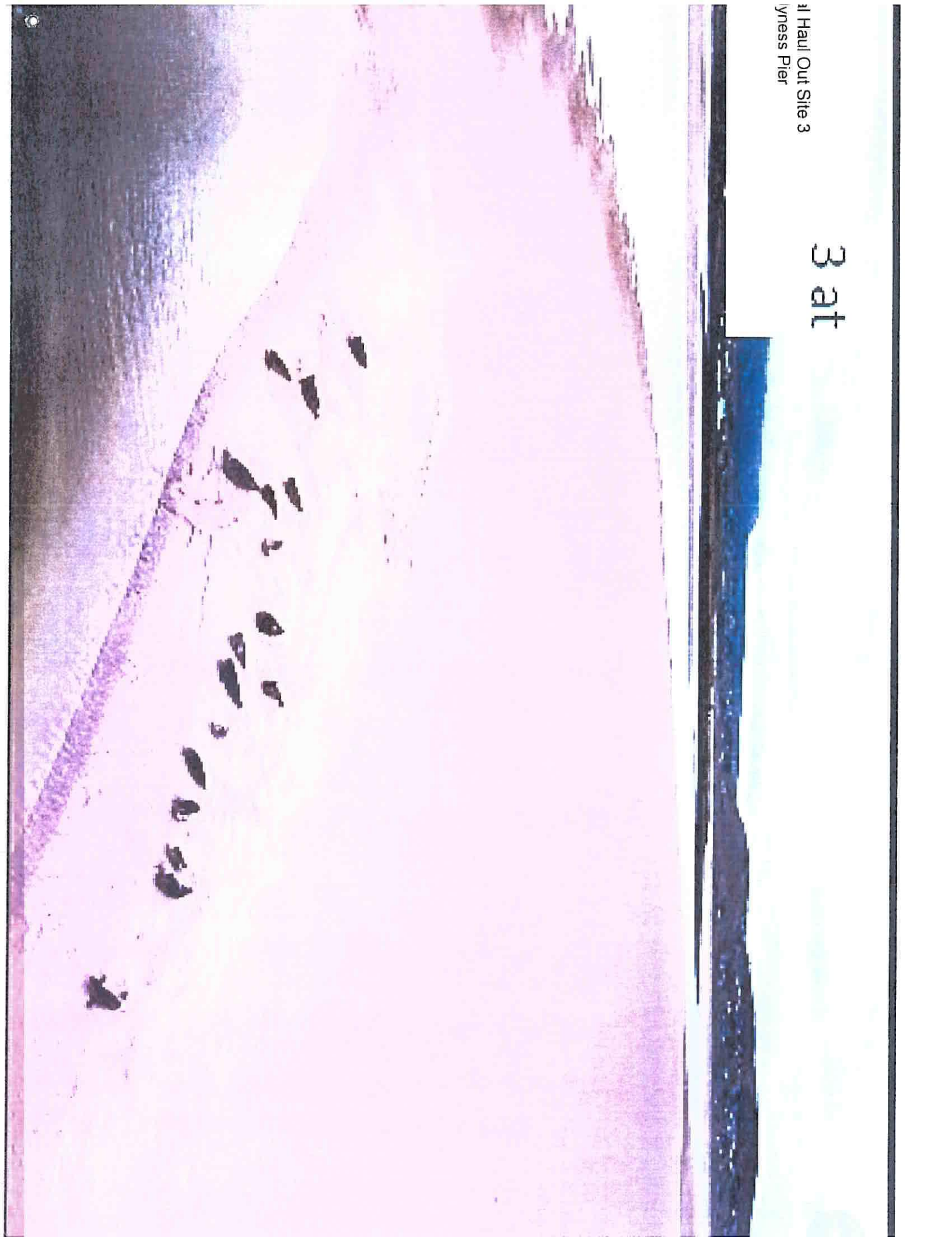
Seal haul-out site 2,
Kilcult, Ballyness Bay



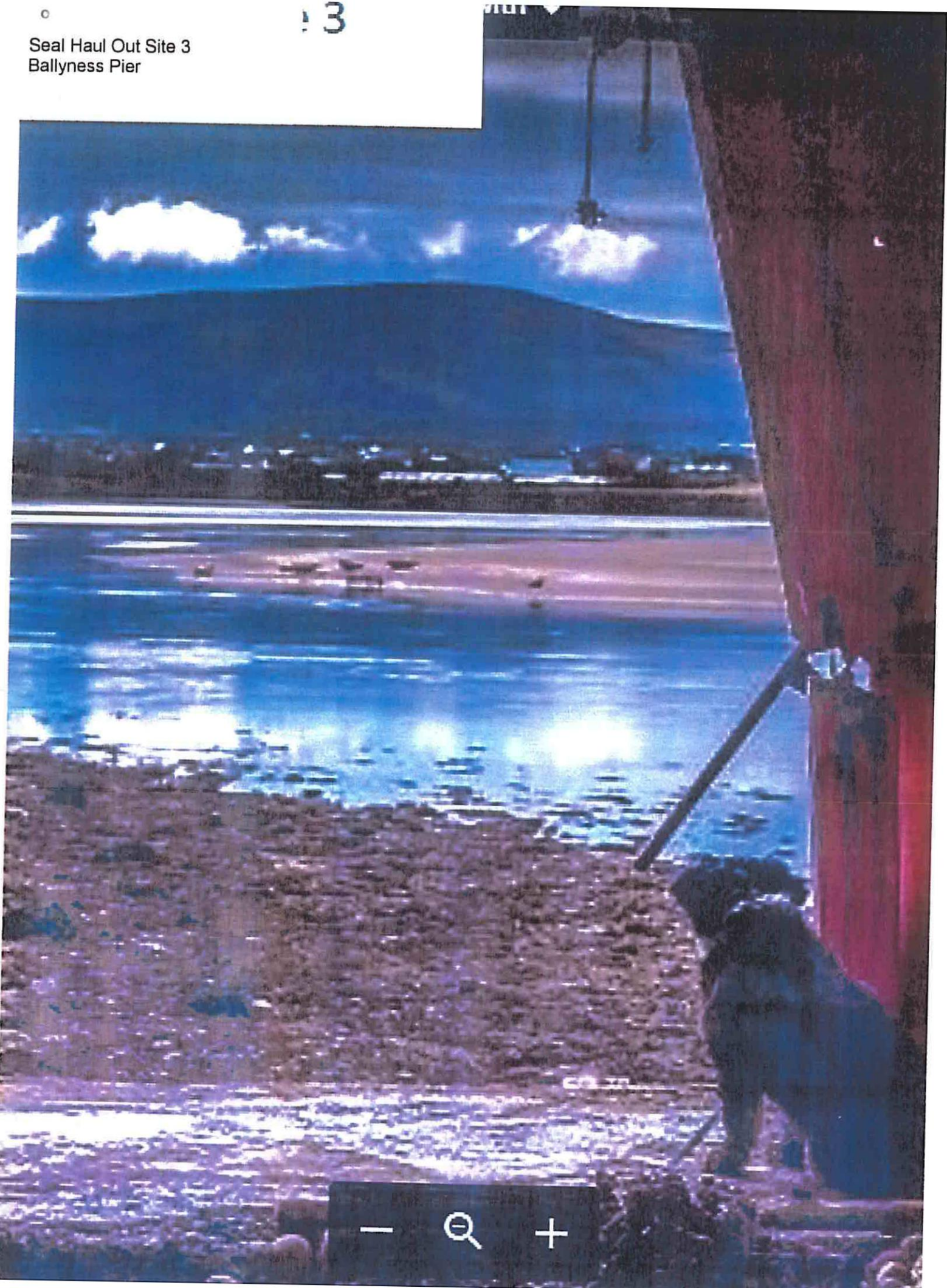
SEAL HAUL-OUT SITE 2

il Haul Out Site 2 Killuit
yness Bay





Seal Haul Out Site 3
Ballyness Pier



Seal Haul Out 4
Black Rock

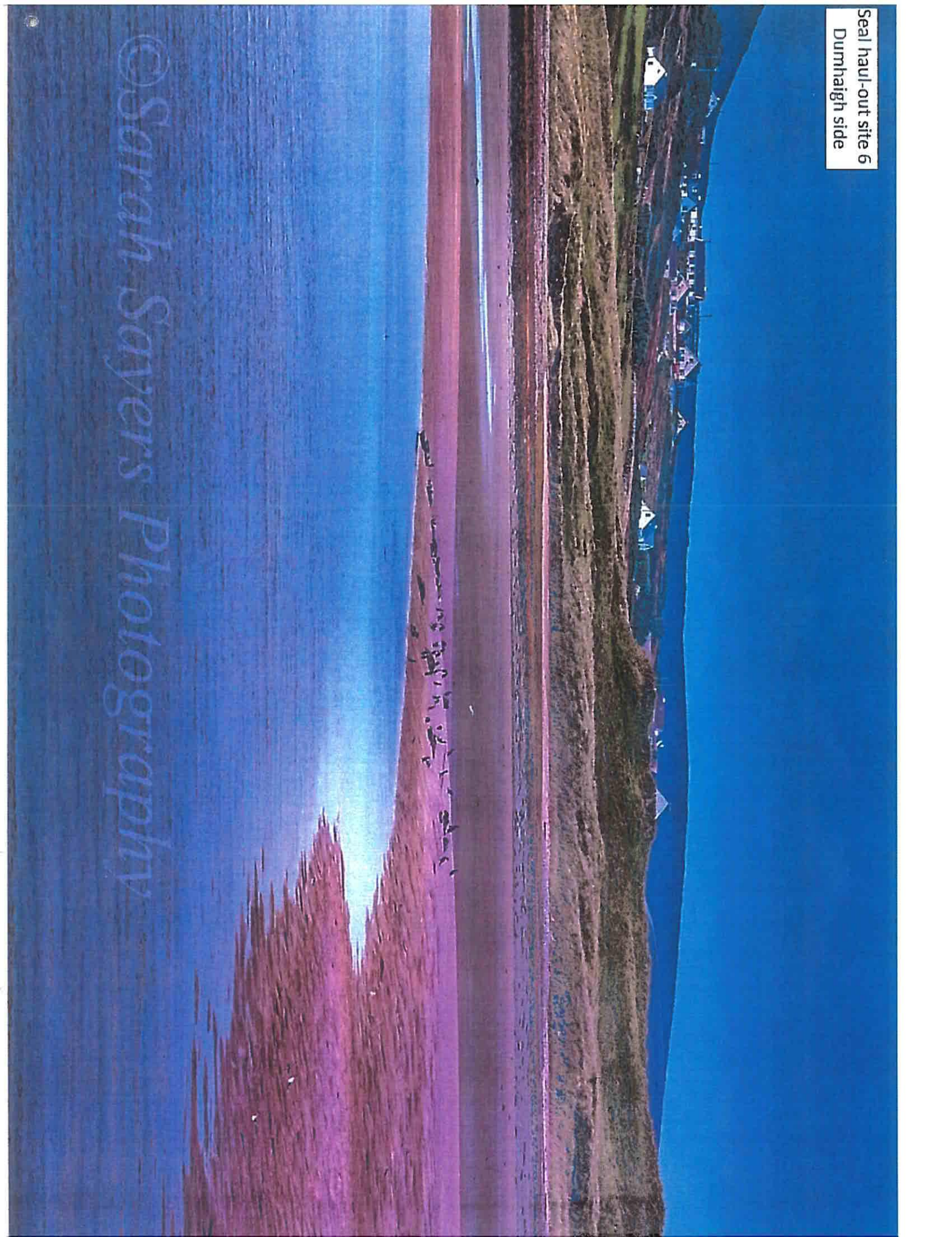
4 at

Rock, Ballyness Pier

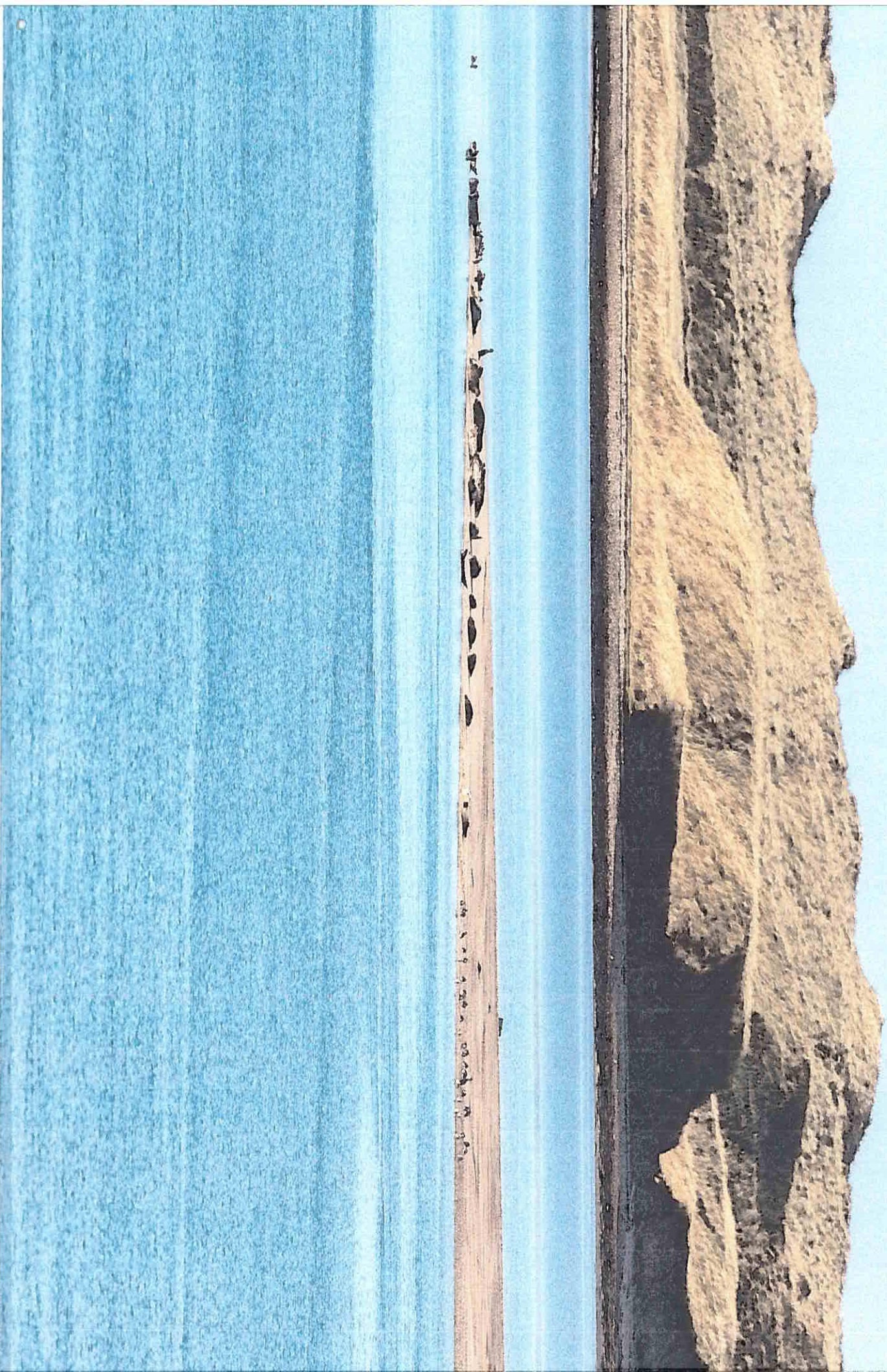


Seal haul-out site 6
Durnhaigh side

©Sarah Sayers Photography

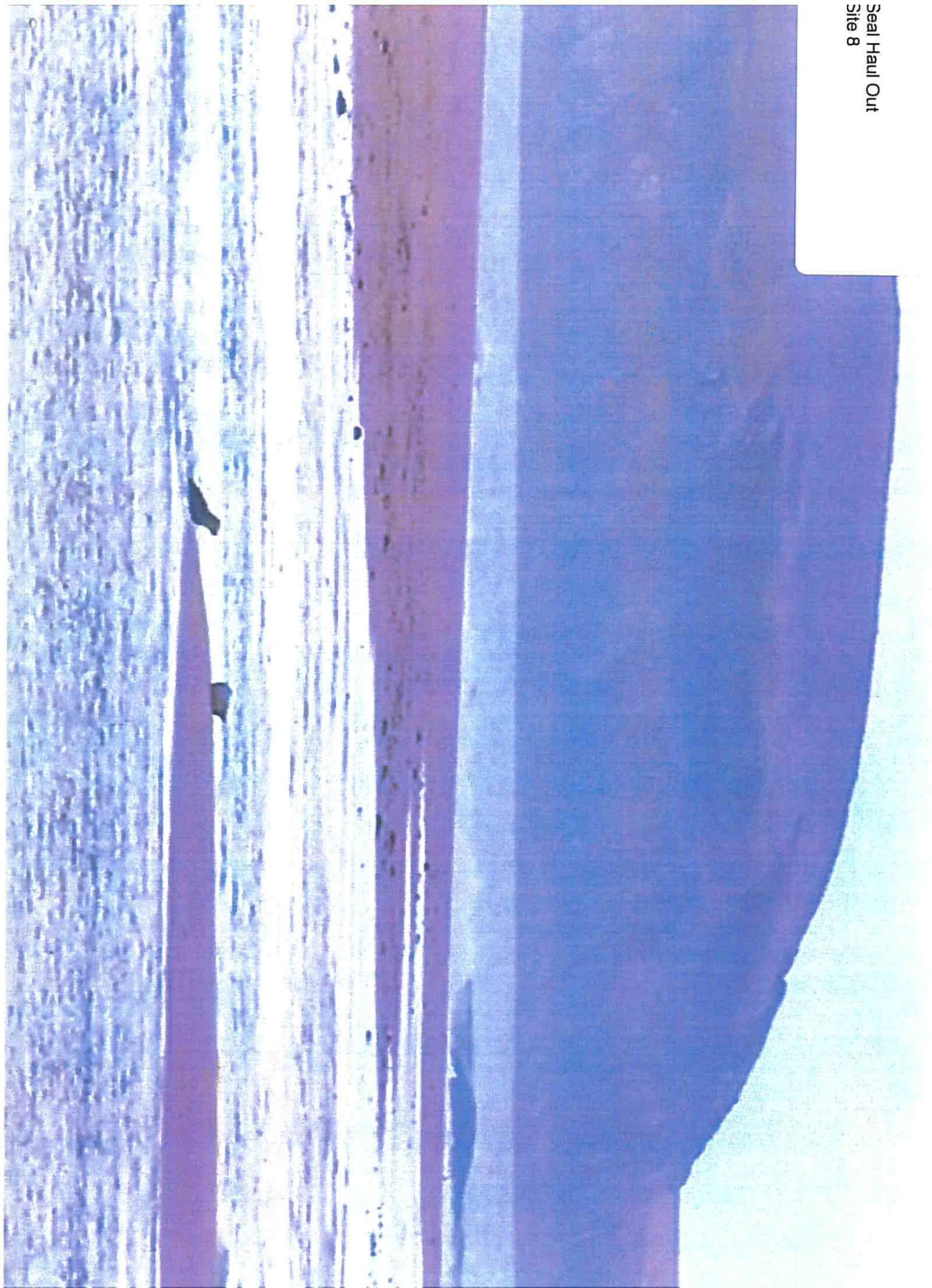


al haul-out site 7
agheroarty side



21

agheroarty side



WINDSURFERS
IN AREA OF SITE 510A



APPENDIX 9

Receipts of rates paid on Ballyness Several Fishery.

STATEMENT



Mr Francis Carr
c/o Peter Butler
Ballyconnell
Letterkenny
Co Donegal (Rate No.21)

PAGE 1
DATE 12 December 20

Station Road,
Ballyshannon,
Co. Donegal

A/C NO. 000863

TELEPHONE: 00353 71 9851435

Email:joan.kelly@fisheriesireland.ie

REMITTANCE ADVICE



ENQUIRIES AND PAYMENTS TO:-

Station Road,
Ballyshannon,
Co. Donegal

TELEPHONE: 00353 71 9851435

Email:joan.kelly@fisheriesireland.ie

PAGE 1

DATE 12 December 2017

A/C NO. 000863

**PLEASE DETACH AND RETURN
WITH YOUR PAYMENT
INDICATING ITEMS PAID BELOW**

DATE	TRANSACTION NO.	TRANSACTION VALUE	TRANSACTION BALANCE	TRANSACTION NO.	TRANSACTION BALANCE	TICK ITEMS PAID
31-May-10	9900001800	315.94	315.94	9900001800	315.94	
22-Sep-10	1100000348	316.24	316.24	1100000348	316.24	
1-May-11	1100001722	316.24	316.24	1100001722	316.24	
1-Sep-11	1100003107	315.94	315.94	1100003107	315.94	
1-May-12	1100004511	316.09	316.09	1100004511	316.09	
16-Sep-12	1100005789	316.09	316.09	1100005789	316.09	
1-May-13	1100007179	316.09	316.09	1100007179	316.09	
1-Sep-13	1100008436	316.09	316.09	1100008436	316.09	
1-May-14	1100009804	316.09	316.09	1100009804	316.09	
16-Sep-14	1100011046	316.09	316.09	1100011046	316.09	
1-May-15	1100012404	316.09	316.09	1100012404	316.09	
1-Sep-15	1100013678	316.09	316.09	1100013678	316.09	
1-May-16	1100015053	331.86	331.86	1100015053	331.86	
16-Sep-16	1100016302	331.86	331.86	1100016302	331.86	
1-May-17	1100017654	331.86	331.86	1100017654	331.86	
1-Sep-17	1100018915	331.86	331.86	1100018915	331.86	

AGED ANALYSIS euro

Current	0.00	TOTAL DUE euro 5,120.52
31-60	0.00	
61-90	0.00	

TOTAL DUE		TOTAL REMITTED	
euro	5,120.52	euro	

APPENDIX 10

Notes on the Precautionary Principle

THE PRECAUTIONARY PRINCIPLE:

From: EU Guidance Document on The Implementation of the Birds and Habitats Directives in estuaries and coastal zones

Pg 33: 3.4. Dealing with uncertainties: adaptive management

In carrying out appropriate assessments for plans or projects in the sense of Article 6(3) of the Habitats Directive, it may be necessary to take recourse to **the precautionary principle**. The focus of the assessment should be on **objectively demonstrating, with supporting evidence, including undertaking the necessary studies, and based on best available scientific knowledge, that there will be no adverse effects on the integrity of the Natura 2000 site**. However adaptive management also helps to address situations when, because of science limits or uncertainty about the functioning of complex and dynamic ecosystems, it is not possible for the competent authorities to fully ascertain the absence of adverse effects.

When the absence of significant adverse effects of a plan or a project on a Natura 2000 site cannot be ascertained, the derogation scheme under article 6.4 of the Habitats Directive foresees that the plan or project can only be authorised in the absence of alternative solutions, if the plan or project is justified by imperative reasons of overriding public interest and if the necessary compensatory measures are undertaken to protect the overall coherence of the Natura 2000 network.

Pg44: **Precautionary principle**: where scientific evidence is insufficient, inconclusive or uncertain and there are indications through preliminary objective scientific evaluation that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the chosen level of protection, lack of scientific knowledge shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (Rio Declaration, 1992 & EC, 2000).

MITIGATION

From: Dept of Environment, Heritage and Local Government's Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities

Pg27: **Stage 1 - Screening for Appropriate Assessment**

Screening should be undertaken without the inclusion of mitigation, unless potential impacts clearly can be avoided through the modification or redesign of the plan or project, in which case the screening process is repeated on the altered plan. The greatest level of evidence and justification will be needed in circumstances when the process ends at screening stage on grounds of no impact.

Stage 2 - Appropriate Assessment

This stage considers whether the plan or project, **alone or in combination with other projects or plans**, will have adverse effects on the integrity of a Natura 2000 site, and includes any mitigation measures necessary to avoid, reduce or offset negative effects. **The proponent of the plan or project will be required to submit a Natura Impact Statement (*did they?*), i.e.** the report of a targeted professional scientific examination of the plan or project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of the site's conservation objectives, **taking account of in combination effects**. This should provide information to enable the competent authority to carry out the appropriate assessment. If the assessment is negative, i.e. adverse effects on the integrity of a site cannot be excluded,

then the process must proceed to Stage 4, or the plan or project should be abandoned. The AA is carried out by the competent authority, and is supported by the NIS.

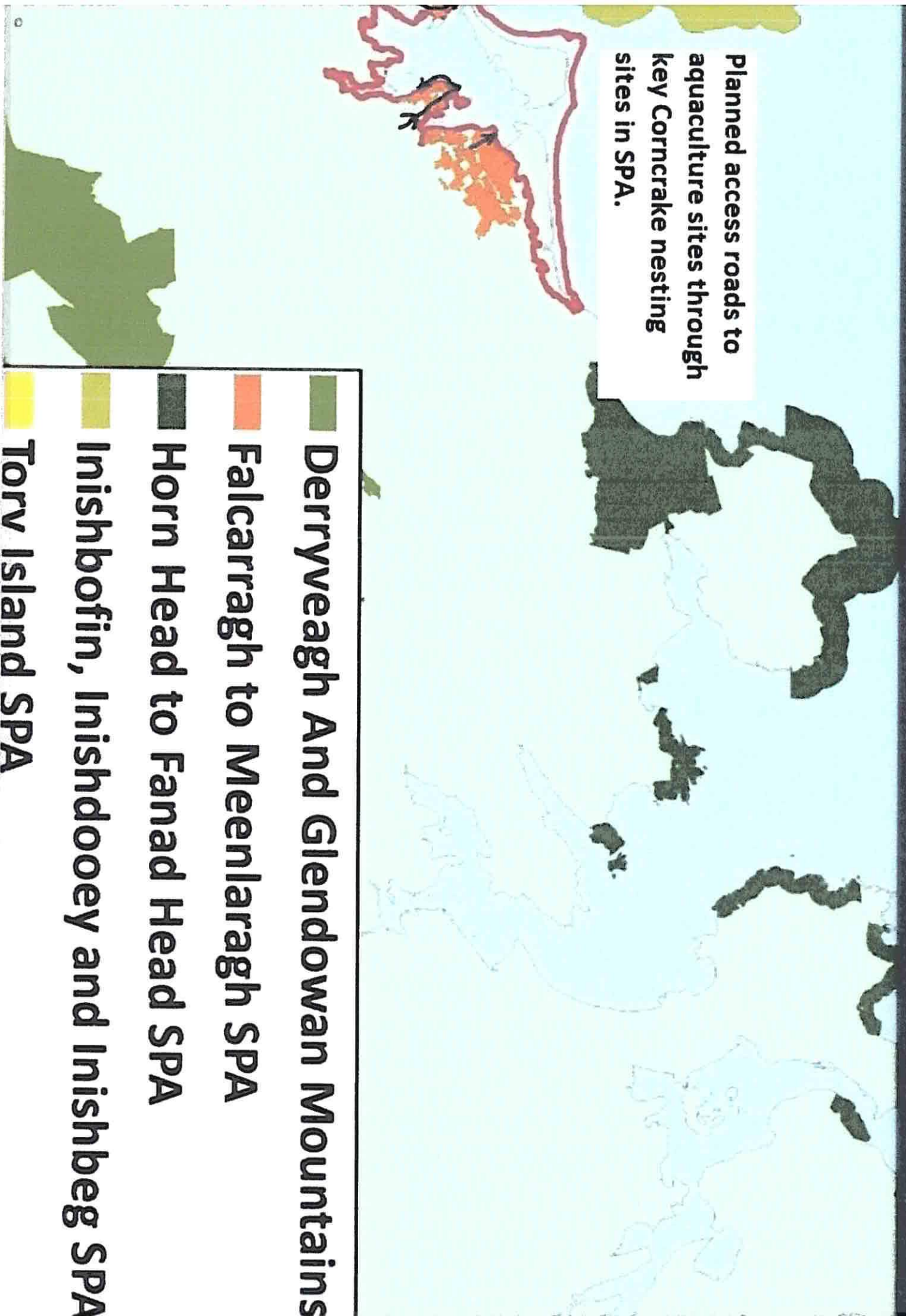
3.3.5 AA - Mitigation Measures

If mitigation is possible that enables a risk to be **avoided fully**, then, subject to other necessary approvals, the project or plan may proceed. If mitigation measures are insufficient, or are **not actually practicable and achievable to avoid the risk entirely, then, in the light of a negative assessment, the plan or project may not proceed. A wider search for alternative solutions may need to be considered – Stage 3.**

APPENDIX 11

Map showing proposed access roads to aquaculture locations through key
 corncrake nesting sites in SPA.

Planned access roads to aquaculture sites through key Corncrake nesting sites in SPA.



Derryveagh And Glendowan Mountains

Falcarragh to Meenlaragh SPA

Horn Head to Fanad Head SPA

Inishbofin, Inishdooley and Inishbeg SPA

Torv Island SPA

APPENDIX 12

Document submitted to the Aarhus Convention Compliance Office

An Appeal to the Aarhus Convention Compliance Office

On behalf of the “Save Ballyness Bay” group, Falcarragh, Co Donegal, Ireland

Explanatory notes:

To link incidents of alleged non-compliance in the text to the relevant Articles in the Convention we have used the follow method.

1. “Aarhus Article x.x.” written in red, indicates the article in the “*Aarhus Convention*” that we suggest has not been complied with.
eg. “Aarhus Article 6.4 (d) (i)”
2. “(MRPEPP) A40c.ii” written in blue, indicates an article in one of the two chapters,
 (a) ”General recommendations” e.g. “(MRPEPP) F16
 or
 (b) “Public Participation in decision-making on specific activities (article 6)”, e.g “(MRPEPP) D62c.
 in
 “*Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention.*”

that we suggest has not been complied with.

3. Annex X, written in Green, refers to the corresponding numbered item in the Annex.

0

1.

Save Ballyness Bay Action Group

Killult, Falcarragh, Co. Donegal, Ireland. F92 N6X6

Contact person: John Connaghan, Chairman. Ph. 00 353 74 9135712

Email: muckishman@gmail.com

11. Minister Michael Creed, Minister for Agriculture, Food and the Marine, Ireland. (hereafter DAFM). Also Ms. Josepha Madigan, Minister for Culture, Heritage and the Gaeltacht and its sub department, National Parks and Wildlife. (NPWS)

111 13 Aquaculture Licence applications for licensing commercial Aquaculture production activities (Oysters and Clams) throughout Ballyness Bay, currently with the Minister of Agriculture Food and the Marine, Ireland, i.e. Nos T12/ 407,409,441,455,500,502,508,509,510,514,515,516 and 519

Background Information

Ballyness Bay, situated in North West Donegal, Ireland, is a scenic, largely sandy, tidal estuary to several rivers and streams. The entire bay area has been a designated Special Area of Conservation (SAC) 001090, since 2018. Within the bay some areas have also been designated as Special Protected Areas, (SPA)004149. The bay is an important over-wintering, feeding and breeding area for a wide variety of wildlife both resident and migratory. Of special note are the Corncrake, Curlew, Chough, Brent, Barnacle and Grey geese, Eider and many other varieties of duck and waders and Geyer's Whorl Snail. Some of these species are on the Protected and Redlisted Species lists.

One of the rivers discharging into the estuary, the Tullaghobegley, is a habitat of the endangered and EU protected Fresh Water Pearl Mussel

Not alone is the Bay of immense environmental importance but is also of great importance as a vital local amenity, much used by the surrounding community for healthy outdoor activities that have existed harmoniously with its wildlife for many years.

In a survey of employment in the area, carried out by the local Community, employers stated that 213 out of the 377 jobs in the surrounding area are primarily tourist related. Tourists visit the area mainly for its scenic beauty and unspoiled character. That will change drastically if the Aquaculture licences being applied for are granted and shellfish production takes over and changes the whole character of the Bay. That will be to the detriment of the local Community, Wildlife, the SAC and SPA.

There is real concern locally for the sustainability of jobs and for the economy of the area.

Under the Irish Government, Aquaculture and Foreshore licensing is handled by Minister Creed of the Department of Agriculture Food and the Marine. (DAFM). The protection of SAC and SPA areas is entrusted to the National Parks and Wildlife Service (NPWS) under the Minister for Culture, Heritage and the Gaeltacht.

We, the Committee of Save Ballyness Bay, contend that there have been several shortcomings in the way the Applications process is being handled by the Govt. Department.

We also contend that the spirit and regulations of the Aarhus Convention on Consultation with the Community have not been followed.

Foreword.

Of primary importance is the fact that Ballyness Bay is **NOT** listed as a “Designated Shellfish Area” by the Dept. of Housing, Planning and Local Government under Irish legislation. cf.

<https://www.housing.gov.ie/water/water-quality/shellfish-waters/donegal>

In its entirety it is a fully designated SAC (001090) and SPA (004149) site. It is entitled to the full range of protective legislation laid down for such by both EU and Irish law.

The various Departments should never have allowed it to reach the stage of considering these Applications for the use of Ballyness Bay SAC / SPA as a possible location for shellfish production.

The “zero option” should have been exercised by the Departments.

We offer a brief outline of the issues below:

1. The Consultation Process.

(a) In late 2017 / 2018 the DAFM notified by letter all those with older unresolved applications for Aquaculture licences to re-apply for licences.

When the applications were received by the DAFM, notifications to be inserted in newspapers alerting the public to such applications were prepared by the DAFM for the Applicants,

[Annex 1](#)

The DAFM.. specified which paper the notices were to be placed in.

As can be seen from the DAFM’s “Foreshore Acts 1933 to 2011- General guidance Notes”, this is the approach that they specify.

[Annex2](#)

*The DAFM.. took control of the notification process.
It effectively acted as an agent for the Applicants.*

2. Newspapers in which Notifications appeared.

(a) The Notifications were placed in the “Donegal Democrat” newspaper on March 14th and March 21st and 26th, 2019

This paper has a very low circulation in the Ballyness Bay area affected by the notifications.

Below are the results of a survey of Newspaper circulation figures for the whole area around Ballyness Bay, which includes Falcarragh town.

Circulation figures:

Donegal Democrat, specified by the DAFM.. versus the popular local newspaper, (Donegal News)

Donegal Democrat (the DAFM.’s choice)		Donegal News (Popular local paper)
In Falcarragh	15	460
Whole of local area	35	645

Aarhus Article 6.2 (d)(ii),
(MRPEPP) D. 63a, 64c, 64d, 64e, 66,
(MRPEPP) E.71b.

Annex 3

3 Content of Notifications

If, despite the small number of “Donegal Democrat” newspapers circulated in the area, some of the public had become aware of the notifications there were further obstacles to the public’s opportunity to partake in the consultation process.

The Notices stated that the Aquaculture and Foreshore licence applications and relevant documents “may be inspected” in the local Garda (ie.Police) station in Falcarragh, and in the Letterkenny Garda station which is 50 Km. distant.

Annex 1

(a) The local Garda station is open on a “restricted hours” basis only, and being a rural station those hours when the station is manned and open to the public are very unpredictable. Garda station staff are often out on call from the station during the displayed opening hours and then, no public access is possible to inspect the documents.

Aarhus Article 6.2
(MRPEPP) D62a, D63a, D63b

The opening hours for the Garda station were not listed on the notices. They are in fact 10am – 1pm, Monday to Saturday.

(b) During the four weeks following publication of the Notices there were four Sundays and a Public Holiday (17th March). Consequently the public had access to inspect the documents for only 24 days.

Taking into account the “restricted hours” of opening in the Garda station, and in the very best scenario where the Garda station could be found open during their full stated opening hours, (which is rarely the case), the public had a total of 72 hours to inspect the documents.

Aarhus Article 6.2. Aarhus Article 6.3 and Aarhus Article 6.4

(MRPEPP) D57, D59, D60, D63a,

(MRPEPP) E72.

(MRPEPP) E“Reasonable and unreasonable timeframes for public participation” p.31

(c) No credible effort was made by the DAFM.. to source alternative locations or methods whereby the documents could have been more easily available to the public.

(MRPEPP) D59, D63a, D64c, D64d, D67

(d) The suggestion that the documents could be inspected in Letterkenny Garda station, involving a round trip of c.100Km, is neither a practical nor a fair option for the public.

Aarhus Article 6.4

(MRPEPP). D64a, b, c, d, and e

4. Options not indicated to the Public.

At no point was the “zero option” as outlined in “(MRPEPP), General Recommendations,” F.16 and G.17 and G.19, indicated as being available as an option to the public.

Aarhus Article 6.4

(MRPEPP “General Recommendations”, F.16 and G.17 and G.19

(MRPEPP) F78c

5. The DAFM Minister’s stipulations regarding the preparation and placement of notices in newspapers.

(a) The DAFM stipulated that they “will prepare the notice and specify the newspapers in which it should be published” Annex 2

(b) They chose, in our case, the local newspaper with the lowest local circulation in areas affected by these applications
Ref. Par. 2 (a) above.

Aarhus Article 6.2 (d)(ii),

(MRPEPP) D63a, 64c, 64d, 64e, 66,

(MRPEPP) E71

Annex 3

This follows a pattern which has emerged with similar applications along the coast where habitually, notifications are placed in low-circulation papers in the areas that are affected.

(c) The DAFM. was well aware from protests to similar earlier applications along the Co Donegal coastline at eg. Linsfort, Braade, etc, where this same approach to publication was taken, that this approach disadvantaged and outraged the public Annex 4, 20, 21, 22

- (d) The DAFM's persistence with this approach ensures that the public interest is being undermined by:
- i. A remarkable lack of effort by the DAFM in establishing the best way to disseminate this information to the local community.
[Aarhus Article 6.2](#)
 - ii. A refusal to correct known shortcomings in the DAFM's handling of the public Consultation process
 - iii. An approach that ensures that while fulfilling their legal requirement of placing a Notice, at the same time allows a situation whereby that notice is seen by the least number of people possible in the communities affected.

Should the latter be the case it would indicate that the DAFM.. is deliberately adopting an approach which results in an unjust bias against the rights of the affected public to fair consultation.

[Aarhus Article 6.2 \(d\)\(ii\)](#), [Aarhus Article 6.3](#), [Aarhus Article 6.4](#).

[\(MRPEPP\) D63a](#).

[Annex 3. 4. 20.](#)

[\(MRPEPP\) Annex "Scoping"](#)

6. Duration of Notices.

Notices also stated that any person might make "written submissions or observation to the Minister.. etc" during a period of four weeks".

[Aarhus Article 6.3](#), [Aarhus Article 6.4](#)

[\(MRPEPP\) D60](#),

[\(MRPEPP\) E72a](#), [D72b](#)

7. The newspaper Notice to alert the public to each Application appeared in only one edition of the "Donegal Democrat" for each batch of applications. It was not published for the four week duration of the consultation process.

8. Language

The Ballyness Bay area is n Irish speaking (Gaeltacht) area. A large section of the local population would cite Irish as their first language and would not be confident in reading or understanding formal text, especially technical terms, in English.

The text of the Notices was all in English.

There was no Irish version supplied.

[\(MRPEPP\) D63c](#)

9. **The Department of Agriculture's response to queries and submissions**

- (a) The local community only became aware of these applications, from another source, in June 2019. This was unfortunately outside the four week window specified by the Minister as admissible for submissions.
- (b) Nevertheless, many queries and submissions were then forwarded to the Minister in the DAFM, etc. by members of the public and other local concerned bodies.
- (c) These submissions received a standard reply from the Minister's Department to the effect that "*the public and statutory consultation phase of the application is now closed and as the application is now currently under consideration by the Department as part of a statutory process it would not be appropriate to comment further on the matter at this time*"

Annex 9

- (d) So, effectively, The Minister is making no allowance for the inadequacies of the his own DAFM's Notification process.
Aarhus Articles 6.2(d)ii, Aarhus Articles 6.3, Aarhus Articles 6.4
(MRPEPP) D60, D62a

10. **The Department of Culture Heritage and the Gaeltacht's response re. the protection of the Ballyness SAC and SPA areas**

- (a) Queries to elicit information regarding that Dept's input into the Aquaculture Licence Application process as related to the SAC /SPA in Ballyness Bay were sent to Minister Josepha Madigan in the Dept. of the Culture Heritage and the Gaeltacht.

A short acknowledgement was received stating that it was the responsibility of the DAFM and that they were referring the query to that quarter.

This reply is difficult to understand considering the Dept. of Culture, Heritage and the Gaeltacht's statutory responsibilities for the care of the Environment, SACs and SPAs, through their sub department, the National Parks and Wildlife Service.

National Parks and Wildlife Service (hereafter NPWS), under control of Minister Madigan's Department of Culture Heritage and the Gaeltacht, have responsibility for the management and protection of SAC and SPA areas under the Irish Government.

- (b) A letter expressing concern was sent to NPWS on 29/5/2019.
No reply has been received to date.

The results of 10 (c) and (a) and (b) above, effectively mean that because the public missed out on the closing date of the notified consultation process there was no further opportunity given to them to access information or contribute their views.

Aarhus Articles 3.2, 3.7 and 3.9.

Aarhus Article 6.2(d)ii, Aarhus Articles 6.2(d)vi.

(MRPEPP) D63a.

(MRPEPP) Annex “Scoping”

11. Scientific Data as presented in the Appropriate Assessment

As part of the Licence Application process, the DAFM in Ireland requested the Marine Institute Ireland to carry out an Appropriate Assessment (AA) rather than a full Environmental Impact Study. Annex 7

- (a) The Marine Institute is funded by the DAFM.
This may constitute a conflict of interest and casts doubts on the independence of the report.

Many of the conclusions reached in the AA appear to be in conflict with various EU Directives, i.e. The Habitats Directive, Birds Directive, “Guidance on Aquaculture and Natura 2000 and EU Habitats”

Also, the Irish Government’s Dept. of Agriculture S.I.416 of 2018 “European Union Habitats (BALLYNESS BAY SPECIAL AREA OF CONSERVATION 001090) REGULATIONS 2018, Schedule 4.

Annex 18, 19,

- (b) Several important critiques of the Marine Institute’s AA by various environmental scientists and concerned bodies are available
Annex 11, 12, 13, 14, and 20 highlighted green)
- i. The DAFM., in holding to their interpretation that the Consultation period had ended, is not allowing this information to be considered.
(MRPEPP), D62c.
- ii. When a policy is being pursued that effectively prevents pertinent information being made available, it can not be accepted that the public have been “notified effectively”
MRPEPP D62a
- iii Proceeding to making a decision, while not taking into consideration all the relevant and available information, cannot be accepted as being in the public interest.
Aarhus Article 6.2, Aarhus Article 6.3, Aarhus Article 6.4
(MRPEPP) D59, 62(c)
(MRPEPP) D74,
(MRPEPP) General recommendations F16.

- (c) References to mitigation measures to reduce or to prevent various damaging environmental effects are alluded to within the text of the AA.
- (i). No details of the mitigation measures are supplied.
Aarhus Article 6.6(c)
- (ii). No AA, as required, covering these mitigation measures is supplied for public inspection.
- (d) No non-technical summary of the above is supplied.
Aarhus Article 6.6(d)
- (e) *Crassostrea Gigas* (*Pacific Oysters*) are a non native species. It is stated in the applications that Triploid or genetically modified version of these Oysters are to be used if these Applications are granted.

Much information is now available to indicate that a certain percentage of these triploid Oysters revert to a breeding habit and have invaded and colonised bays in up to 17 separate locations in Ireland, England and elsewhere, causing huge environmental damage. Eg. "The Dynamics of Environmental Sustainability and Local Development: Aquaculture" A study for NESC, Patrick Bresnihan Assistant Professor of Environmental Geography No. 143 April 2016, Part 1, Ch 3, pps. 62-67
Annex 11, 12, 16, and 17.

This information has not been mentioned in the AA and therefore Sandy Legal points was not made available to the public during the consultation process..

- (f) No reference has been made to any measures being applied to protect Ballyness Bay from problems outlined in Par 11 (e) above.
Aarhus Article 6.6(c),
(MRPEPP) M145-150.

The scope of the information and of the critical analysis as supplied in the AA is unacceptably limited in its scope. It does not adequately examine the available information of environmental importance to Ballyness Bay SAC and SPA areas. Nor does it take due cognisance of the EU regulations and Directives that apply to such an area.
Annex 11, 12, 13, 14, 15, 16, 17, 18, 19.

Due to the outlined lack of information and proper scientific analysis in the AA report as detailed in Par. 11. (b),(c), (d), (e), and (f) above, the public was not supplied with sufficiently comprehensive Environmental Impact information in this AA to enable it to arrive at a measured decision, during or following, the consultation period offered.

Aarhus Article 6.1, 6.2,
(MRPEPP) B44,a,b. B45, B47,
(MRPEPP) D53, D61, D62c, D62d, D72a

Annex 11, 12, 13, 14

VI. Use of Domestic remedies.

We have taken all the steps available to us to engage with the relevant departments.
Annex 8, sample of letters to Minister.
The DAFM have replied to all letters with a standard reply format stating that

"the public and statutory consultation phase of the application is now closed and as the application is now currently under consideration by the Department as part of a statutory process it would not be appropriate to comment further on the matter at this time".

Annex 9

The results of attempts to communicate with the Dept of Culture, Heritage and the Gaeltacht and their sub department NPWS have been outlined in Par. 10 (a) and (b) above. No information was forthcoming from either source.

Aarhus Articles 3.2, 3.7, and 3.9.

Aarhus Article 6.2(d)ii

MRPEPP D62(c)

V11. Use of other international procedures

None used.

VIII. Confidentiality

I would request that my name be kept confidential.

I would request that my reasons for this request be kept confidential.

Even though there is overwhelming local support for our stance on this issue, (as demonstrated by crowded public meeting and huge online support), I make this request because there has been a certain amount of intimidation locally against members of our group by others. Being the only person being identified by name might expose me unduly.

We, the Save Ballyness Bay Committee, would contend that the administration of the Public Consultation process as carried out by the Department falls far short of acceptable and of being compliant with the letter or the spirit of the Aarhus Convention.

We ask you to investigate the matters outlined above. If your findings indicate that the Aarhus Convention conditions have not been complied with, we would ask that you take the necessary action to remedy the matter.

Hoping for your kind attention to this matter,

Yours sincerely,

John Connaghan
Chairman, "Save Ballyness Bay" Group

John Connaghan. Chairman, "Save Ballyness Bay Group".

ANNEX List.

- 1 Copy of Notices in Donegal Democrat
- 2 Foreshore Acts 1933 to 2011- General guidance Notes”.
- 3 Lithuania Verdict ACCC/2006/16; ECE/MP.PP/2008/5/Add 6.4 April 2008,
para. 67. (Extract)
- 4 Other Notifications in Donegal Newspapers Trawbreaga
- 4a Other Notifications in Donegal Newspapers Linsfort
- 5 SPA Falcarragh to Meenlaragh, (Site synopsis) (includes Ballyness Bay).
- 6 SAC Ballyness Bay (Synopsis)
- 7 Marine Institute (MI) Appropriate Assessment report.
- 8 Sample Public letter to Min Creed DAFM (1)
- 8a Sample Public letter to Min Creed DAFM (2)
- 9 Min. Creed, DAFM’s reply
- 10 S.I. 416 of 2018, “European Habitats (Ballyness Bay SAC 001090)
Reg. 2018, Schedule 4
- 11 Dr. Tony McNally.
- 12 Sandy Alcorn Ecologist. “
- 13 Birdwatch IRL. “
- 14 An Taisce submission “
- 15 Other Notifications in Donegal Newspapers Linsfort
- 16 “Dynamics of Environmental Sustainability” Oyster diseases in Ireland.
- 17 Journal of Fisheries and Livestock production
- 18 EU Habitats Directive
https://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm
- 19 EU Birds Directive
https://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm
- 20 Linsford Submission
- 21 DAFM website showing applications etc.
<https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/donegal/>
- 22 Marine Institute (MI) Appropriate Assessment Ballyness Bay. (2298Kb)
<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/donegal/PropAssessBallynessBayReport040319.pdf>
- 23 Draft Appropriate Assessment Conclusion (See also Annex 7)
<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessmentconclusionstatement/DraftConclusionStatementBallynessBay070319.pdf>

APPENDIX 13

Letter from Inland Fisheries Ireland to Minister Creed regarding fishing activities in Ballyness Bay.



26 November 2019

Michael Creed T.D.
Minister for Agriculture, Food and the Marine
Agriculture House
Kildare Street
Dublin
DO2 WK12

Dear Minister

I am writing to you in connection with the recent proposals for shellfish aquaculture development in Ballyness Bay Special Area of Conservation, Co. Donegal and in particular with aspects of the Final Appropriate Assessment of Aquaculture in Ballyness Bay SAC (Site Code 01090) as submitted by the Marine Institute (as attached).

Page 5 of the report (**Assessment of in-combination effects of aquaculture, fisheries and other activities**) states that 'There are no fishing activities with Ballyness Bay SAC and therefore are no likely combination effects'.

This statement is in fact inaccurate. Ballyness Bay contains a valuable, and highly scenic, wild sea trout fishery which forms an integral part of Ireland's recreational and tourism sea trout angling resource. Documentary evidence of this is provided (as enclosed) by the enclosed angling guide produced by Inland Fisheries Ireland- *Sea Trout Angling on Ireland's North West Coast*.

It should also be noted that a commercial salmon draft net fishery still remains in existence at the base of the Tullaghobegley River, which drains to Ballyness Bay. The draft net fishery hasn't operated in recent years due to conservation reasons, but may open again in the future depending on the annual available harvestable surplus. (The Tullaghobegley River had a modest salmon surplus in 2019 and was listed as open for angling).

Thank you for your consideration of the above. I would of course be happy to provide any additional information on the matter as may be required.

Yours sincerely

Dr. Milton Matthews
(Director- IFI Ballyshannon)

cc Brian McKean (Sec)., Cloughaneely Angling Association

APPENDIX 14

NPWS Ballyness Bay Site Synopsis 2013.



Site Name: Ballyness Bay SAC

Site Code: 001090

Ballyness Bay is situated in north-west Donegal adjacent to the towns of Gortahork and Falcarragh. The underlying geology is mostly pelites, with some smaller areas of limestone and quartzite. This is mostly covered by windblown sand and peat. Ballyness Bay is a large and very shallow estuarine complex, with extensive areas of sandflats which are exposed at low tide.

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes):

- [1130] Estuaries
- [1140] Tidal Mudflats and Sandflats
- [2110] Embryonic Shifting Dunes
- [2120] Marram Dunes (White Dunes)
- [2130] Fixed Dunes (Grey Dunes)*
- [2190] Humid Dune Slacks
- [1013] Geyer's Whorl Snail (*Vertigo geyeri*)

The intertidal sandflats of Ballyness Bay often have a rich macro-invertebrate fauna, with notable populations of Lugworm (*Arenicola marina*) and Common Cockle (*Cardium edule*). Eelgrass (*Zostera* sp.) is also present. The bay is almost completely cut off from the open sea by two large sand dune covered spits. The Dooey sand dunes are highly dynamic and have grown to a considerable height near the tip of the spit - they contain what is probably the largest unvegetated sand dune in the country. The succession of vegetation types across the spit and the topographical features make this area of special interest.

Of particular importance are the fixed dunes which occur along the length of the Dooey sand spit. They are found east of a large band of mobile Marram (*Ammophila arenaria*) dunes. There are some good species-rich areas, which include Common Dog-violet (*Viola riviniana*), Wild Pansy (*Viola tricolor* subsp. *curtisii*), Thyme-leaved Sandwort (*Arenaria serpyllifolia*), Harebell (*Campanula rotundifolia*), Daisy (*Bellis perennis*), Wild Thyme (*Thymus praecox*), Common Bird's-foot-trefoil (*Lotus corniculatus*), Red Fescue (*Festuca rubra*) and Lady's Bedstraw (*Galium verum*). There is also a good variety of moss and lichen species, including *Tortula ruraliformis*, *Brachythecium albicans*, *Rhytidiadelphus squarrosus*, *Homalothecium lutescens* and *Peltigera canina*.

Dunes dominated by Marram are well developed. Also occurring are embryonic dunes, with species such as Lyme Grass (*Leymus arenarius*), Sea Couch (*Elymus farctus*) and Sea Rocket (*Cakile maritima*).

The dunes at Drumatinny, by contrast, are quite low but also have areas of fixed dune as well as sandy, machair-type grassland. Humid dune slacks, with species such as Creeping Willow (*Salix repens*) and Jointed Rush (*Juncus articulatus*), are scattered through the dunes at Drumatinny. Areas of saltmarsh, dry and wet grassland and heath add further diversity to the site.

The rare whorl snail *Vertigo geyeri*, a species listed on Annex II of the E.U. Habitats Directive, is found at this site.

This site is important for waterfowl. Species counts (all average peaks over 4 seasons, 1994/95 to 1996/97) include Ringed Plover (110), Brent Goose (85), Red-breasted Merganser (12), Wigeon (47), Oystercatcher (87), Curlew (55), Sanderling (47) and Greenshank (7). The populations of Ringed Plover and Sanderling are of national importance. Also occurring is Golden Plover (165, same count period), a species listed on Annex I of the E.U. Birds Directive. Large numbers of Lapwing have been noted sheltering during stormy weather in dune slacks near Drumatinny. Chough, another species listed on Annex I of the E.U. Birds Directive, have been noted feeding near Binavea Strand.

Land use within the bay comprises fishing and sailing on a small scale; the surrounding dunes and grassland are grazed by sheep and cattle.

Ballyness Bay contains several important coastal habitats listed on Annex I of the E.U. Habitats Directive, including the priority habitat fixed dunes. The site is also an important wildfowl site.