



Derek Diver

Site T12/492A

Appeal

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)	Derek Diver		
Address of Appellant			
Crocknagee			
Roxtown			
Clonmany			
Co Donegal			
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	<input checked="" type="checkbox"/>
Appeal by any other individual or organisation	€152.37	<input type="checkbox"/>
Request for an Oral Hearing * (fee payable in addition to appeal fee)	€76.18	<input type="checkbox"/>
* In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.		
(Cheques Payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))		
Electronic Funds Transfer Details	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D

Subject Matter of the Appeal

We wish to appeal the decision of the Minister to apply a variation to licence T12/492A 8.21 ha to 0.902 ha upon issuing of this licence.

The reasons provided for this variation were;

1. The variation is in keeping with the policy of evenly distributing the licensed area to all applicants
2. Possible effects the larger site would have on migratory salmonids
3. Possible physical alteration of the shore

The subject matter of our appeal relates directly to the reasons cited in support of the variation.

**AQUACULTURE LICENCES
APPEALS BOARD**

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23 JUL 2019

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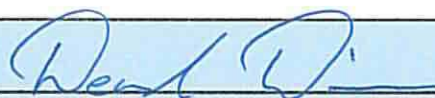
Site Reference Number:- (as allocated by the Department of Agriculture, Food and the Marine)	T12/492A
Appellant's particular interest in the outcome of the appeal:	
Appellant is the licence applicant. We employ 20 full time and 40 seasonal people in what is a rural area with little alternative full-time employment. We believe the variation applied to this licence undermines the sustainability of our business.	
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):	
<p>The grounds of our appeal relate directly to the reasons cited in support of the variation;</p> <p>Issue Raised: Policy of evenly distributing the licensed area to all applicants</p> <p>Our Response: We are not made aware at any stage during the application or deliberative process that such a policy exists and if it does exist we do not believe it is being applied in a consistent manner of all aquaculture licence applications</p> <p>We are not aware of such a policy and given that many applicants in Donegal and Ireland have received larger licences without reference to such a policy we do not believe the policy is being evenly applied. We are concerned as to the lack of transparency in the decision-making processes in our Bay, which has seen many other licences processed by both by DAFM and ALAB over the last few years which were submitted at the same time as our own. The delay in processing our applications has placed us at a disadvantage in terms of accessing available ground up to the permitted overlap and disturbance thresholds required by Natura 2000. We have had a long correspondence with the Department on this application and this is the first time the apparent conflict with policy has been raised.</p> <p>We request that ALAB provide a copy of this policy document so that we can further support our appeal.</p> <p>Issued Raised: Possibility of interference with the passage of wild fish</p> <p>Our Response: We do not accept that the application poses a risk of interference to the passage of wild fish.</p> <p>This application is not located near any channels leading to the rivers supporting populations of Migratory fish in the Trawbreaga bay catchment. The rivers highlighted as being of concern by IFI (Donagh and the Glenagannon Rivers) as part of the statutory consultation process are on the other side of the bay.</p> <p>We do acknowledge that there is a small spate river upstream of the application, but we can locate no records of angling activity of fish monitoring associated with this spate river.</p> <p>Trestles are open structure and therefore do not impede passage of migratory fish species. As part of good husbandry and site management we further have breaks between trestle lines and do not permit the build-up of any debris that would block channels as this would reduce water flow and thus the growth of our oysters.</p> <p>We request that ALAB provide a copy of all IFI submissions relating to this licence so that we may further support our appeal.</p> <p>Issued Raised: Possible physical alteration of the shore</p> <p>Our Response: The hectareage of this application was reduced in size from 15.575 ha to 8.23 ha following the identification of this risk in the Appropriate Assessment.</p>	

The issue of Physical disturbance associated with this site was first raised in the Appropriate assessment conducted by the Marine Institute which contained the following statement; "the proposed area (and presumably the trestle occupation) does appear to block the channel as well as majority of the opening to the inner part of the bay. This situation presents a risk of increased sedimentation in the inner part of the bay and result in a change to the community constituents. The risk of significant disturbance cannot be discounted". In response to this concern we reduced the application area from 15.575ha to 8.23 ha. This reduction was accepted by DAFM yet we received no further communications containing further comments from the Marine Institute.

As part of good husbandry and site management we have breaks between trestle lines and do not permit the build-up of any debris that would block channels as this would reduce water flow and thus the growth of our oysters.

We request that ALAB provide a copy of all Marine Institute comments relating to the reduced licence footprint and possible physical disturbance effects so that we may further support our appeal.

Signed by appellant:



Date:

18/7/19

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

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

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

Extracts from Act

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

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(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.