An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

AP7/2/2018

Fitzpatrick Oysters Ltd

Site Ref: T3/88 A, B & C

Appeal

Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

Guthán/Telephone: 057 8631912 R-phost/Email: info@alab.ie Láithreán Gréasáin/Website: www.alab.ie

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

Name and address of appellant:

Telephone:..... Fax:
Mobile Tel:..... E-mail address: fitzpatrickoysters1td@gmail.com

Subject matter of the appeal:
APPEALING REFUSAL OF APPLICATIONS T03/88A, B+C IN BANNOW BAY CO. WEXFORD

Site Reference Number:- T03/88 A, B + C
(as allocated by the Department of Agriculture, Food and the Marine)

Appellant's particular interest in the outcome of the appeal:
DONT THINK REFUSAL IS VALID THESE SITES ARE WHERE I WANT TO EXPAND INTO.

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 APPROPRIATE ASSESMENT IS SERIOUSLY FLAWED AND IGNORED PREVIOUSLY AGREED BIRD ZONES PLUS IGNORED SOME OF THE BIRD DATA THE INDUSTRY SUPPLIED FOR THE UPDATED ASSESMENT

Fee enclosed: €380.92 €
(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)

Signed by appellant: Eugene Fitzpatrick Date: 8-8-2018

Note 1: 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.

Note 2: The fees payable are as follows:

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.

AQUACULTURE LICENCES APPEALS BOARD
9 AUG 2018
RECEIVED
by hand
mail.

08/August 2018

Fitzpatrick Oysters Ltd.

Tallaught

Saltmills

New Ross

Co. Wexford.

Mobile:

Email: fitzpatrickoystersltd@gmail.com

Aquaculture Licence Appeals Board

Kilminchy Court

Portlaoise

Co. Laois

RE: Fitzpatrick Oysters Ltd. comments on the Bannow Bay SPA Appropriate Assessment and its Conclusion statement and the refusal of applications T03/88A, B and C.

Dear Sir/Madam,

Find enclosed my completed application form of appeal and several maps along with this covering letter which includes my concerns regarding the validity of the appropriate assessment process that concluded that these applications could not be licenced as they would cause such a disturbance to birdlife that no mitigating measures could remedy that damage.

You may or may not be aware but our company along with other shellfish growers sponsored 3 years of winter bird data collection (2014/2015, 2015/2016, 2016/2017) and indeed our data was submitted to the Department of Agriculture Food and the Marine (DAFM) in order for them to 'update' their appropriate assessment (AA) which in our opinion does not have the required amount of bird field data. We are concerned that in their updated AA they only refer to using two of the three datasets that we sent.

Furthermore we were of the opinion that over the course of many years the centre of the bay was earmarked for aquaculture development based on agreed bird wildlife zoning plans which the assessment has completely dismissed (details below). The local community know us and do not object to these applications. Indeed we would hope that oyster farming will develop into a potential tourist food trail in the near future and have an even bigger economic impact in the region. The county council aren't even opposing these sites but it is a very badly cobbled together appropriate assessment that has led to their refusal.

Specific details in the AA process that highlight its weakness.

Site specific data bird data:

Fitzpatrick Oysters Ltd. have concerns that the limited amount of site specific data for Bannow Bay has affecedt subsequent confidence in the assessment conclusions. The SPA assessment relies heavily on the research carried out for a previous project: The Effects of Intertidal Oyster Culture on the Spatial Distribution of Waterbirds (Gittings & O' Donoghue, 2012), which for Bannow Bay relied on data from **one observer/counter spending four days to studying the bay** . The study area for that report **did not extend** to the whole bay or the entirety of the aquaculture production area. Thus the field data was not fit for purpose.

Assessment assumptions:

We have great concerns with regard to the assumptions underlying the assessment.

The predicted displacements are based on three assumptions (Section 8.25) which are assumed must hold true for the final predictions in the assessment to be valid, these are:

1. *The 2009/2010 low tide counts provide an accurate representation of the species low tide distribution*
2. *In the absence of intertidal oyster cultivation, the species would be uniformly distributed throughout the available intertidal habitat within subsite 00413.*
3. *The species are completely excluded from areas occupied by trestles*

Based on local knowledge Fitzpatrick Oysters Ltd. have the following comments on these assumptions:

- *Assumption 1*: T2009/2010 low tide counts were carried out over 4 low tides: 1 in each October, November and December 2009 and 1 in February 2010. As stated above the limited nature of the site specific dataset may affect subsequent confidence in the assessment conclusions.
- *Assumption 1*: No data appears available on the weather conditions during the low tide counts, weather conditions do influence bird behaviour and inclusion of such data would increase confidence in the assessment outcomes.
- *Assumption 2:* Area 00413 is not uniform in the nature of its habitat with notable variations in bathymetry and substratum. Therefore there may be low confidence in the assumption that bird usage of 00413 will be uniform in terms of feeding and roosting
- *Assumption 3:* The assessment regards the absence of a bird species from areas occupied by trestles as exclusion. This is a highly precautionary approach which fails to assess the quality of the habitat in the absence of trestles nor does it account for better feeding areas outside the oyster production areas.

Bird Areas:

We are locals and are in the bay more than anyone else and thus have observed that bird distribution is generally concentrated northeast of the aquaculture production area right up to Wellingtonbridge, Northwest of the production area in the estuary of the Taulaght Stream and areas southeast and seaward of the production area. There are clearly species that are attracted to the trestle areas with light-bellied geese, cormorant, heron and oystercatcher all observed feeding in and around the trestles. The 'trestle study ' in Bannow which studied displacement impacts does not appear to have considered the variations in background disturbance on licenced sites; some sites are very close to land and thus closer to potential predators and human activity and some are much more isolated.

Positive impacts of shellfish culture in Bannow Bay:

We have some concerns that the positive impacts of shellfish culture do not appear to have been considered in the assessment. We wish to highlight the vital ecosystem services that oysters provide in Bannow Bay. Shellfish act through top down control as circuit breakers between primary symptoms of eutrophication and secondary symptoms. Primary symptoms are *decreased light availability* (caused by increase in chlorophyll a and macroalgal growth), *increased organic decomposition* (caused by increase in chlorophyll a and macroalgal growth) and *algal dominance changes* (caused by a change from diatoms to flagellates and benthic to pelagic algae). The respective secondary symptom for each of the three primary symptoms are *loss of Submerged Aquatic Vegetation*), *low dissolved oxygen* and *an increase in harmful algal blooms*. Bannow has a lot of agricultural land draining into the catchment and particularly around the shores of Bannow. In addition there are significant inputs at Wellingtonbridge from point discharges. Bannow Bay is regarded as **potentially eutrophic** based on a macroalgal shore survey undertaken by the Marine Institute. We would suggest that the positive contribution of shellfish be considered more than the appropriate assessment did.

Wildlife zones: Our map included

Section 1.9, 1.10 and 1.11 of the SPA Assessment refers to the 'wildlife zones' agreed by DAFM and NPWS. The author of the SPA Assessment states that *'we have not been able to consider these zones in our assessment due to lack of information about the scientific rationale behind their designation.'*

We have concerns about this assertion – the wildlife zones were established following extensive consultation between NPWS, DAFM and BIM. They were based on bird studies and expert advice by NPWS as the competent authority for the protection of the designated site and species. The established zones subsequently guided all aquaculture development from 1993 onwards, with licences refused, trestles removed and realignment of trial licences conducted, under the oversight of NPWS who did not object to these amendments.

The long established and clearly understood zones clearly influenced the pattern of applications in the Bay by guiding the industry into the less sensitive areas (as agreed with NPWS). With the exception of the small trial site T03/41/1B, no other renewal, trial site or application overlaps with the wildlife zones as originally agreed and subsequently modified and agreed to in 1999. In regard

to T03/41/1B, a trial licence was issued after agreement with NPWS. A review in 2002 by DAFM into licensing identified room for limited expansion. This was in reference to zone 'Y' in the agreement which was an area deemed suitable for aquaculture development as it was 'less sensitive' in relation to birds.

It is also noted that the Areas for Aquaculture Development in Bannow Bay as produced by Department of the Arts Culture and Gaeltacht has a reference on the map to the co-financing of the project through **'LIFE' E.U.** funding which is the same reference stated at the bottom of the Duchas produced Bird Usage Map included in the SPA Assessment. So the amendments to the less sensitive zone for aquaculture development and the reaffirmation of the existing wildlife zone boundaries north and further south of the production area was the outcome of a an EU funded bird usage study.

To our disbelief all of this zoning has been pushed to the side as if it never existed which surely cannot be correct. How can such a body of work be completely ignored.

IWeBs data:

Table 2.1 of the SPA Assessment detailing IWeBS coverage in Bannow Bay since 1994/95 to 2013/2014 shows that the minimum target of one count per month for the months September to March inclusive for that period of years would yield 140 counts. However the data available only reaches 35- 37% of that target (35 if the three poor counts are excluded) and the collection effort changes in 2002 (two counters changed to one). The limited amount of site specific data and the variation in collection effort may affect subsequent confidence in the assessment conclusions.

AA concerns about sedimentation and eutrophication:

In Section 7.3 the SPA Assessment states that *'intertidal oyster and mussel cultivation may cause impacts to benthic invertebrates through sedimentation and eutrophication and this could potentially affect food resources for waterbird species.'* We would suggest that this statement be balanced against the ecosystem services provided by cultured shellfish in the bay and the husbandry practices undertaken by operators in the Bay. The risk of benthic impacts is associated with a high density culture in areas of low flushing. Producers operate at reduced trestle densities in Bannow Bay when compared to other bays in the region. This is in tune with the hydrographic conditions of the bay and serves to mitigate the risk of benthic impacts. As far as we are aware shellfish cultivation fights against eutrophication and does not promote it. Indeed it would be our belief that the bay would be in a terrible state if it was not for shellfish farming as it would be fully eutrophic.

Feeding areas for Brent geese:

In Section 8.17 the SPA Assessment states that *'Light-bellied Brent Goose were only recorded on two of the four trestle study counts and they showed strongly negative patterns of association with trestles on both these counts.'* Given the reduced monitoring effort (number of tides and number of counters) and the presence of other feeding sources such as *Zostera*, we would suggest there may simply be a habitat preference rather than a trestle effect or the observer just wasn't there enough

to see the geese on the trestles. We see Brent Geese frequently close to trestles and on trestles in Bannow Bay as well as the 'green' shoreline areas.

Conclusion:

We are only seeking limited expansion within the SUMS marking scheme. In particular site T03/88A,B and C are crucial to our development and in particular 88A which provides us with better training (toughening of the oysters) prior to sale. Indeed this area is hard and strips early and is of no use to birds.

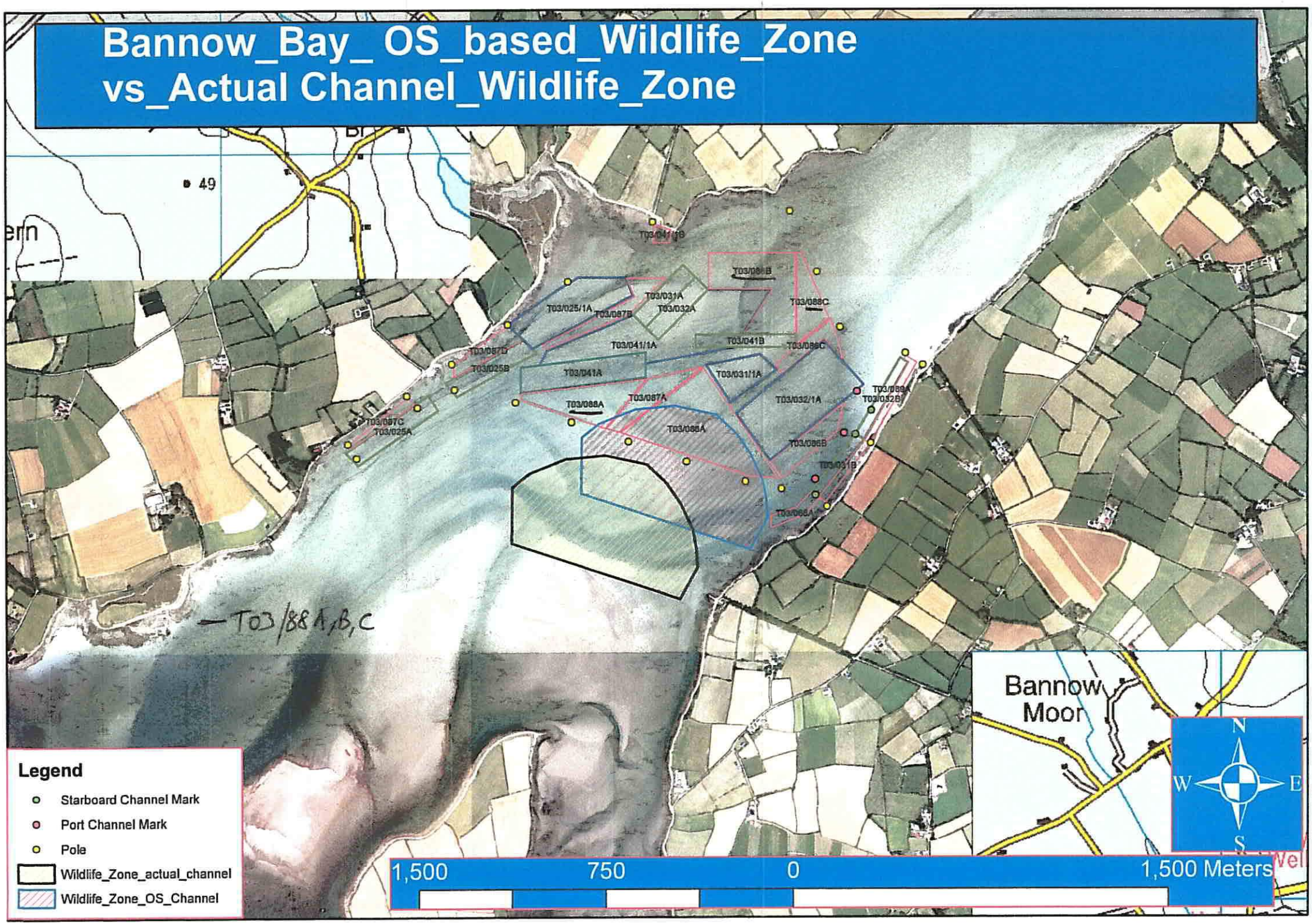
Yours sincerely,

Eugene Fitzpatrick

Fitzpatrick Oysters Ltd.

Sites_in_Relation_to_Bird_Wildlife_Zones

Existing sites (licensed (Green) and trials awaiting full licence (Blue) and new applications (Red)


Bannow_Bay_ OS_based_Wildlife_Zone
vs_Actual Channel_Wildlife_Zone
T03/088A,B,C
T03/041/1B
T03/088B
T03/031A
T03/025/1A
T03/087B
T03/032A
T03/089C
T03/041B
T03/041/1A
T03/086C
T03/087D
T03/025B
T03/041A
T03/031/1A
T03/089A
T03/032/1A
T03/088A
T03/087A
T03/087C
T03/025A
T03/086A
T03/086B
T03/031B
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Starboard Channel Mark
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