

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



Marion Rueter

Site T32/27

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)	MARION RUETER
Address of Appellant	CLOGGAN ARKLOW CO. WICKLOW

Phone:		Email:	
Mobile:		Fax:	

### Fees

Fees must be received by the closing date for receipt of appeals		Amount	Tick
Appeal by licence applicant		€380.92	
Appeal by any other individual or organisation		€152.37	✓
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

APPEAL the Granting of  
Aquaculture / Foreshore License T32/27  
Size + Impact.



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



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

T32/27

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

THE DEVELOPMENT ADJOINS my Property  
and is 240 m from my Boundary.

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 ATTACHED PAGES.

Size and Impact on:

Local Business

Environment.

Signed by appellant:

Mark Rieker

Date:

19th Nov. 2018

**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

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



### 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

(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.

## ENVIRONMENT AND ZONING

This application is unusual for two reasons.

1 The size. This application is for 76 Ha or about 100 acres. This is about six –seven times bigger than average application for a shellfish farm. Probably one of the largest proposed in Ireland.

2. The Location. This application is on a new site off a county with no previous aquaculture applications or experience. This means that sites sensitive or vulnerable to a 100 acre shellfish farm have not been identified.

It is also locating a 100acre shellfish farm in an area already designated for tourism. The bathing area is tested and published in the national newspapers every year.

Wicklow Co. Council in its Coastal Zone Management Plan, (in which it references the Department of the Marine) refers to the coastal area as amongst the most sensitive and valuable resources in the County in terms of habitats, scenic beauty and recreation.

In the adjacent short area of coastline it includes a significant pNHA and an important SAC, both of which include or included important sand dune systems. The Arklow Sandbanks run parallel to the coast to the east. Erosion of the dunes over the past century has resulted in a submerged sand dune system stretching under the shallow bay and out toward the sandbanks. The area qualifies under the EU Habitats Directive as one requiring an SAC.

Unlike the farms in Cork and Wexford this is a corridor for protected species traveling up the east coast

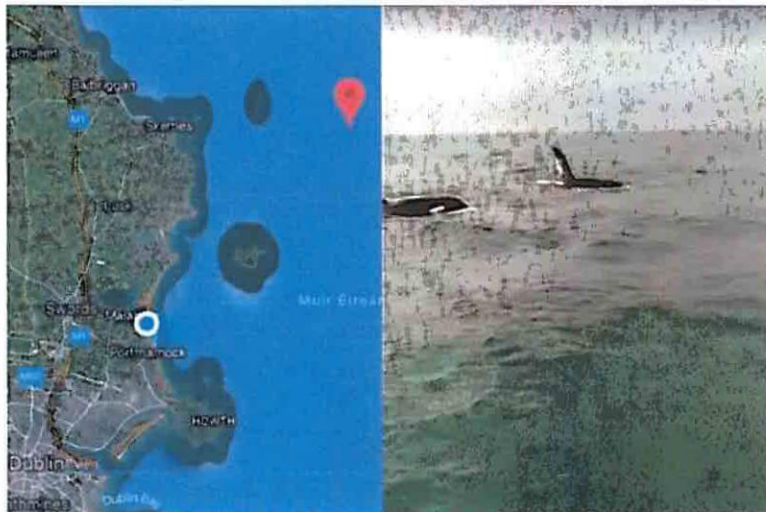
Dolphins/Porpoises.

The local seal population has been growing with seal pups recorded on the beach.

A recent Interreg study recorded leatherback turtles following jellyfish up the coastline from Rosslare.

In the 1970's and the 1990's Basking Sharks washed up on the beach.

## 18 NOV. 2018 Killer Whales in Transit down the Irish Coast





## CHAPTER 11 - COASTAL ZONE MANAGEMENT

### 11.1 Introduction

The coastal areas of County Wicklow are amongst the most sensitive and valuable resources in the County, both in terms of habitats, scenic beauty and recreation. They provide a destination for tourists and attractive settlement areas. Given the pressure on these areas, it is considered necessary to set out more detailed objectives for these locations. For the avoidance of doubt, any objectives set out in this chapter shall override any other objectives set out in this plan.

### 11.2 Coastal Zone Management

A number of areas along the coast are designated protected sites under the Habitats Directive and/or the Birds Directive therefore any plans or projects with the identified potential to impact on one of these sites shall include Appropriate Assessment screening or full Appropriate Assessment and / or an EIS.

#### General Coastal Zone Management Objectives

**CZM1** To ensure that there is no removal of sand dunes, beach sands or gravels through application of the provisions of the Foreshore (Amendment) Act (1992), in close co-operation with the Department of Communications, Climate Action and the Environment and the Department of Agriculture, Food and the Marine.

**CZM2** To ensure that no reclamation of estuary land or coastal marshland occurs, which would damage coastal habitats.

**CZM3** To protect both public and private investment by prohibiting any new building or development (including caravans and temporary dwellings) within 100m of 'soft shorelines' i.e. shorelines that are prone to erosion.

**CZM4** To prohibit the development of habitable structures below 3m (OD Malin), in the interest of public safety and the protection of property and residential amenity.

**CZM5** To protect the character and visual potential of the coast and conserve the character and quality of seascapes.

**CZM6** To facilitate an Integrated Coastal Zone Management approach to ensure the conservation, management and protection of man-made and natural resources of the coastal zone.

**CZM7** To facilitate the provision of new or the reinforcement of existing coastal defences and protection measures where necessary along the full coastline of the County and in particular to support the implementation of the measures identified in the Murrough Coastal Protection Study<sup>1</sup> and any other similar studies that are produced during the lifetime of the plan.

#### Cell 12 Arklow Head / Clogga

This cell stretches from Rock Big in the north to the Wicklow County boundary at Kilmichael point in the south.

The coast road forms the eastern boundary of the cell, for the most part, but the cell does extend inland as far as the railway line at Bogland and Money Little. Tourism development, mainly in the form of holiday homes and mobile home parks has taken place around Clogga. Clogga beach itself is an attractive, medium sized sandy beach with limited tourist facilities and a very small car park. The Arklow Rock-Askinnity pNHA extends into this cell.

#### Chapter 11 | Coastal Zone Management

##### Wicklow County Development Plan 2016-2022

##### Objective CZ12

1. To facilitate the enhancement of recreational amenities and facilities in the cell to cater for day visitors and long stay holiday makers to the extent that it is consistent with maintaining the capacity of the cell (including its beach and bathing water quality, sand dunes, car parks and road network) and in a manner that does not diminish its unique rural, scenic and recreational amenities.
2. Development that is detrimental to the quality or amenity of heritage features will not be permitted, including views and prospects, archaeological features, protected trees/structures.
3. To strictly control the further proliferation of sea outfalls for effluent discharge and in particular to prohibit short sea outfalls. All effluent discharges should be in compliance with the EU Bathing Water Directive. Any development that compromises the Blue Flag status of the beach will not be permitted.



4. To facilitate the development of appropriate outdoor and indoor recreation in the cell by permitting the use of its rural hinterland for environmentally sensitive and sustainable recreational purposes, where buildings and structures have only a minor impact on the landscape and where the completion of landscaping schemes would assimilate such developments into the countryside (e.g. golf, pitch and putt, amenity forestry, paint ball games, adventure fun parks).
5. To facilitate the development of new tourist accommodation subject to the following controls:
  - a) New tourist accommodation shall be restricted to the existing developed cluster at Clogga or to existing developed sites;
  - b) permission will only be considered for new accommodation where the development forms part of a well developed, integrated tourism and recreation development, which would add to the public amenity and enjoyment of the area and provides a significant public element (e.g. public car parking, playground / indoor playzone, swimming pool open to paying public etc);
  - c) the development of any further holiday homes shall be prohibited, other than a small scale element of which may be allowable in an integrated development that provides a range of accommodation types;
  - d) the development of any further static or touring caravan parks shall be prohibited;
  - e) automated gates will not be permitted on any development; and
  - f) new development shall have or be provided with high quality direct access to the main traffic routes;
  - g) development shall be of an exceptionally high quality design.
6. To preserve existing access routes to the beach and to support and facilitate the development of additional car parking, proximate to existing access ways to the beach.
7. To control and limit the development of permanent rural housing to that shown to be strictly necessary (in accordance with the County settlement and rural development strategies) and to require the highest standards of siting and design for any new dwelling and regard to environmental designations.



## South Coastal Cells

WICKLOW COUNTY  
DEVELOPMENT PLAN 2016-2022



Coastal Cell



SPA, SAC and pNHA



Wicklow County Council  
Planning Department

Maps Not To Scale



## ENVIRONMENTAL CONSIDERATIONS

### Irish sea sandbanks

Under National and European law, Ireland is committed to the protection and conservation of specific marine habitats and species. The conservation and monitoring of marine habitats necessitates an understanding of their physical and biological structure. The EU Habitats Directive (93/43/EEC) lists a series of habitat types in Annex I that require the designation of Special Areas of Conservation (SACs). One of these is "Sandbanks which are slightly covered by sea water all the time" (henceforth referred to as sandbank/s). They consist of sandy sediments that are permanently covered by shallow seawater, typically at depths of less than 20 m below chart datum (but sometimes including channels or other areas greater than 20 m deep). The habitat comprises distinct banks (i.e. elongated, rounded or irregular 'mound' shapes) that may arise from horizontal or sloping plains of sandy sediment. Where the areas of horizontal or sloping sandy habitat are closely associated with the banks, they may be included within the Annex I type (Johnston et al., 2002).

### **SITE NAME: ARKLOW ROCK – ASKINTINNY Proposed National Heritage Area** **SITE CODE: 001745**

This coastal site is located just south of Arklow, Co. Wicklow. Arklow Rock is an Ordovician volcanic intrusion which forms a knoll of rhyolite. A large quarry, which is still being worked, has been cut into the rock. The sandy beach and cliffs south of Arklow Head form part of the site. Small numbers of Fulmars nest in slopes.

A dune system occurred here but has been completely eroded within the last 20 years. Some recent fore dune deposits have accumulated at the base of the clay slopes.

The site is of importance as it is a good example of coastal heath. The other habitats within the site provide good diversity within a relatively small area. The presence of two rare and protected plant species adds significantly to the importance of the site.

### **SITE NAME: KILPATRICK SANDHILLS SAC** **SITE CODE: 001742**

This SAC encompasses a range of coastal habitats but primarily is a mature, relatively intact sand dune system, which extends south from Kilmichael Point for a distance of 2km. The dunes attain impressive heights and a good diversity of habitats and species are present including sandy beach, shingle beach, embryonic dunes, mobile dunes, species-rich fixed dunes and dune slack. The presence of gorse (*Ulex europaeus*) suggests that the SAC may also support the nationally rare decalcified fixed dune (dune heath) habitat (NPWS, 2013). This is of particular importance owing to its rarity in Ireland generally and particularly on the east coast (Ryle et al., 2009.)

All of the dune habitats indicated above occur as a complex mosaic of constantly changing and evolving vegetation communities. They are inextricably linked in terms of their ecological functioning and should be regarded as single geomorphological units. As such, no dune habitat should be considered in isolation from the other dune habitats present at a site, or the adjoining semi-natural habitats with which they often form important transitional communities. The location, character and dynamic behaviour of sand dunes are governed by a combination of geographic, climatic, edaphic and anthropogenic factors. Sand dunes are highly complex, dynamic systems, where the habitats occur in a complex and constantly evolving and changing mosaic. They function as systems in terms of geomorphology and hydrology and maintaining the favourable conservation condition of the habitats present depends on allowing these processes to continue unhindered.



Citation: Kingston, N. (2012) Checklist of protected & rare species in Ireland. Unpublished National Parks & Wildlife Service Report.

## Vertebrates

### Mammals

Species EU HD OSPAR WA Red Status (Marnell et al., 2010) *Erinaceus europaeus* Hedgehog X lc  
*Sorex minutus* Pygmy shrew X lc *Rhinolophus hipposideros* Lesser Horseshoe II IV X lc *Myotis mystacinus* Whiskered bat IV X lc *Myotis nattereri* Natterer's bat IV X lc *Myotis daubentoni* Daubenton's bat IV X lc *Myotis brandtii* Brandt's bat IV X dd *Nyctalus leisleri* Leisler's bat IV X NT *Pipistrellus pipistrellus* Common pipistrelle IV X lc *Pipistrellus pygmaeus* Soprano pipistrelle IV X lc *Pipistrellus nathusii* Nathusius' pipistrelle IV X lc *Plecotus auritus* Brown long-eared bat IV X lc  
*Lepus timidus* Irish hare V X lc *Lepus europaeus* Brown hare X na *Rattus rattus* Ship rat VU  
*Sciurus vulgaris* Red squirrel X NT *Lutra lutra* Otter II IV X NT *Martes martes* Pine marten V X lc  
*Meles meles* Badger X lc *Mustela erminea* Stoat X lc *Canis lupus* Grey wolf RE *Cervus elaphus* Red deer X lc *Cervus nippon* Sika deer X na *Dama dama* Fallow deer X lc *Halichoerus grypus* Grey seal II V X *Phoca vitulina* Harbour seal II V X *Tursiops truncatus* (tursio) Bottlenose dolphin II IV X *Phocoena phocoena* Harbour porpoise II IV X X *Balaenoptera musculus* Blue whale IV X X  
*Eubalaena glacialis* Northern right whale IV X X ALL cetaceans are protected under the EC Habitats Directive (Annex IV), the Whale Fisheries Act, 1937 (including an order made in SI 240/1982) and the Wildlife Act, 1976.

### Reptiles

Species EU HD WA OSPAR Red Status (King et al., 2011) *Dermochelys coriacea* Leatherback turtle IV X X lc *Lepidochelys kempii* Kemp's Ridley turtle IV X na *Caretta caretta* Loggerhead turtle II IV X X na *Eretmochelys imbricata* Hawksbill turtle IV X na *Lacerta vivipara* Common lizard X lc The common lizard was added to the Wildlife Act, 1976 by regulations made in SI 282/1980, and Marine turtles were added by regulations made in SI 112/1990.

EU HD EU Habitats Directive [Council Directive 92/43/EEC] II Annex II animal & plant species IV Annex IV animal & plant species V Annex V animal & plant species

## **TOURISM IMPACT**

This area is adjacent to a zoned tourism area including a bathing area. There has been no study on the impact on the existing tourism industry. The application submitted makes no reference to the local tourism industry. The Commissioner of Irish Lights would have no knowledge or interest in tourists using the shoreline.



The application is for 72 Ha or over 100 acres. This will be one of the largest farms in the country. The average farm size is 9 Ha. It will consist of miles of rope and around a hundred acres of buoys. At 100 buoys per acre that totals 10,000 buoys. There is no indication as to how many of these will have lights. The Clogga headland is about 30-40ft above sea level it is zoned an area of outstanding natural beauty. The proposed development site is only the bare minimum 240m from the coastline and is highly visible from this point.

100 acres of ropes and buoys is a navigational hazard. While the proposed development would be 240m from the shoreline submerged rocks extend significantly further out into the sea.

The determination of the Application claims that there has been consideration given to ensure the least impact on local fishing and navigation. There has been no consideration given the local tourism industry.



Compared to those made in Wexford and Cork, in my opinion this application has not been assessed to the same level.

**The determination for this license states**

"There are no significant impacts on the marine environment. This development should bring further biodiversity, possibly increasing this (whelk) fishery. Significant impacts on adjacent Natura 2000 sites are not likely. There will be no habitat loss and no habitat or species fragmentation within the adjacent Natura 2000 sites. Similarly there will be no adverse impact on sensitive habitats or species".

This is a broad statement of facts with no supporting evidence. There is no information in this application that could lead to this conclusion. There is no information on local habitats or local species.

Studies of Seed mussel farms do not support a claim of increased biodiversity. There is on, the contrary, a concern that larger protected species can become entangled in the ropes.

**The determination states that**

"Available advice is to the effect that the waters are suitable with adequate larval presence."

This is not reflected in the information submitted in the application. The depths in the 76Ha have not been submitted. The hydrological study submitted cannot under any criteria be considered detailed hydrodynamic modelling. There are no details of the "considerable testing showing prolific mussel larval presence". It is a large ambition to seed a 76Ha farm with local spat. It is not unreasonable to ask what the available advice is and its source?

**The determination states that**

The proposed development should have a positive effect on the economy of the local area. The development of this type of mussel cultivation has the potential to give a sustainable and consistent supply of native grown mussel spat to the aquaculture industry at both a local and national level;

All development applications potentially have a positive effect on the economy. That does not mean that it overrides all other considerations. This is the first such application along this coastline and it sets the baseline for further applications. As such I think particular care should be taken with this application

This is a very large development of 76 Ha very close to an established tourism industry.

It is a very large development in an area that qualifies for an SAC designation under the Habitats Directive.

It is a very large development with no local history to assess potential impacts and no studies carried out on existing habitats and species.

## **CONCLUSION**

I feel that the granting of this licence was premature. It did not take into consideration the size of the development. It did not consider objectively the impact a development of this size would have on an area acknowledged to be the most amongst the most valuable and sensitive resources in the county

As a newly proposed development no studies were submitted on the existing habitats or species present. There has been no assessment of the possible impact on the local area.

No evidence was provided to show there was sufficient mussel spat produced locally to seed a shellfish farm of 76Ha.

Assuming that all submitted information was posted with the application on the internet, I feel that conclusions in the Determination were not supported by information submitted in the application. I feel that subjective opinions were stated as facts.

I would like to appeal this decision.

Considering the size and location I would ask that an Environmental Impact study be carried out before this development is approved.

I would like the marine area to be officially recognised as an SAC under the Habitats directive

I would ask that the development zone be moved further out from the coastline to lessen its impact. If it were 500m from the coastline as opposed to 240m it would make no difference to the development and would considerably lessen any impact along the shore.

I would ask that the initial size be reduced, it can always be enlarged at a later date if the impacts are favourable and the business is successful





**SEAL PUP ON CLOGGA BEACH**



**CURRENT VIEW SOUTHWARDS FROM CLOGGA HEADLAND OVERLOOKING PROPOSED DEVELOPMENT SITE.**