

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Liam Hayes

Site T6/433A

Appeal

Liam Hayes,
Glosa,
Cromane,
Killorglin,
County Kerry
October 31st, 2018

Aquaculture Licences Appeals Board,
Kilminchy Court,
Dublin Road,
Portlaoise,
Co. Laois

Dear Board Members,

I am an Agricultural science graduate from U.C.D. and grew up about 1 km away from this aquaculture site. I have always worked in the natural resource area and have many years experience in the oyster business.

My Family have been fishing these waters for generations and were the first to grow oysters commercially in Castlemaine harbour starting in 1993. In the early years the business was marginal but continued production of a superior product has paid dividends. I am in this for the long haul and work with my Brother on his licensed oyster site.

I am one of the 21 seafood producers on the **"Taste the Atlantic"** seafood trail and work closely with B.I.M. and Failte Ireland on their marketing initiatives. I am committed to building a sustainable business which will showcase the best seafood this country has to offer. I want to create jobs, contribute to my community and recently established Kerry Premium Oysters Ltd.

The South-Kerry area has suffered from heavy emigration over the years and I was forced to leave twice to better my situation. Shellfish production is what is keeping this area alive at present and is Cromane's heritage.

As vice-Chairperson of Cromane community council, I want to make this area a better place in which to live. This includes a dedication to preserving our unique ecosystem and enabling our local people to stay. I have never drawn any form of public assistance and I am working to build a legacy family business that is socially responsible and proud of place, product and people.

I would be very grateful for your kind consideration of my oyster licence application.

Sincerely,

Liam Hayes

Liam Hayes



**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)	Liam Hayes		
Address of Appellant	Glosha,		
	Cromane,		
	Killorglin,		
	Co. Kerry		
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 T06/433A

1. This aquaculture licence application was not considered on its own merit but as part of a larger group of oyster cultivation applications. Many of the other applications were in unsuitable or leisure areas. Several applications were excessively large. This may have prevented my application from getting a fair and independent hearing.
2. At this time, there is no evidence to suggest that the carrying capacity of the harbour has been reached. The oysters being produced in Castlemaine harbour are of the highest quality due to the abundant nutrient availability from three large rivers. The overall percentage of the harbour area in shellfish production is less than the Marine Institute guidelines. There is the possibility to issue new licences.

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

3. This site may only be accessed by boat from a foreshore area that is already in use by oyster growers. No tractors can be used on site and all work will be done manually. This will ensure that any possible disturbance is minimised. I believe that the risk of significant disturbance from activities conducted in this manner is very low.
4. The location of this site is less than a kilometre from my home. My family have been growing oysters in Cromane since 1993 and have lived in this area for generations. We have always operated to the highest environmental standards and this will continue into the future. I am committed to our unspoilt harbour and understand my responsibility to ensuring that this continues to be a safe place for all wildlife.
5. The conclusions of the appropriate assessment are subjective and not proven. In the reasons for my licence refusal, in each case they say that something "could" result or "cannot be discounted". This proves that the conclusions are not proven and are closer to observations than fact. As an Agricultural Science graduate, I spend a lot of time working in this environment and I honestly believe that a low density oyster area does not interfere at all with the birds enjoyment of our harbour.

T06/433 A

1. I am the applicant for oyster cultivation licence **T06/433A**. This licence application is located within the Cromane designated shellfish growing waters area. This site is surrounded by licensed sites and can only be accessed by boat. No structures will be visible to the naked eye from shore.
2. I am one of the 21 participants in the "**Taste the Atlantic**" programme and liaise closely with B.I.M. and Failte Ireland on marketing the food trail. This is a long term initiative of the Wild Atlantic Way and it is vital to my continuing effort that I become a properly licensed seafood producer. Over the last few years I have been working hard on raising the profile of local and sustainably produced seafood in conjunction with B.I.M.

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):

1. I feel that this application was not independently assessed but was considered as one of a large number of applications. This may have prevented a fair evaluation of my application.
2. As a percentage, the area of licensed oyster sites in Castlemaine Harbour is less than that allowable under the Department of Marine guidelines. There is no evidence of a lack of carrying capacity.
3. All oyster cultivation on this site will be conducted in a low impact manner. The environmental impact will be less than normal because of this.
4. The reasons for my licence application refusal are not proven. In each of the reasons for refusal there is a lack of certainty and a subjective opinion is advanced. **To say that something could happen or is potentially possible does not prove that it will definitely result and must be rejected as a valid reason.**

Signed by appellant: Liam Hayes Date: 30/10/2018

**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.

ALAB Form 1 (Rev. 10/18) - Appeal Notice (to be completed by appellant) - This form is to be completed by the appellant and submitted to the ALAB offices. It is not to be used as a template for the appeal notice. The appellant must provide details of the appeal and the reasons for the appeal. The ALAB will then consider the appeal and make a decision. The appellant must be satisfied with the decision or may appeal the decision to the High Court. The appellant must be satisfied with the decision or may appeal the decision to the High Court.

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.

See 4/5

Determination of Aquaculture/Foreshore Licensing application – T06/433A

Mr. Liam Hayes has applied for authorisation for the cultivation of Pacific Oysters using bags and trestles at a site, T06/433A (18.70 ha), on the foreshore in Castlemaine Harbour, Co. Kerry.

The Minister for Agriculture, Food and the Marine has determined that it is **not in the public interest** to grant Aquaculture/Foreshore Licences for this site. In making his determination the Minister considered those matters which by virtue of the Fisheries (Amendment) Act 1997, and other relevant legislation, he was required to have regard. Such matters include any submissions and observations received in accordance with the statutory provisions. The following are the reasons and considerations for the Minister's determination to **refuse** the licences sought: -

- a) The site is located within the Castlemaine Harbour Special Area of Conservation (SAC) and Special Protection Area (SPA) Natura 2000 sites. A Natura Appropriate Assessment (AA) was carried out in 2011 in relation to existing aquaculture activity and new applications on hand at that time in the SAC and SPA. Licensing determinations were made in conformity with 'Natura' requirements. Recently, in 2018, a further Article 6 assessment has been carried out in relation to aquaculture applications received subsequent to the completion of the original AA (this includes this site). An Appropriate Assessment Conclusion Statement has been produced in relation to this recent AA (available on the Department's website). This document outlines how the **proposed** aquaculture activities in Castlemaine Harbour SAC and SPA, including this site, are being managed so as not to significantly or adversely affect the integrity of the SAC and SPA.
- b) Taking account of the recommendations from the Appropriate Assessment process, the **proposed** aquaculture activities are not consistent with the Conservation Objectives for the SPA and **could** result in significant disturbances to key bird species and reductions in their density and functional foraging habitat area.
- c) The **potential** increase in the spatial area arising from new aquaculture activities (including this site) **could** cause seston depletion and impact negatively on the carrying capacity of Castlemaine Harbour.
- d) The **potential risks** from licensing the proposed aquaculture activities, including this site, on the integrity of the Natura 2000 sites **cannot be discounted**.

These reasons are subjective and indicate a lack of belief on the part of the author. For this reason I believe that they can not be considered as valid reasons to deny my license application