



**Appeal Ref No. AP 2&3/2019**

## **Aquaculture Licences Appeals Board**

### **Technical Advisor's Report**

Description: An assessment of aquaculture license appeal in respect of an application to grant licences with variation to Derek Diver in Trawbreaga Bay:

A) For site **T12/345A/I** from 3.757 ha to 0.903 ha upon issuing of the licence (AP2-2019).

The reasons provided for this variation are;

1. The possibility of interference with the passage of wild fish
2. The variation is in keeping with the policy of evenly distributing the licensed area to all applicants. The subject matter of our appeal relates directly to the reasons cited in support of the variation.

B) For site **T12/492A** 8.21 ha to 0.902 ha upon issuing of the licence (AP3-2019).

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

### **Final**

#### **Licence Application**

Department Ref No: T12/345A/I and T12/345A/I

Applicant: Derek Diver

Minister's Decision: To grant licences with variation.

#### **Appeal**

**Type of Appeal:** Appeal is made by the applicant (Derek Diver) in respect to the type of licence granted by the Minister at both sites.

**Appellant(s):** Derek Diver

**Observers:** None

**Technical Advisor:** Bryan Deegan, Altemar Limited.

**Date of site Inspections:** 15<sup>th</sup> January 2020, 24<sup>th</sup> May 2020, 23<sup>rd</sup> July 2020 & 17<sup>th</sup> November 2020.

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## 1.0 General Matters / Appeal Details

### 1.1 Appeal Details & Observer Comments / Submissions

Date Appeals Received: 23<sup>rd</sup> July 2019  
Location of Site Appealed: Trawbreaga Bay, Co. Donegal

### 1.2 Name of Appellant (s):

Derek Diver, Crocknagee, Roxtown, Clonmany, Co. Donegal.

### 1.3 Name of Observer (s)

No official observations outside of Appellants/Applicants response were submitted.

### 1.4 Grounds for Appeal

The Minister granted the licence with variation. As outlined in the determinations the Minister has

- A) T12/345/1A *“approved the granting to you a variation of 4 (four) 10-year Aquaculture Licences and accompanying Foreshore Licences, for the cultivation of oysters using bags and trestles on site No: T12/345/1A (reducing site footprint from 3.757ha to 0.9030)”*
- B) T12/492 *“approved the granting to you a variation of 4 (four) 10-year Aquaculture Licences and accompanying Foreshore Licences, for the cultivation of oysters using bags and trestles on T12/492A (reducing site footprint from 8.21ha to 0.902ha)”*

The reasons for this decision are elaborated on the Department’s website at:

<http://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquaculturelicencedecisions/> and are seen in Appendix I and Appendix II.

The applicant/appellant has stated in his appeals that:

- A) T12/345/1A

***“Issued Raised: Possibility of interference with the passage of wild fish.***

*Our Response: We do not accept that the application for 3.757Ha poses a risk of interference to the passage of wild fish.*

*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 (Donaghand the Glenagannon Rivers) as part of the statutory consultation process are on the other side of the bay.*

*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. 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. We request that ALAB provide a copy of all IFI submissions relating to this licence so that we may further support our appeal.*

***Issue Raised: Policy of evenly distributing the licensed area to all applicants.***

*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.*

*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.*

*We request that ALAB provide a copy of this policy document so that we can further support our appeal.”*

- B) T12/492 *“The grounds of our appeal relate directly to the reasons cited in support of the variation;*

***Issue Raised: Policy of evenly distributing the licensed area to all applicants***

*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*

*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.*

*We request that ALAB provide a copy of this policy document so that we can further support our appeal.*

***Issued Raised: Possibility of interference with the passage of wild fish***

*Our Response: We do not accept that the application poses a risk of interference to the passage of wild fish.*

*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 (Donaghand the Glenagannon Rivers) as part of the statutory consultation process are on the other side of the bay.*

*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. 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. We request that ALAB provide a copy of all IFI submissions relating to this licence so that we may further support our appeal.*

***Issued Raised: Possible physical alteration of the shore.***

*Our Response: The hectarage 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.*

*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*

**Substantive Issues**

1. The granting of a Variation.
  - A) T12/345/1A- Possibility of interference with the passage of wild fish
  - B) T12/492-Possibility of interference with the passage of wild fish and Possible physical alteration of the shore.
2. Assessment Process. T12/345/1A & T12/492-Policy of evenly distributing the licensed area to all applicants.<sup>1</sup>

**Non-Substantive Issues:**      *None*

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<sup>1</sup> It is not possible for the Technical Advisor Report to cover the internal policy decisions. Communication in relation to this matter is seen in Appendix VI.

### **1.5 Minister's submission**

Section 44 of the Fisheries (Amendment) Act 1997 part 2 states that "The Minister and each other party except the appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it"

No submissions are enclosed from the Minister or any other party in light of the appeal.

### **1.6 Applicant response**

As per Section 44 part 2 of the Fisheries" Amendment Act 1997 which states "The Minister and each other party except the appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it."

No additional submissions in addition to the original appeal are enclosed from the Applicant or any other party in light of the appeal.

However, as seen in Appendix IV additional communication was carried out between ALAB and with the applicant during the technical advisor assessment. This was primarily as a result of trestles within the application area which were subsequently removed.

## **2.0 Consideration of Non-Substantive Issues**

Only Substantive issues have been considered. However, it is not possible for the Technical Advisor Report to cover the internal policy decisions. There were no non-substantive issues.

## **3.0 Oral Hearing Assessment**

In line with Section 49 of the Fisheries Amendment Act 1997 an oral hearing may be conducted by the ALAB regarding the licence appeals.

The applicant/appellant did not submit a request for an oral hearing with his Appeal forms dated 18/07/19 which were received at ALAB on 23<sup>rd</sup> July 2019.

Having reviewed the Ministers File, additional correspondence from the appellant/applicant/ Department of Agriculture, Food and the Marine and carried out a site visit, there is sufficient evidence in this technical report to make a clear decision in relation to the appeal. As a result, it is felt that an Oral Hearing is not required in this case.

#### 4.0 Minister's file

In line with particulars of Section 43 of the Fisheries Amendment Act 1997 the following documented items were sent to the ALAB from the Minister and were reviewed:

A) T12/345/1A (AP2-2019)

1. Copy of the Application Form (dated 19<sup>th</sup> June 2006) with maps, charts, co-ordinates and drawings.
2. Copy of the Appropriate Assessment Report of Aquaculture in North Inishowen SAC (Site code: 2012) and Trawbreaga Bay SPA (Site Code: 4034) (dated December 2017).
3. Copy of relevant observations (BIM) (dated 18 July 2018)
4. Copy of relevant observations (DAU) (dated 23<sup>rd</sup> July 2018)
5. Copy of relevant observations (Inland Fisheries Ireland) (dated 17<sup>th</sup> & 23<sup>rd</sup> July 2018)
6. Copy of relevant observations (Marine Institute) (dated 17<sup>th</sup> July 2018)
7. Copy of relevant observations (Irish Lights) (dated 11<sup>th</sup> July 2018)
8. Copy of relevant observations (Marine Survey Office) (dated 1<sup>st</sup> August 2018)
9. Copy of relevant observations (An Taisce) (dated 18<sup>th</sup> July 2018) & (MI Response dated 6<sup>th</sup> November 2018)
10. Copy of relevant observations (Paul O Sullivan 23<sup>rd</sup> July 2018)
11. Copy of relevant observations (Derek Diver) (dated 2<sup>nd</sup> August 2018)
12. Submission AGR 00691-18: Recommendation to Grant (a variation) Aquaculture and Foreshore Licences for 2 sites T12/345A/1 & T12/345B/1 (Coastal Zone Management – No date)
13. Copy of Appropriate Assessment Conclusion Statement by Licensing Authority for aquaculture activities in North Inishowen Coast Special Area of Conservation (SAC) (002012), and Trawbreaga Bay Special Protection Areas (SPA) (004034) (Natura 2000 sites)
14. Copy of Foreshore Licence T12/345A/1
15. Copy of the Ministerial Determination. (Dated 20/06/2019)
16. Letter from ALAB to Department re Minister's decision (21<sup>st</sup> June 2018)
17. Copy of advertisement in Donegal Democrat (Dated June 27<sup>th</sup> 2019)

B) T12/492 (AP3-2019)

1. Copy of the Application Form (**dated 16<sup>th</sup> October 2014**) with maps, charts, co-ordinates and drawings.
2. Copy of the Appropriate Assessment Report of Aquaculture in North Inishowen SAC (Site

- code: 2012) and Trawbreaga Bay SPA (Site Code: 4034) (dated December 2017).
3. Copy of relevant observations (BIM) (dated 18 July 2018)
  4. Copy of relevant observations (DAU) (dated 23<sup>rd</sup> July 2018)
  5. Copy of relevant observations (Inland Fisheries Ireland) (dated 17<sup>th</sup> & 23<sup>rd</sup> July 2018)
  6. Copy of relevant observations (Marine Institute) (dated 6<sup>th</sup> November 2018) and Aquaculture and Foreshore Management Division (17<sup>th</sup> July 2018 )
  7. Copy of relevant observations (Irish Lights) (dated 11<sup>th</sup> July 2018)
  8. Copy of relevant observations (Paul O Sullivan 20<sup>th</sup> & 23<sup>rd</sup> July 2018)
  9. Copy of relevant observations (Marine Survey Office) (dated 1<sup>st</sup> August 2018)
  10. Copy of relevant observations (EPA) (dated 13<sup>th</sup> July 2018)
  11. Copy of relevant observations (An Taisce) (dated 18<sup>th</sup> July 2018)
  12. Copy of relevant observations (Derek Diver) (dated 2<sup>nd</sup> August 2018)
  13. Submission AGR 00741-18: Recommendation to Grant (a variation) Aquaculture and Foreshore Licences for 1 Site (T12/492A) (Coastal Zone Management – No date)
  14. Copy of Appropriate Assessment Conclusion Statement by Licensing Authority for aquaculture activities in North Inishowen Coast Special Area of Conservation (SAC) (002012), and Trawbreaga Bay Special Protection Areas (SPA) (004034) (Natura 2000 sites)
  15. Copy of Foreshore Licence T12/492A
  16. Copy of Aquaculture Licence T12/492A
  17. Copy of the Ministerial Determination. (Dated 20/06/2019)
  18. Copy of advertisement in Donegal Democrat (Dated June 27<sup>th</sup> 2019)
  19. Letter from ALAB to Department re Minister's decision (21<sup>st</sup> June 2018)
  20. Letter from ALAB to Minister Michael Creed TD (19<sup>th</sup> November 2019)
  21. Letter from Department of Agriculture to ALAB (2<sup>nd</sup> August 2019)

ArcGIS shapefiles were also sent from the Department to Altemar Ltd. for the review. As seen in Appendix VI additional information was sought from DAFM (Section 47) in relation to:

- 1) whether the applications made in respect of each of Sites T12/345A/1 and T12/492A relates to a new licence application or a renewal of a licence application;
- 2) providing a map which includes up to date satellite imagery for each of the sites confirming the licence application area and the granted licence area on satellite imagery
- 3) Providing a copy of the "policy of evenly distributing the licensed area to all applicants".

In reply to the above information request DAFM stated:

- 1) "Both of the applications referred to are new applications for aquaculture and foreshore licences."
- 2) "The Department of Agriculture, Food and the Marine has not produced satellite imagery for these sites and so it is not possible to provide this information."
- 3) "Aquaculture activity in Trawbreaga Bay is characterized by a large number of small sites. The areas applied for in the applications under appeal were significantly larger relative to other areas licensed in the Bay. In order to manage the development of aquaculture in the Bay, having regard to the efficient and effective management of such activity, and in line with similar reductions recommended in 2017 and granted by the Minister for other applications in the area, a reduction for the sites in question was considered appropriate to ensure equal distribution of the licensed area to all applicants in Trawbreaga Bay. This practice can be clearly seen on the map which the Department has provided to ALAB previously (copy attached)."

## **5.0 Context of the Area**

### **5.1 Physical descriptions**

As outlined in the Shellfish Pollution Reduction Programme, Site Characterisation Report Number 29<sup>2</sup> “Trawbreaga is situated in County Donegal in the North Western International River Basin District (Figures 1 & 2). It is a well-sheltered bay which lies on the northwestern coast of the Inishowen Peninsula. Doagh Isle, a low-lying, sandy promontory, stretches across the mouth of the bay, leaving only a narrow strait to the open sea. The bay area empties at low tide to expose a mixture of mudflats, sandbanks and stony/rocky substrates. The designated shellfish area is 4.3 km<sup>2</sup> and stretches from Moanrealtagh Point to Duaghmore Point and around Fergal Point.

The contributing catchment of the shellfish area is 144.4 km<sup>2</sup> in area and includes a number of small rivers and streams, chiefly the Ballyboe, Donagh and Glennagannon rivers (Figure 3).

The population of the catchment is approximately 4,000. The main towns in the catchment are Carndonagh with a population of 1,923 and Malin with a population of 122.

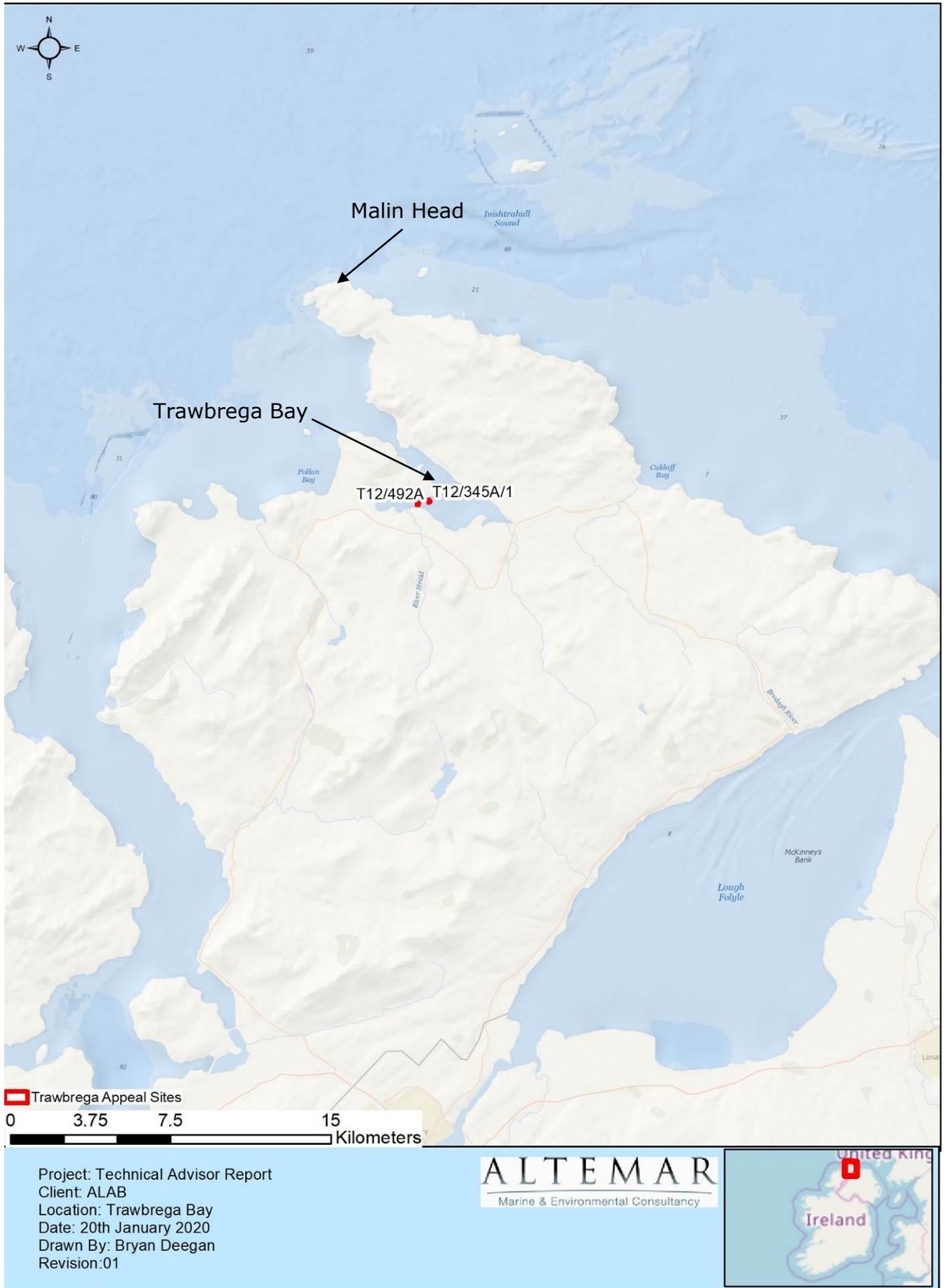
The bay is mostly surrounded by agricultural land of low to moderate intensity. The estimated number of sheep and cattle in the catchment is 27,000 and 4,500 respectively.”

The designated shellfish area is seen in Figure 4. The aquaculture sites in question (T12/345/1A & T12/492) are located in the inner section of the Bay, south of Fegart Point (Figure 2). The closest weather station to the Trawbreaga Bay is Malin Head. Based on Met Eireann Data<sup>3</sup> the mean annual, rainfall is 1107.0mm, temperature is 9.7.C. Watercourses that feed Trawbreaga Bay are seen in Figure 3. Photograph of the site location (Figure 3) are seen in Plates 1 and 2.

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<sup>2</sup> <https://www.housing.gov.ie/sites/default/files/publications/files/filedownload21897en.pdf>

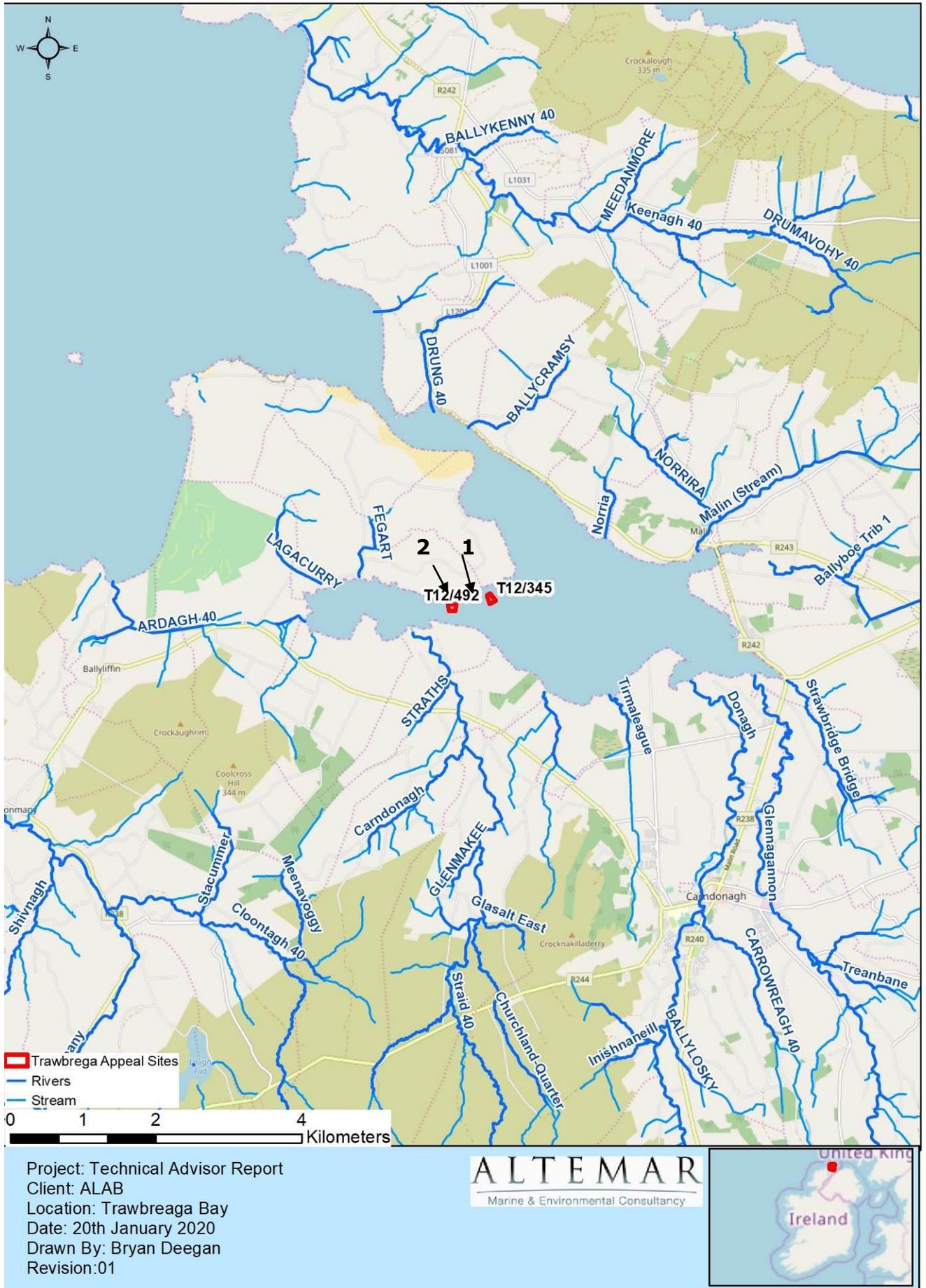
<sup>3</sup> <https://www.met.ie/climate/available-data/monthly-data>



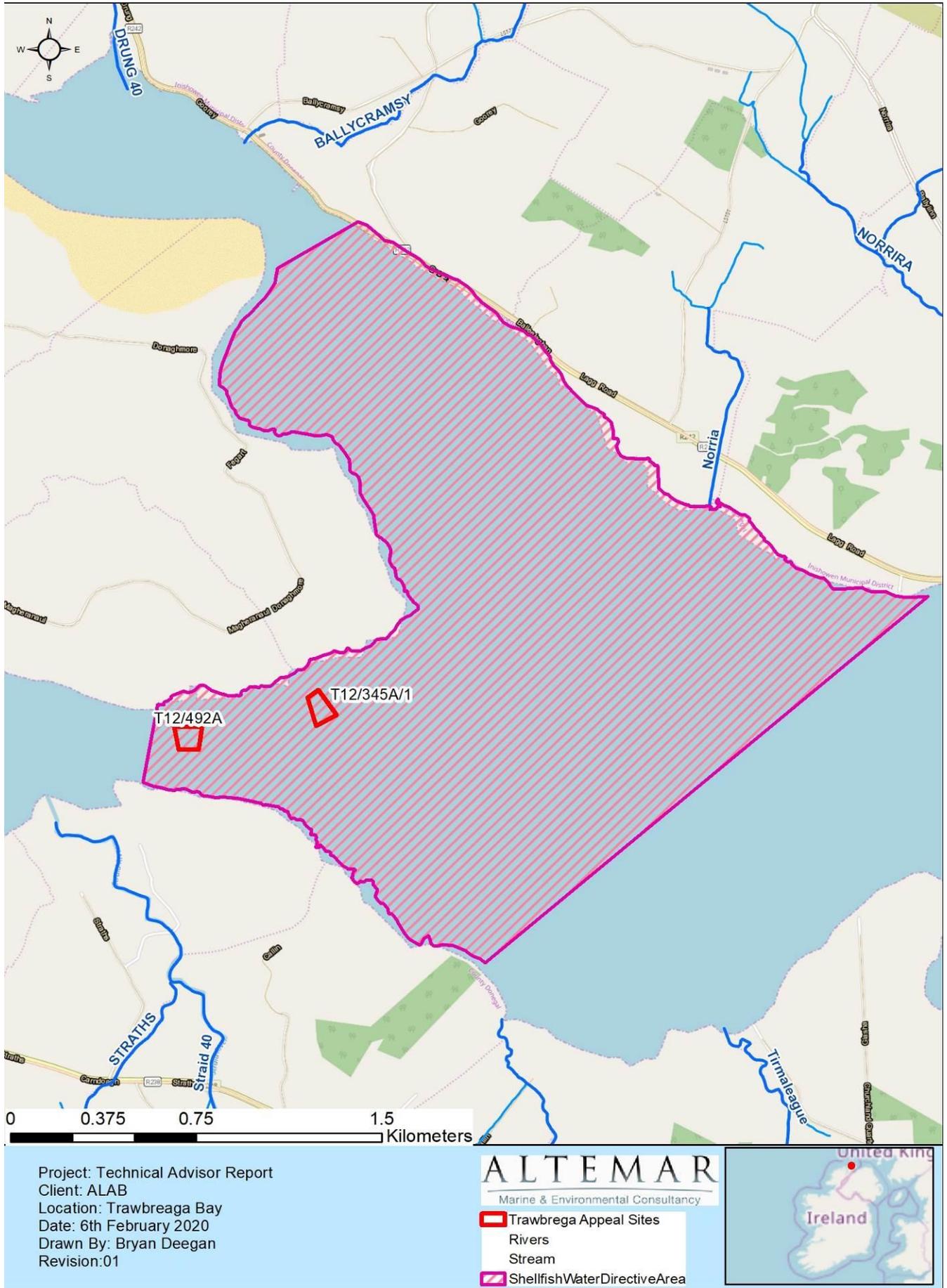
**Figure 1.** Trawbrega Bay.



Figure 2. Satellite imagery of Trawbreaga Bay, Co. Donegal (Bing).



**Figure 3.** Watercourses entering Trawbrega Bay (Plate 1 & 2 Locations).



**Figure 4.** Designated Shellfish Waters.



**Plate 1.** Image of the aquaculture site location (from R246).



**Plate 2.** Image of the aquaculture sites locations from access track.

## 5.2 Resource Users

### Shellfish

#### **Oysters**

As outlined in the Report supporting Appropriate Assessment of Aquaculture in North Inishowen Coast SAC (Site code: 002012) (Marine Institute, 2018) aquaculture activities “occur at Trawbreaga Bay, focussing primarily on the cultivation of the Pacific oyster *C. gigas*. Descriptions of spatial extents of existing and proposed aquaculture activities within the qualifying interest were calculated using coordinates of activity areas in a GIS (Figure 4). The spatial extent of the cultivation activities (current and proposed) overlapping the habitat features is presented in Table 1 (data provided by DAFM).”

**Table 1.** Spatial extent of aquaculture activities and access routes overlapping with the qualifying interest (1140 Mudflats and sandflats not covered by seawater at low tide) in North Inishowen Coast SAC. Aquaculture activities presented according to culture type, method and license status.

				<b>1140 - Mudflats and sandflats not covered by seawater at low tide (988ha)</b>	
<b>Culture Type</b>	Method	Status	No of Licences	Area (ha)	% Feature
<b>Oysters</b>	Intensive	Licensed	23	17.08	1.72
<b>Oysters</b>	Intensive	Application	48	73.64	7.4
<b>Access Routes</b>				6.77	0.69
<b>Grand Total</b>				<b>97.72</b>	<b>9.89</b>

“Oyster production has been operational in Trawbreaga Bay since the late 1990’s, however it was not until the early noughties that licenses were first issued for the area. In 2001 there were 26 licences to farm oysters in the Trawbreaga Bay area. Currently there are 23 valid oyster production licences with a further 48 new applications.”

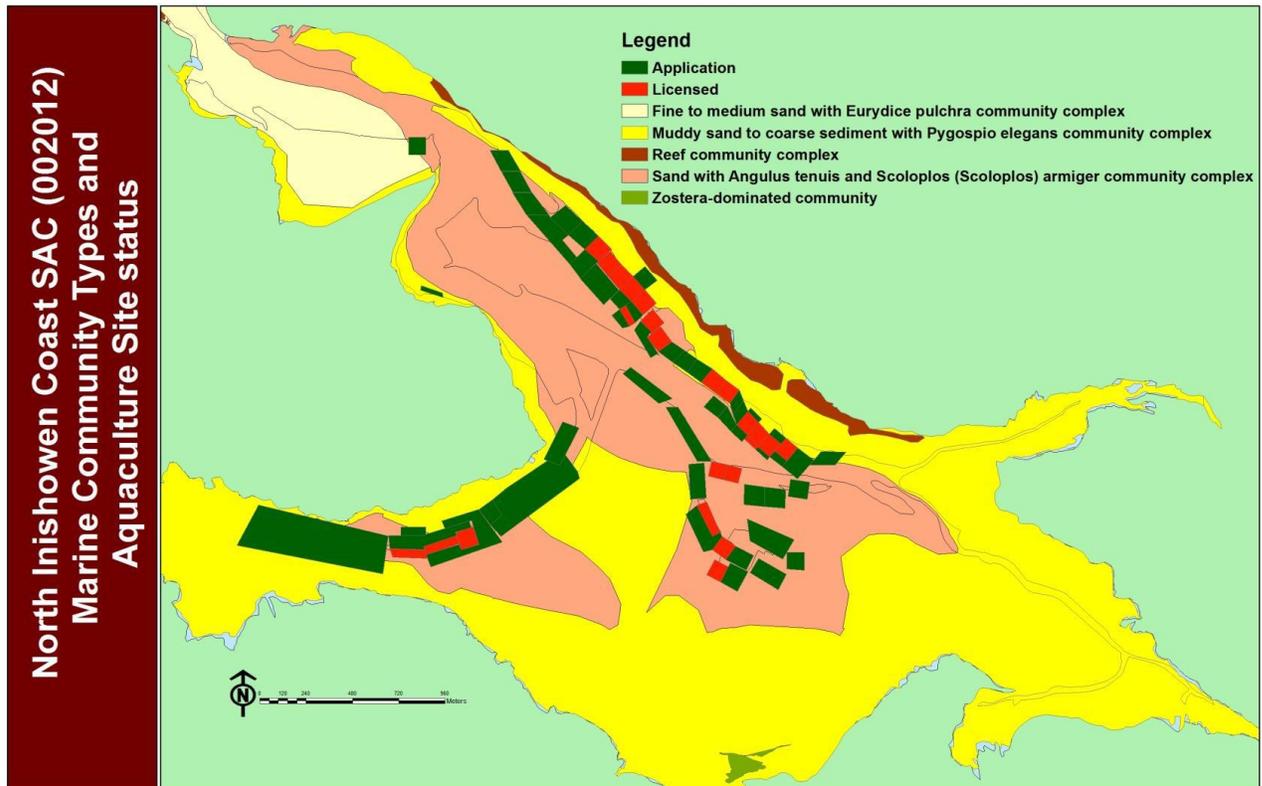
#### **Intertidal Oyster Cultivation**

##### *Current Activity*

“Current oyster cultivation within North Inishowen Coast SAC is a form of intensive culture with oyster seed cultivated using the bag and trestle method within the intertidal zone, either to half-grown or fully-grown size. The bag and trestle method uses steel table-like structures which rise from the shore to just above knee height on the middle to lower intertidal zone, arrayed in double rows with wide gaps between the paired rows to allow for access. Trestles used are made from steel and typically between 3 in length, are approximately 1 metre in width and stand between 0.5 and 0.7 metre in height. In general, oyster farms are positioned between mean Low Water Spring and mean Low Water Neap, allowing on average between 2 and 5 hours exposure depending on location, tidal and weather conditions. The trestles hold typically hold six HDPE mesh bags approximately 1m by 0.5m by 10cm, using rubber and wire clips to close the mesh bags and to fasten them to the trestles. The production cycle begins in North Inishowen Coast SAC when G4 to G8 (6 – 10mm, respectively) oyster seed is brought to the service site either in spring or late summer of each year. Oyster bags vary in mesh size (4mm, 6mm, 9mm and 14 mm) depending on oyster stock grade. For example 6mm seed is put into 4mm mesh bags at a ratio of 1000 to 1500 seed per bag. Both Diploid and Triploid oysters are grown in Trawbreaga Bay. Though the majority of producers are now moving into triploid production of all their stock as it appears to perform well in the area.

The oyster seed is bought in from oyster nurseries in France or the UK and include;

- GrainOceanFrance Turbot
- Satmar
- France Nissian



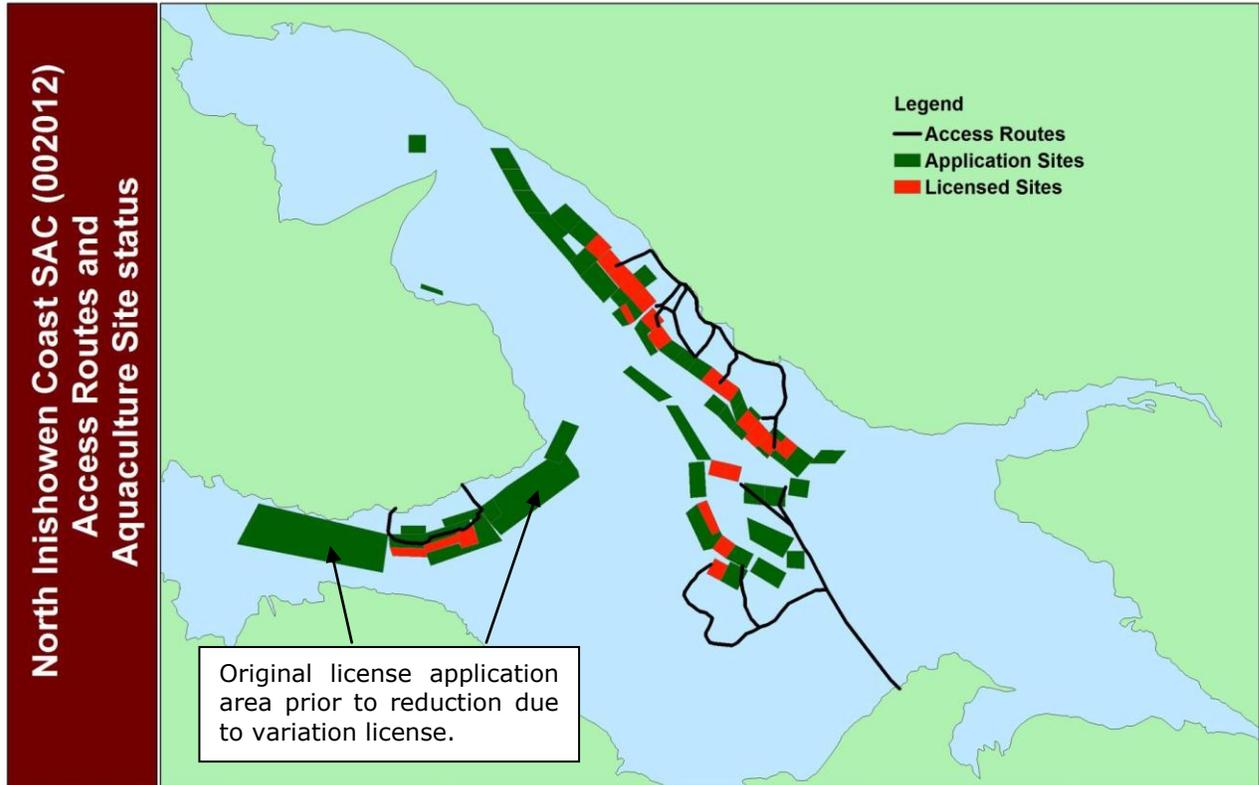
**Figure 5.** Aquaculture sites (licenced and applications) at Trawbreaga Bay relative to principal marine community types recorded within the marine Annex I qualifying interest of Mudflats and sandflats not covered by seawater at low tide (1140) of North Inishowen Coast SAC (NPWS 2014c).

“Oysters are thinned out and graded as the oysters grow. As the oysters grow, they will be taken to the handling / sorting facility twice per year for grading and re-packing, and returned to the trestles. In the final stage they will be ‘hardened’ in the upper intertidal area, before removal, grading, bagging and delivery. Time to harvest, depending on intake size, ranges from 2.5 to 4 years, where they will have reached 60 or 80 to the kilo. At reaching market size oysters are in bags of about 120. Some farmers also take in half grown hatchery produced oysters (from Dungloe, Co. Donegal) and grow under contract for local farmers in the area.

There are three main pacific oyster production areas within Trawbreaga Bay; the North and South of the bay, with one producer farming in the West of the bay. Farms on the intertidal area are typically accessed during spring tides (at low tide) using vans or tractors. Preparatory work is always conducted in the service areas in the intervening periods, including grading and packing, preparation of bags and trestles and general maintenance work which includes shaking and turning of bags, and hand removal of fouling and seaweed to ensure maintenance of water flow through the bags when submerged. In the North of the Bay, eight of the producers observe one access route from the shore to their farm area, with a maximum of five tractors active in the area at any one time. In the south of the Bay six active producers observe access growing areas using one dedicated access route from the shore. At any one time depending on times of grading and selling stock there can be up to three tractors and trailers operating across the area. In the west of the bay one producer uses a dedicated access route to the farm. This access route is a public road.

### Proposed Oyster Cultivation Activity

New (oyster) applicants, have indicated their source of seed will be from hatcheries currently used by existing farms within the Bay. All new applicants are to use bag and trestles (intensive) as the method of cultivating their oysters. There will be both diploid and triploid (if available) seed used on site. All new proposed cultivation sites are located within the existing licenced areas and will be serviced using existing access routes (see Section 5.1.1.4 and Figure 6 below).



**Figure 6.** Access routes to aquaculture sites.

### Access Routes

There are a number of access routes in Trawbreaga (Figure 6) used to access each of the main growing areas. Tractors and trailers will be used, for all sites within the SAC. Calculation of area of access routes in the SAC is linear length (in metres) by a putative route width of 10m, which is considered a sufficiently precautionary estimate. The spatial coverage of access routes is presented in Table 1.

### Licensed Sites

GIS shapefiles for the status of all licenced sites within Trawbreaga Bay were acquired from DAFM and are shown in Figure 6. Based on these data, the licence reference, holder and hectares occupied by each licence are seen in Table 1. The most up to date licencing status for the site is seen in Figure 8<sup>4</sup>. As can be seen from Figure 9 Derek Diver currently has 2 licenced application areas in Trawbreaga Bay. Figure 10 shows the size of the original site application and granted with variation licences in addition to the designated shellfish area.

4

<https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/donegal/shareddocuments/NorthInishowenCoastTrawbreagaBaySiteMap050517.pdf>



**Figure 7.** Aquaculture licence site numbers in Trawbreaga Bay (All Oyster).

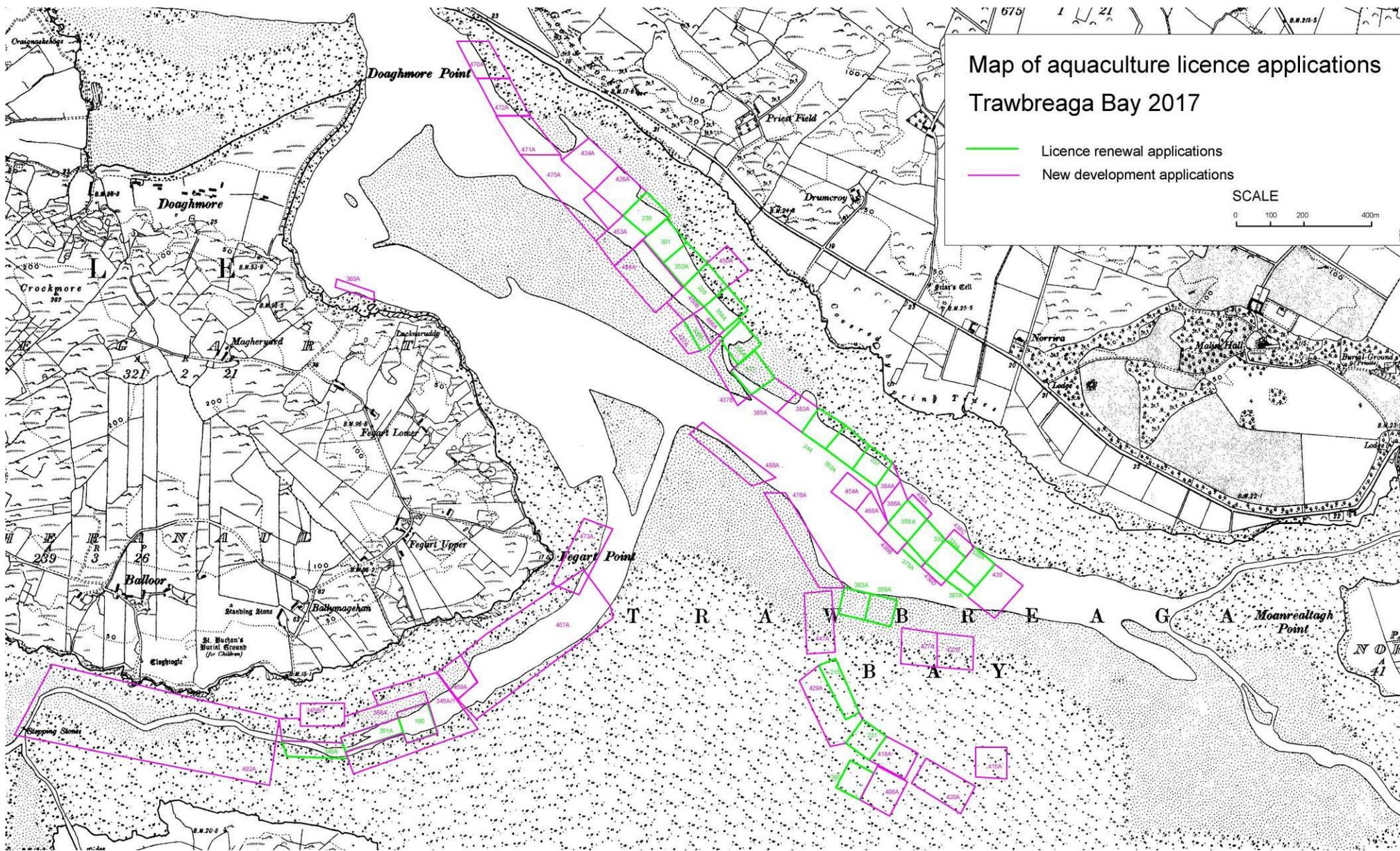
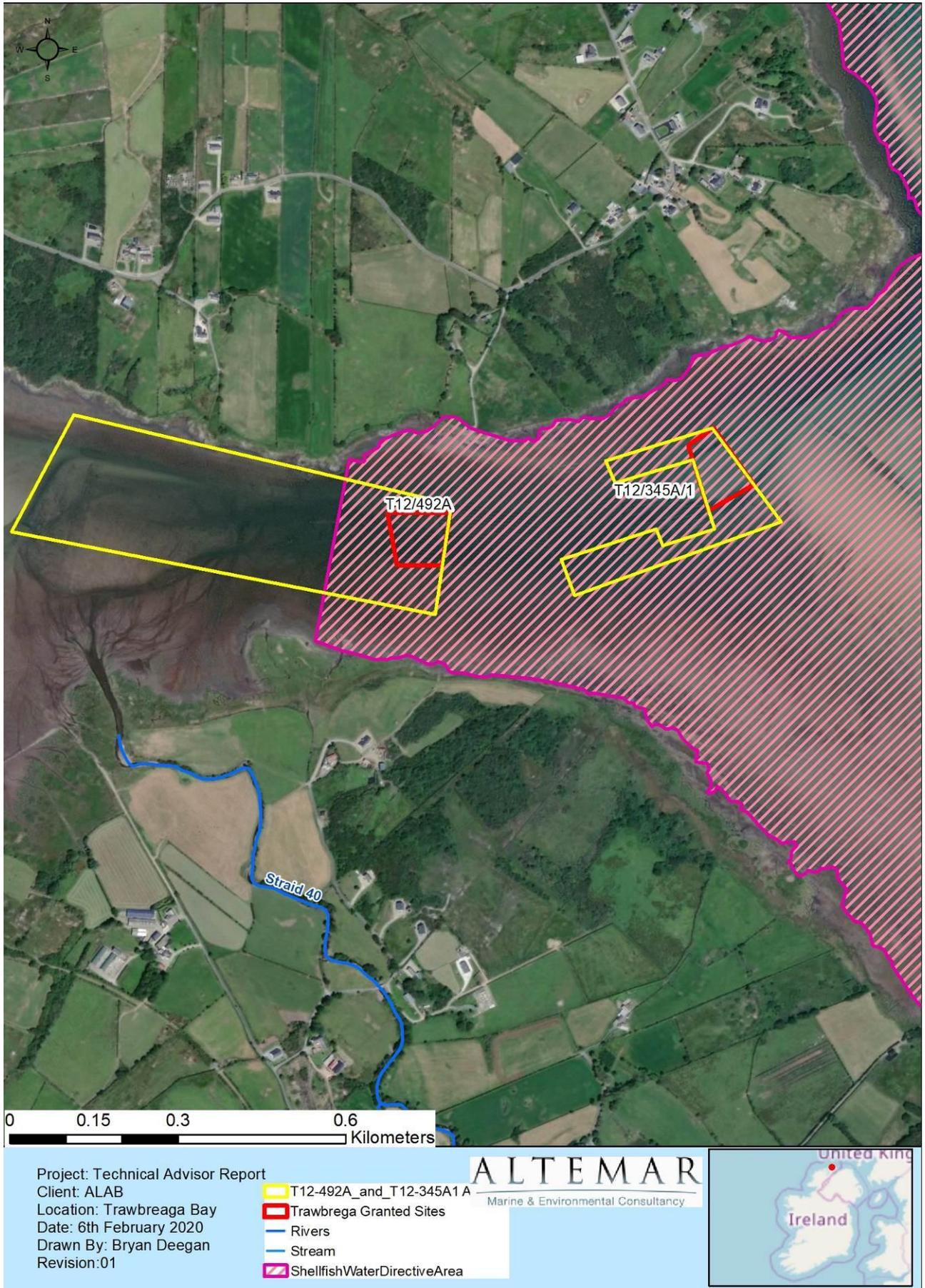


Figure 8. Map of Aquaculture Licences in Trawbreaga Bay (2017)<sup>5</sup>

<sup>5</sup> <https://www.agriculture.gov.ie/seafood/aquacultureforeshoremanagement/aquaculturelicensing/aquacultureforeshorelicenceapplications/donegal/>



Figure 9. Existing Derek Diver Aquaculture Sites in Trawbreaga Bay (red) with appeal sites (pink).



**Figure 10.** Application sites (Yellow) and Granted Sites (Red)

### Angling Activity

As outlined by Inland Fisheries Ireland<sup>6</sup> “As the R242 road swings back east from the beach towards Malin village it runs along the Northern Shore of Trawbreaga Bay (C) where lugworm casts will be found on the banks of the estuary channel. Trench digging is most productive just to the south of the road bridge at Malin, where worms are plentiful but the foreshore is very muddy. From the town of Carndonagh the R238 runs north west parallel to the southern shore of Trawbreaga Bay and as it bears south, about 3kms before Ballyliffin, a small road runs north to Doagh Island (11)

which affords easy access to the southern side of the main channel leading to Trawbreaga Bay. From the channel banks, on a flooding tide, free lined sandeel or spinning with plugs, will yield sea trout in summer and occasional bass in autumn. Bottom fishing at high tide with crab or worm baits will produce freshwater eels, flounder and dogfish.”



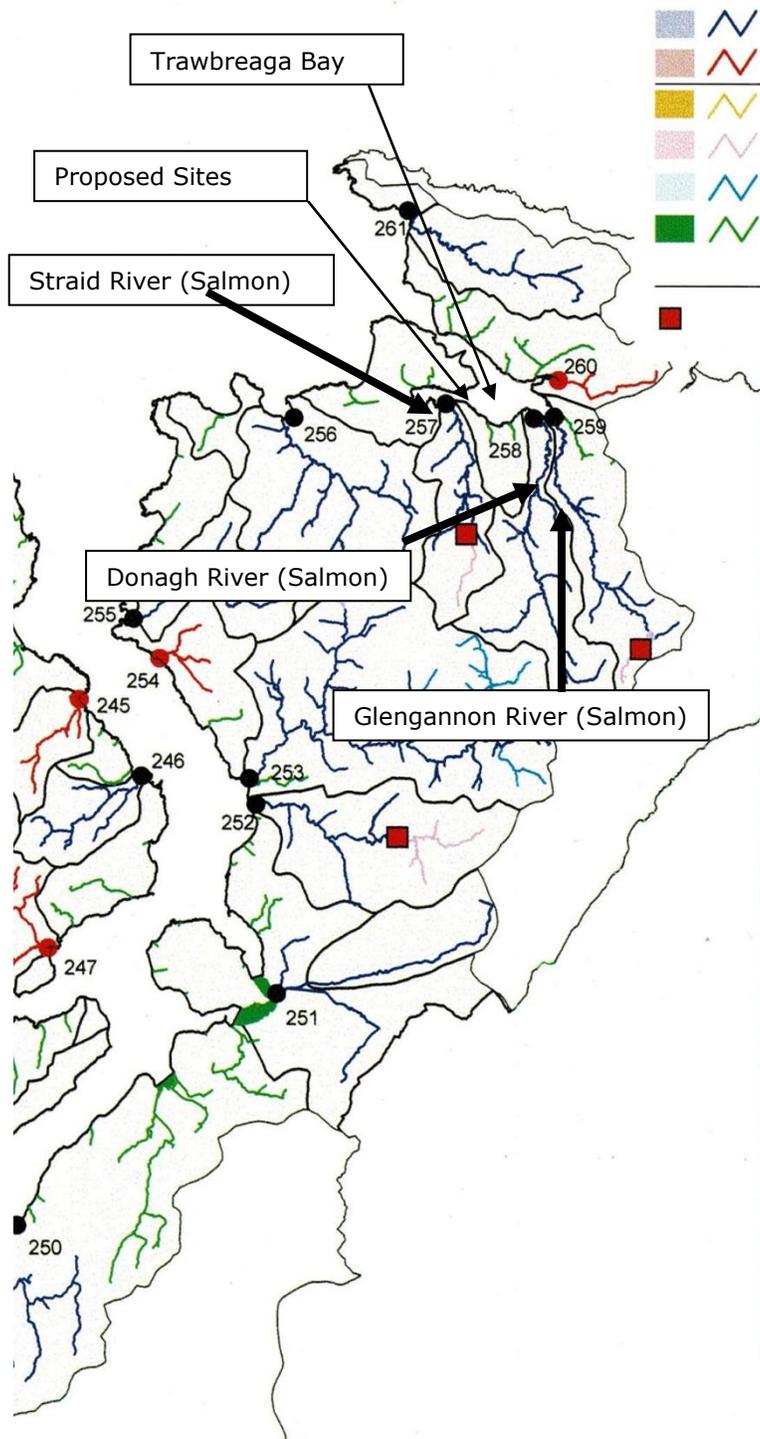
**Figure 11.** Angling Activities

Based on the data in the Inland Fisheries Ireland Quantification of the Freshwater Salmon Habitat Asset in Ireland report<sup>7</sup> three of the rivers within Trawbreaga Bay are characterised as Atlantic salmon (*Salmo salar*) rivers. The Glengannon, Donagh and importantly due to its location beside the application sites the Straid (Figures 12 & 13).

<sup>6</sup> <https://www.fisheriesireland.ie/extranet/angling-1/sea-angling/48-a-guide-to-sea-angling-in-the-donegal-region-1/file.html>

<sup>7</sup> McGinnity, P., Gargan, P., Roche, W., Mills, P. & McGarrigle, M. 2003. Quantification of the Freshwater Salmon Habitat Asset in Ireland using data interpreted in a GIS platform. Irish Freshwater Fisheries, Ecology and Management Series: Number 3, Central Fisheries Board, Dublin, Ireland.

### Designation of Rivers and Lakes

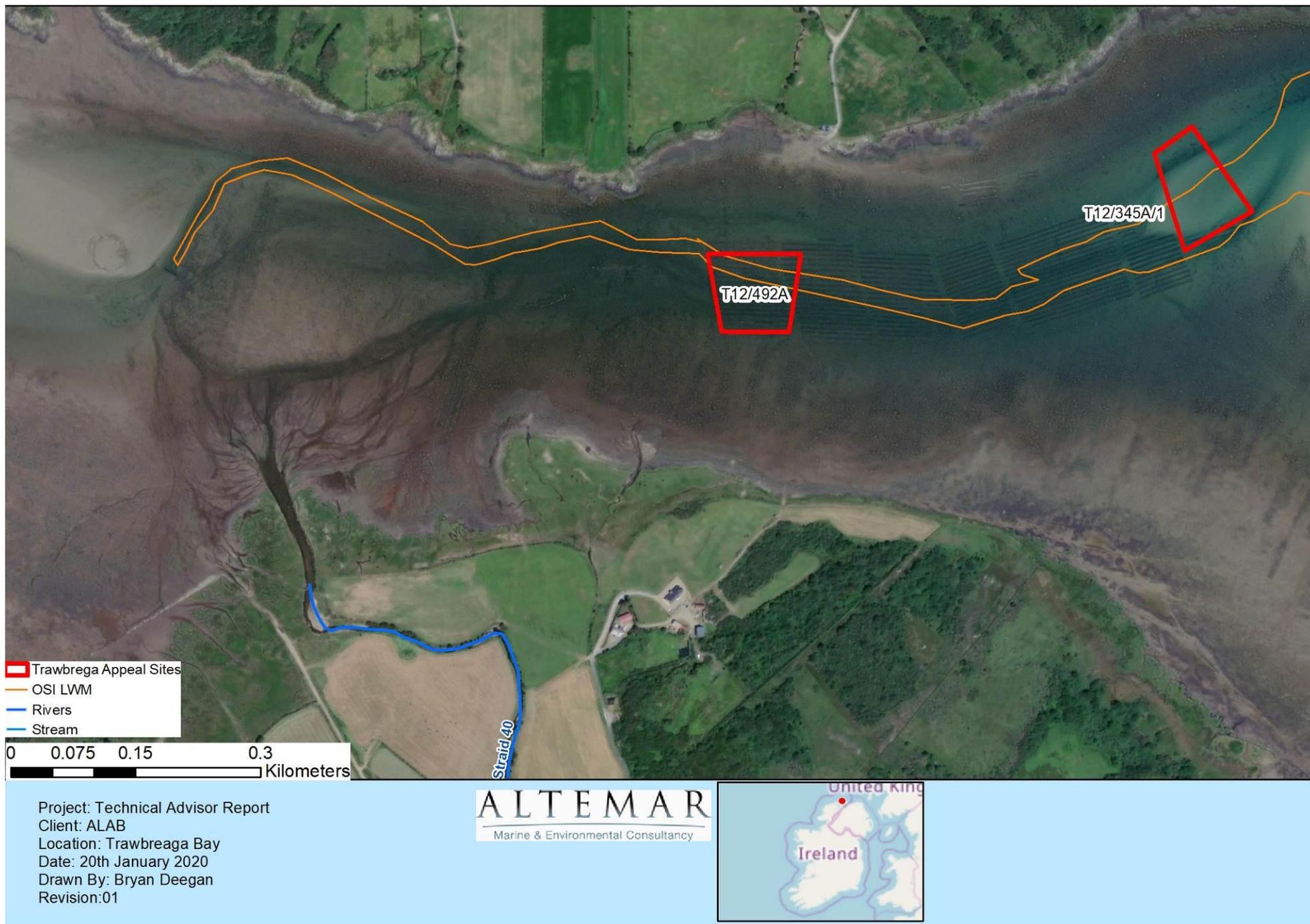


	Salmon/Sea trout		(Tidal Limit)
	Sea trout only		(Tidal Limit)
	Non self sustaining Salmon		
	Above Barrier		
	Not utilised by Salmon		
	Not considered a significant producer of Salmonids		
	1st Order not shown		
	Impassable Barrier		

Excluded from Analysis of Accessible Habitat

228	SAL	Gweedore (River)
229	SAL	Clady (River)
230	SAL	Owencronahulla
231	SAL	Glen (River)
232	ST	Owenawillin
233	ST	Owentully
234	SAL	Glenna (River)
235	SAL	Tullaghobegly (River)
236	SAL	Ray (River)
237	SAL	Derryart (River)
238	SAL	Faymore (River)
239	ST	Duntally (River)
240	SAL	Lackagh (River)
241	ST	Big (Burn)
242	ST	Bunlin (River)
243	ST	Loughkeel (Burn)
244	ST	Burnside (River)
245	ST	Glenvar (River)
246	SAL	Drumhallagh (River)
247	ST	Glenalla (River)
248	SAL	Leannan (River)
249	SAL	Swilly (River)
250	SAL	Isle (Burn)
251	SAL	Burnfoot
252	SAL	Mill (River)
253	SAL	Crana (River)
254	ST	Aghaweel (River)
255	SAL	Owenerk (River)
256	SAL	Clonmany (River)
257	SAL	Straid (River)
258	SAL	Donagh (River)
259	SAL	Glennagannon (River)
260	ST	Ballyboe (River)
261	SAL	Culoort (River)

Figure 12. Atlantic salmon and sea trout rivers.



**Figure 13.** Location of the proposed aquaculture sites in relation to the Straid which has been classed as an Atlantic salmon river.

It is important to note that in relation to the Straid River that in (CFB, 2003)(Figure 12) it is classed as a salmon river while in the Report on the Development of the NASCO Database of Irish Salmon Rivers-Report on Progress<sup>8</sup> the NASCO category of the river is “Lost” due to “Agricultural Enrichment”. However, the Donagh River and Glennagannon River are “Not Threatened with loss”. Pressures seen on the Donagh River are due to “inadequate sewage treatment” and “industrial discharges” while pressures on the Glennagannon River “Drainage / channel modification” and “Agricultural enrichment.”

As outlined in the Inland Fisheries Ireland consultation within the Ministerial File “A site visit was carried out at low water on 16<sup>th</sup> July 2018

1. *This area of (Trawbreaga Bay) is mostly sandy in nature and of a gentle gradient. This area is “a well”sic<sup>9</sup> established route for adult salmon and sea trout returning to spawn and for the outward migration of salmon smolts. Salmon and sea trout populations migrate upstream of this point to two river catchments, River Donagh and the Glenagannon River which flow into Trawbreaga Bay. At present, the Glenagannon and Donagh catchments are currently closed to salmon fishing because stocks do not meet their conservation limits. The conservation status of salmon in Ireland at present is listed as vulnerable (Red List No. 5, 2011). The applicant should take all necessary measures to ensure that the development will not interfere with the passage of migrating salmon and sea trout.*
2. *This site should be clearly marked with navigational marks to prevent any navigational hazard.*
3. *The applicant should confirm that only triploid oysters are intended for use on site.*
4. *That proper biosecurity protocols are followed during the operations of the farm to ensure no diseases or non-native species are introduced or spread elsewhere from the facility should one arise.”*

It would be important to note that the Straid has had historic populations of Atlantic salmon but, these have declined. Should the reasons for the decline in populations reduce e.g. improvements in water quality/agricultural pressures or if enhancement works are carried out, populations could return to the Straid River.

### Tourism

The main tourism attractions outside of the local population areas are seen in Figure 14. The aquaculture site is not on the Wild Atlantic Way (Carandonagh is the nearest location through which it goes). There are no significant tourism attractions in the vicinity of the proposed Aquaculture site. Based on The Donegal Local Economic & Community Plan 2016-2022<sup>10</sup> “The number of tourists visiting Donegal is consistently on the increase. In 2013, 199,000 overseas visitors came to Donegal, increasing by 14.3% since 2012. Of the visitors in 2013, €78,000 were from Britain, 70,000 from mainland Europe, 37,000 from North America and 14,000 from other locations. Overseas visitors were worth €48m to the local economy. The counties domestic visitors were also up from 245,000 (2012) to 260,000 (2013). The domestic tourism market was worth €64million. There are a number of factors driving this event including the establishment and promotion of the Wild Atlantic Way, along which there are a number of signature points like Slieve League, Fanad Head & Malin Head and discovery points including; spell binding islands breathtaking blue flag beaches, world class golf courses, community forests and picnic areas, and historical landmarks etc.”

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<sup>8</sup> [http://www.nasco.int/pdf/2005%20papers/CNL\(05\)45.pdf](http://www.nasco.int/pdf/2005%20papers/CNL(05)45.pdf)

<sup>9</sup> Illegible in note on Ministerial file

<sup>10</sup> <https://www.donegalcoco.ie/media/donegalcountyc/community/lcdc/App%201%20to%20LECP%20%20The%20Profile%20of%20the%20County%20February%202016.pdf>



### Agricultural Activity

As outlined in the Characterisation Report (Trawbreaga Shellfish Area, Co. Donegal)<sup>11</sup> “Approximately 40% of the area of this catchment is farmed land. However, the estimates of livestock densities and fertiliser usage in this catchment are lower than the national averages. The EPA’s diffuse model risk assessment, which investigates the relationship between catchment attributes (percentages of diffuse land cover including agriculture), water chemistry and ecological status, highlights areas of diffuse risk in this catchment. Also, the prevalence of peat and other wet soils in the catchment could result in runoff from agricultural land and the steep slopes could increase the risk of runoff. Agriculture is a possible source of the faecal contamination indicated by shellfish monitoring and therefore agriculture could possibly be affecting shellfish water quality in this shellfish area.”

Table 2 “provides an estimate of the average number of dairy and drystock livestock units and the average loadings of nitrogen and phosphorus chemical fertiliser per hectare of farmed land within the contributing catchment area. The figures beneath the table express the nitrate limit (and Ireland’s derogation) under the Nitrates Directive in terms of livestock densities. Discharges related to agriculture can affect the levels of faecal coliforms, suspended sediments, nutrients and dissolved oxygen in receiving waters. In addition, the use of pesticides and herbicides can introduce a range of harmful chemicals to the water environment.” As can be seen from Table 2 the fertiliser loadings in the catchment are well below the National average.”

Indicator	Catchment (per ha of farmed land)	National Average (per ha of farmed land)
Livestock units	0.60 LU	1.20 LU
Nitrogen fertiliser usage	63.11 kg	92.09 kg
Phosphorus fertiliser usage	5.97 kg	9.74kg

Nitrates Directive limit = 170 kg N per hectare = approx. 2 LU per hectare

Nitrates Directive derogation = 250 kg N per hectare = approx. 3 LU per hectare

**Table 2.** Estimate of the average number of dairy and drystock livestock units and the average loadings of nitrogen and phosphorus in the catchment

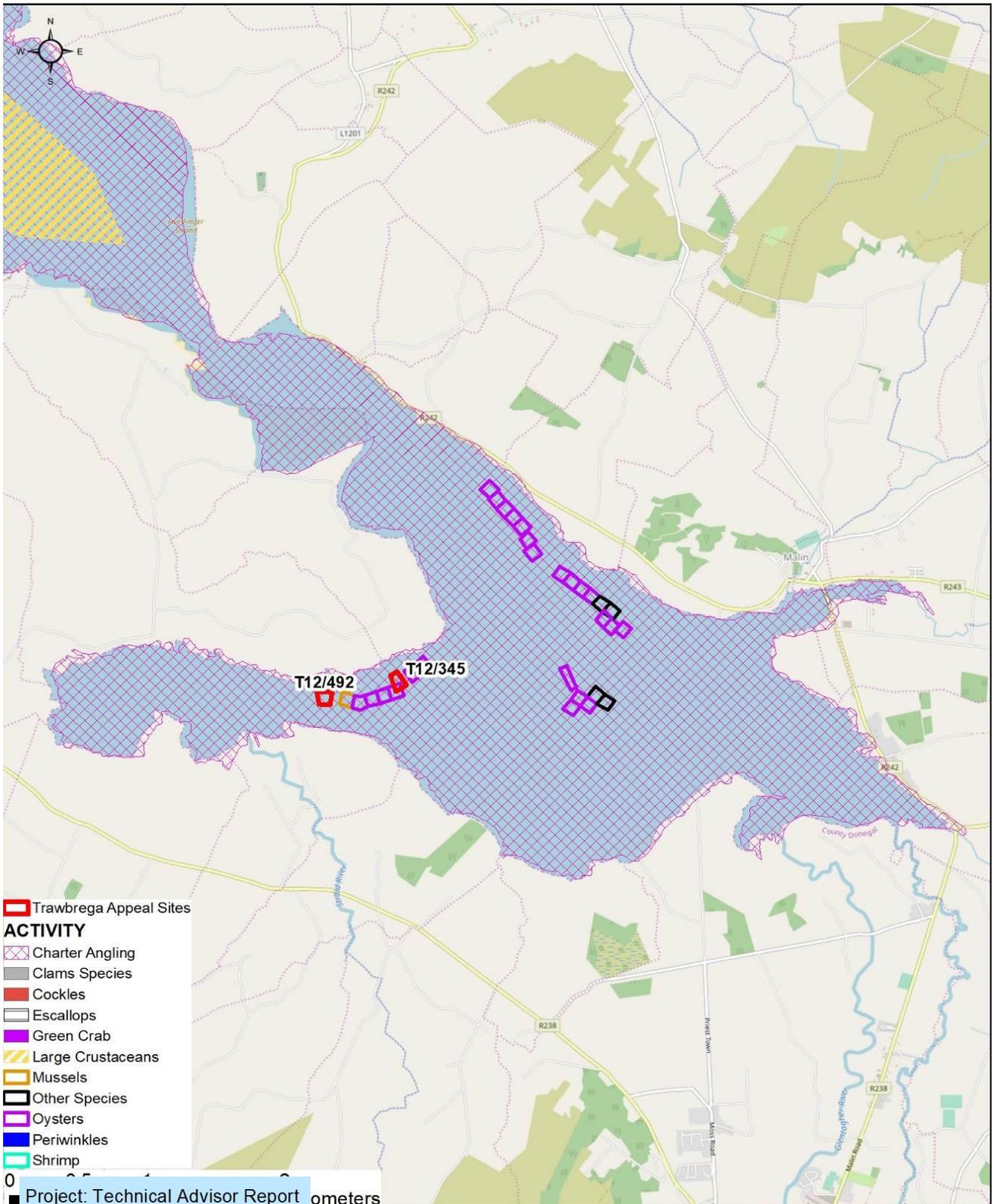
### Forestry

“There is over 7 km<sup>2</sup> of forested land in this catchment and the percentage area under forest cover is lower than the national average. Unlike agriculture, the location of forestry activity is known and very little forestry activity occurs in close proximity to the shellfish area. The EPA’s diffuse model risk assessment, which investigates the relationship between catchment attributes (percentages of diffuse land cover including forestry), water chemistry and ecological status highlights some diffuse risk areas. However, the more recent risk assessment, undertaken by the WFD Forest and Water study, does not highlight any areas of acidification, eutrophication and sedimentation risk. Monitoring does not indicate any water quality issues which are likely to be attributable to forestry and therefore, overall, forestry is unlikely to be affecting shellfish water quality in this shellfish area.”

### Inshore Fishing activity

Based on Marine Institute data the main activity within Trawbreaga Bay is oyster aquaculture with little additional inshore fishing activity (Figure 15). Based on these data the site overlaps with chartered angling. However, the entire bay is marked for this activity.

<sup>11</sup><https://www.housing.gov.ie/sites/default/files/publications/files/filedownload21897en.pdf>



- Trawbreaga Appeal Sites
- ACTIVITY**
- Charter Angling
- Clams Species
- Cockles
- Escallops
- Green Crab
- Large Crustaceans
- Mussels
- Other Species
- Oysters
- Periwinkles
- Shrimp

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 ■ Project: Technical Advisor Report    ometers  
 Client: ALAB  
 Location: Trawbreaga Bay  
 Date: 20th January 2020  
 Drawn By: Bryan Deegan  
 Revision:01  
 Revision:01



**Figure 15.** Inshore Fishing Activity in Trawbreaga Bay.

### 5.3 Environmental Data

#### Water Quality

Trawbreaga Bay is designated as Coastal Waters in the Waterframework Directive (WFD) classification. It is currently classed as unpolluted water quality status (Figure 16). However, of note several rivers entering into the Bay are classed as Poor and bad (Figure 16).

As outlined in the Revised / Updated Trawbreaga Bay Pollution Reduction Programme “The most up to date results of monitoring (2012) indicate that this area is in compliance with the Guide Value of 300 faecal coliforms / 100ml. However due to the previous indication it is prudent to continue with the actions outlined in this Pollution Reduction Programme.”

“There are 1,527 on-site waste water treatment systems in this catchment and their density is higher than the national average. The characterisation report indicates that a smaller number are located within the coastal region of the catchment, which may have a direct impact on the shellfish area. The characterisation report also indicates that the hydrological condition of the majority of the catchment poses a risk to surface and groundwaters, the risk to surface and groundwaters from pathogens and phosphorus is high throughout the catchment as is the likelihood of inadequate percolation.”

“The results of Shellfish Water monitoring do not indicate any water quality issues within/ in the vicinity of this shellfish area. Monitoring of shellfish flesh for food hygiene purposes (2012) indicates faecal contamination in this shellfish area. The bivalve mollusc production areas in Trawbreaga Bay are classified as ‘Class B’ for the purposes of EU Regulation 854/2004. However, the available shellfish samples at this shellfish area are all in compliance with the shellfish guideline value for faecal coliforms as indicated above.”

The West Inishowen Water Management Unit Action Plan<sup>12</sup> states that the Pressures/Risks in the area include Nutrient sources “Over 88% of total phosphorus load is diffuse with agriculture accounting for 56%, forestry 16% and unsewered properties 7%. The main source of phosphorus load from point sources is from WWTPs (11%).”

The summary of the EPA waterbody data seen on the Catchments.ie website (2010-2015) is “Not at Risk”.<sup>13</sup>

Based on Marine Institute Shellfish Safety data<sup>14</sup>, Tra breaga Bay (DL-TB-TB) area. Of the 322 data results from September 2002 to January 2020 the site has remained open for shellfish production for the majority of time (262 results) with Closed Pending for 45 results and Closed 11 results. These closed results were all from 2012-2013 pending were based on failure of *Crassostrea gigas* (Whole) samples. The site has remained open since June 2018. These data indicate that the water quality in Trawbreaga Bay is good with few closures due to Marine Institute Safety inspection sampling.

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<sup>12</sup> [http://www.wfdireland.ie/docs/1\\_River%20Basin%20Management%20Plans%202009%20-%202015/NWIRBD%20RBMP%202010/Water%20Management%20Unit%20Action%20Plans/West%20Inishowen%20WWMU%20Action%20Plan%20March%202010.pdf](http://www.wfdireland.ie/docs/1_River%20Basin%20Management%20Plans%202009%20-%202015/NWIRBD%20RBMP%202010/Water%20Management%20Unit%20Action%20Plans/West%20Inishowen%20WWMU%20Action%20Plan%20March%202010.pdf)

<sup>13</sup> [https://www.catchments.ie/data/#/waterbody/IE\\_NW\\_240\\_0000?k=f6s0b7](https://www.catchments.ie/data/#/waterbody/IE_NW_240_0000?k=f6s0b7)

<sup>14</sup> <http://www.marine.ie/Home/site-area/data-services/interactive-maps/latest-shellfish-safety-data>

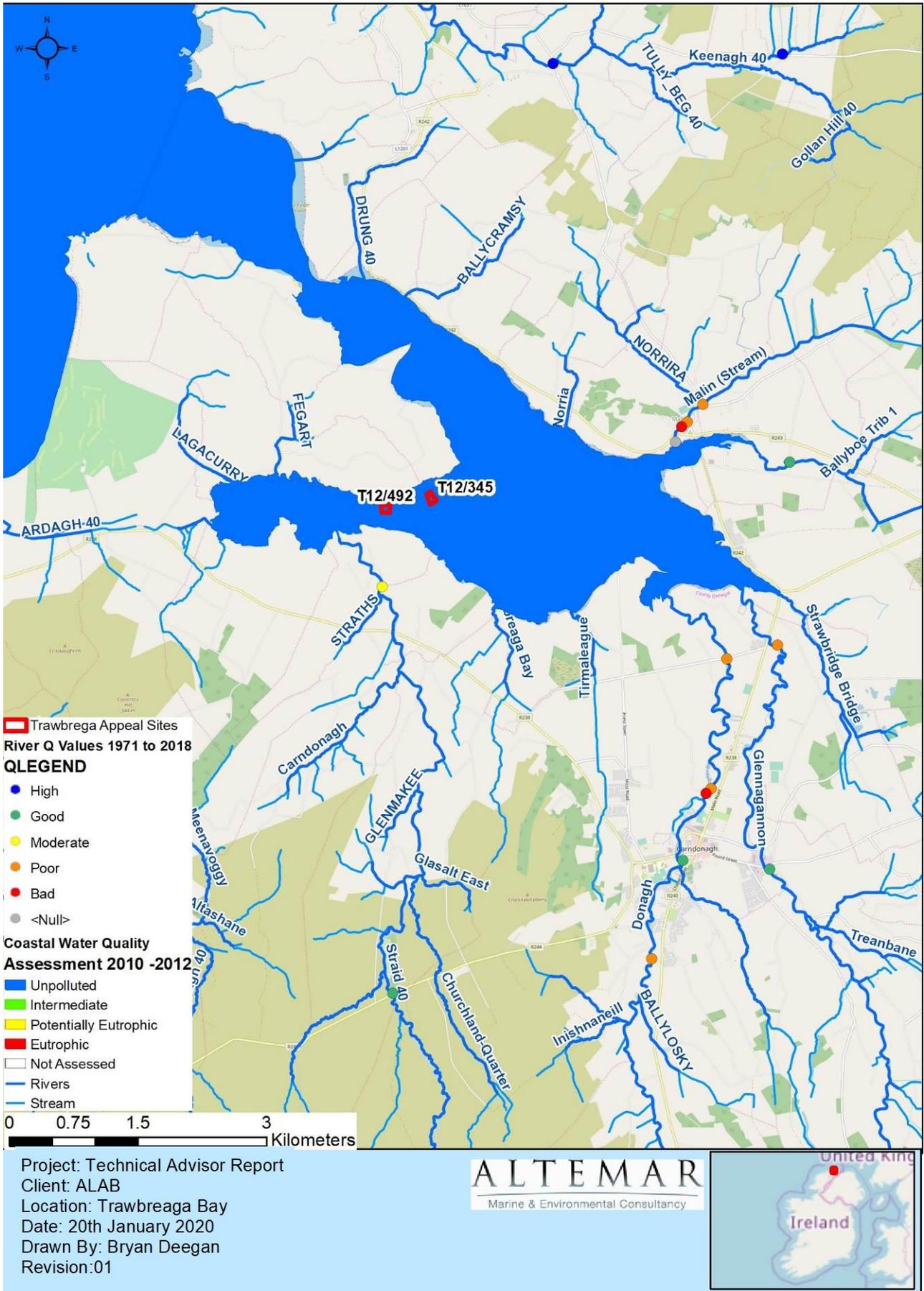


Figure 16. WFD Water quality Status of Trawbrega Bay.

# West Inishowen WMU



# West Inishowen Water Management Unit Action Plan

**Legend**

- Towns and Villages
- Wastewater Treatment Plants
- EPA Licensed Facility (IPPC)
- Local Authority Licensed Discharge
- Water Treatment Plants
- NI Boundary

**River Status**

- Blue: High
- Green: Good
- Yellow: Moderate
- Orange: Poor
- Red: Bad

**Lake Status**

- Blue: High
- Green: Good
- Yellow: Moderate
- Orange: Poor
- Red: Bad



<b>Name</b>	West Inishowen Water Management Unit (WMU)
<b>Area</b>	388km <sup>2</sup>
<b>River Basin District</b>	North Western IRBD
<b>Main Counties</b>	Donegal
<b>Protected Areas</b>	3 SACs (North Inishowen Coast, Magheradrumman Bog, Lough Swilly); 1 SPA (Trawbreaga Bay); 2 surface drinking waters (Doo Lough, Straid River); 1 Bathing Water (Culdaff); 2 Shellfish waters - Lough Swilly and Trawbreaga Bay.

**Sectoral Total Phosphorus Source**  
(This does not imply impact)

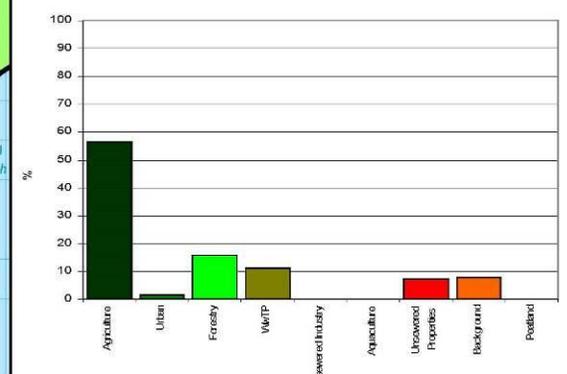


Figure 17. Trawbreaga Bay Management Unit Action Plan

## 5.4 Statutory Status

The location of the aquaculture site in relation to Special Areas of Conservation (SACs), Special Protection Areas (SPA's) and proposed Natural Heritage & Natural Heritage Areas are seen respectively in Figures 18, 19 and 20. The site synopsis of North Inishowen Coast SAC is seen in Appendix II.

The Features of interest for the North Inishowen Coast SAC are:

- Perennial vegetation of stony banks [1220]
- Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Machairs (\* in Ireland) [21A0]
- European dry heaths [4030]
- Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]
- Lutra lutra (Otter) [1355]

There is little site-specific conservation data (species or habitat) for the aquaculture sites. However, based on the Inishowen SAC Conservation Objectives document<sup>15</sup> the sites are located in a "Sand with *Angulus tenuis* and *Scoloplos (Scoloplos) armiger* community complex" (Figure 21). As outlined in the Marine Habitats supporting document<sup>16</sup> "In general the sediment of the complex is that of fine material (23.2% to 98.3% very fine to fine sand). However, there are some localised areas of coarser sediment; medium sand (35.4% to 63.6%) is recorded to the west of Malin and at Doaghmore while to the northwest of Glassagh Point the sediment is mixed (coarse to very coarse sand is 21.7% to 25.9% and gravel is 0.5% to 34.3%). The sand is somewhat mobile with extensive rippling being observed.

The distinguishing species of this community complex are the bivalve *Angulus tenuis*, the polychaetes *Scoloplos (Scoloplos) armiger*, *Spio martinensis* and *Pygospio elegans*. These species occur in low abundances and are not uniformly distributed.

Within Trawbreaga Bay, the bivalve *Cerastoderma edule* and the polychaete *Arenicola marina* are recorded in low abundances (1-5m<sup>-2</sup> and 1-2m<sup>-2</sup>, respectively). On the north shore of the bay from Ballycramsy to Balleelaghan the polychaete *Lanice conchilega* is recorded in low abundances."

As outlined in the Site Synopsis for Trawbreaga Bay Special Protection Area (Appendix III) "Trawbreaga Bay SPA, is of international importance for its Light-bellied Brent Goose population and also supports a nationally important population of Barnacle Goose. The regular occurrence of Barnacle Goose, Chough, Whooper Swan and Bar-tailed Godwit, which are listed on Annex I of the E.U. Birds Directive, is of note. Trawbreaga Bay is a Ramsar Convention site and part of the Trawbreaga Bay SPA is a Wildfowl Sanctuary."

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<sup>15</sup>[https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO002012.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002012.pdf)

<sup>16</sup>

[https://www.npws.ie/sites/default/files/publications/pdf/North%20Inishowen%20Coast%20SA%20\(002012\)%20Conservation%20objectives%20supporting%20document%20-%20Marine%20habitats%20\[Version%201\].pdf](https://www.npws.ie/sites/default/files/publications/pdf/North%20Inishowen%20Coast%20SA%20(002012)%20Conservation%20objectives%20supporting%20document%20-%20Marine%20habitats%20[Version%201].pdf)

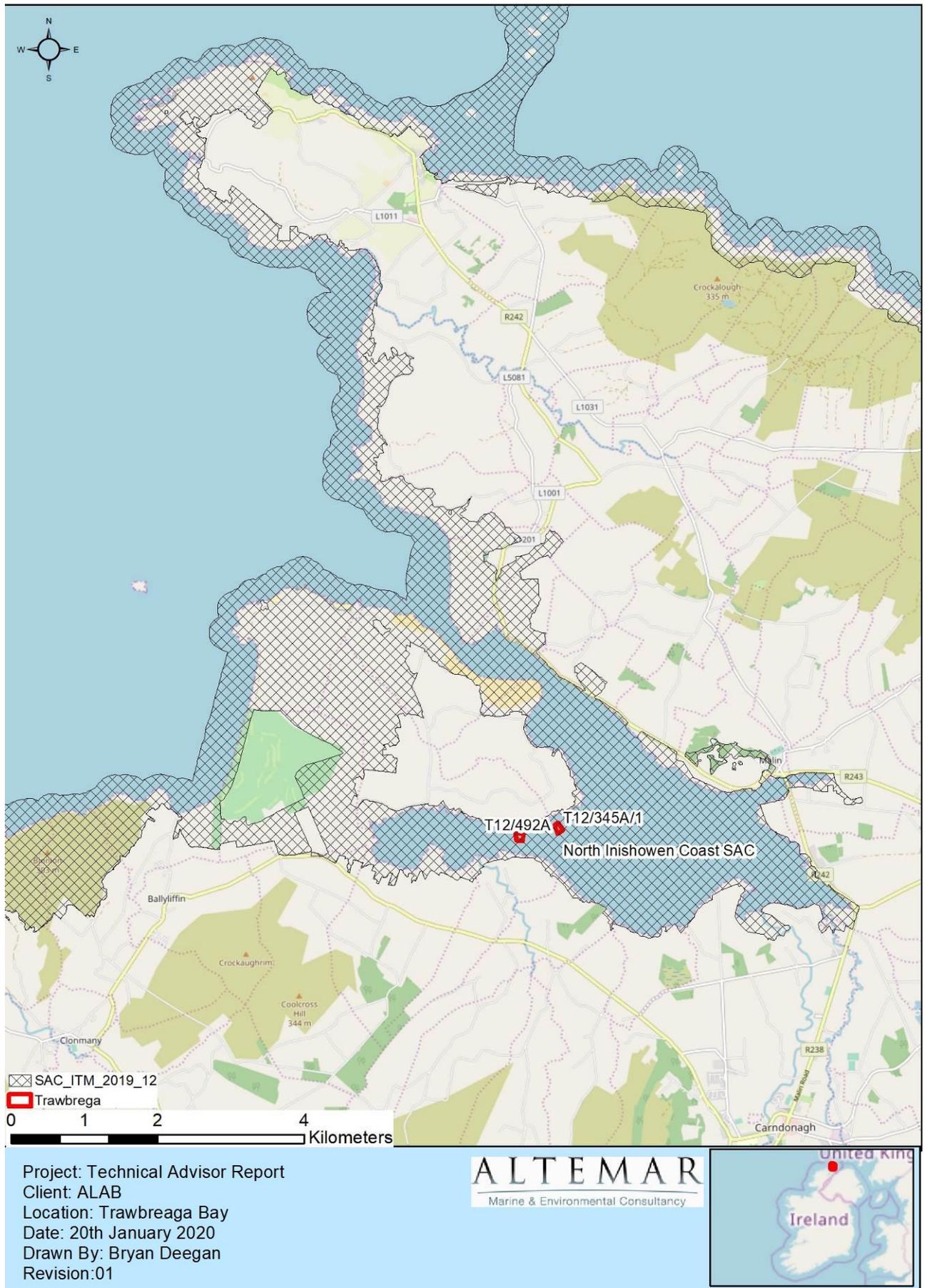
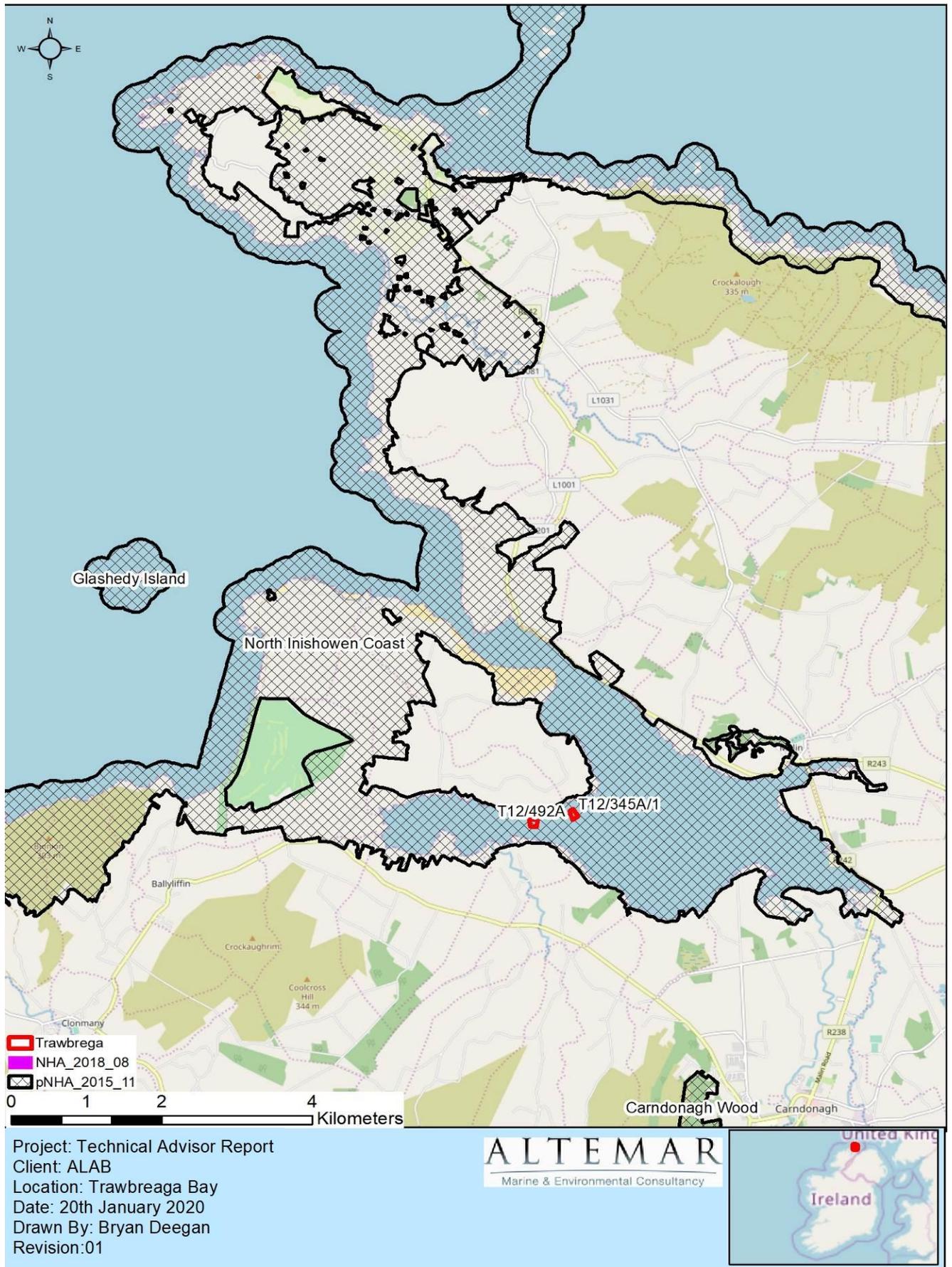


Figure 18. SAC's proximate to the aquaculture site.



**Figure 19.** SPA's and Ramsar sites proximate to the aquaculture site.



**Figure 20.** pNHA's and NHA's proximate to the aquaculture site.

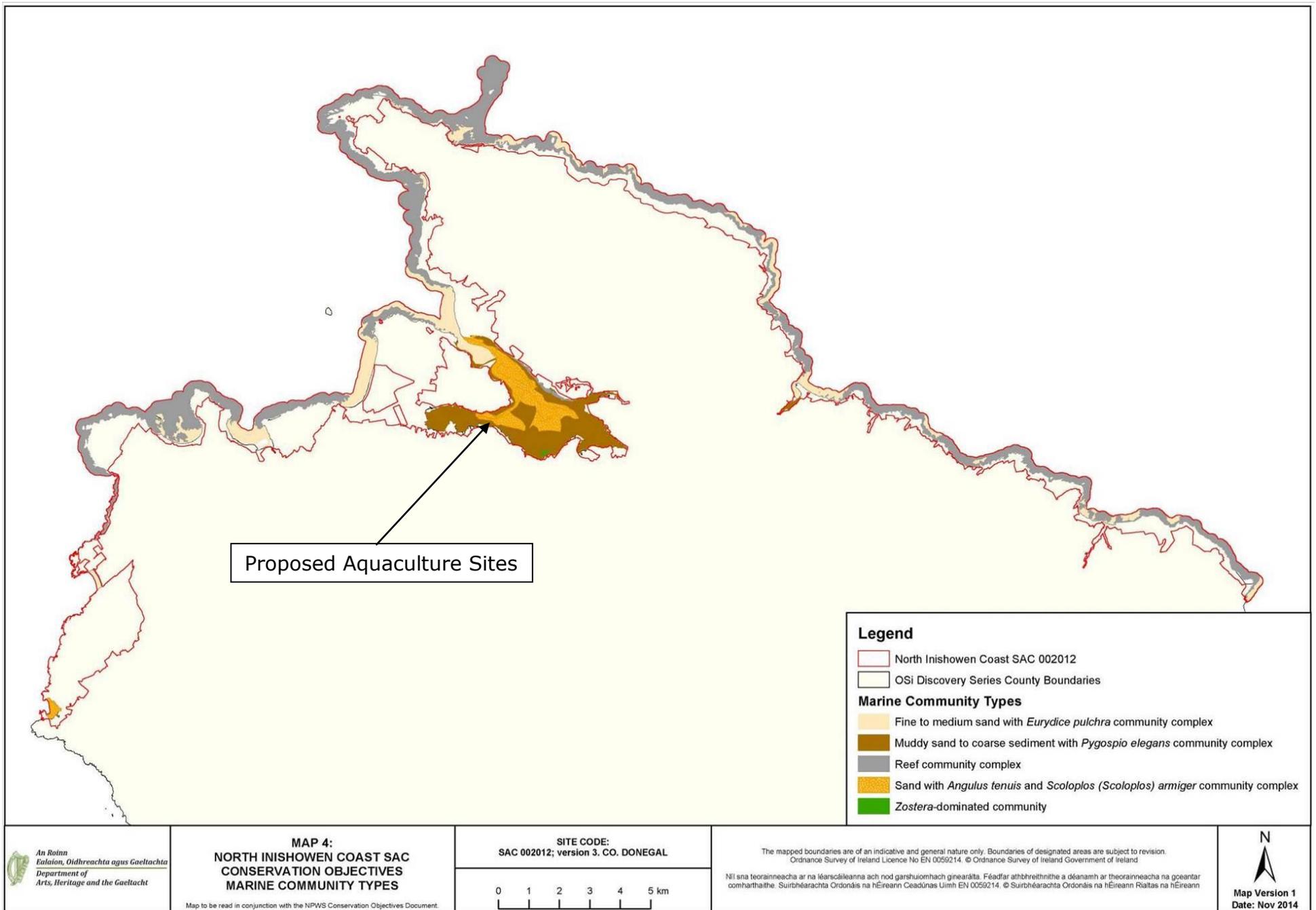
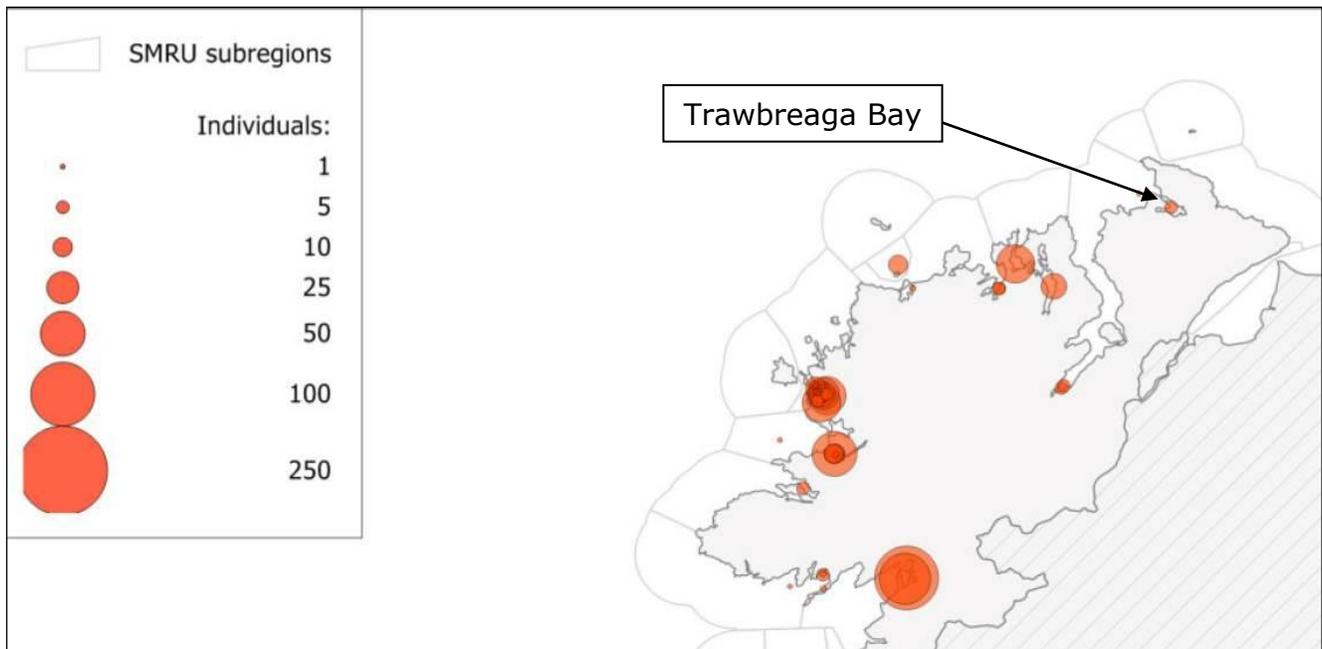


Figure 21. Marine Community Types in the North Inishowen SAC.

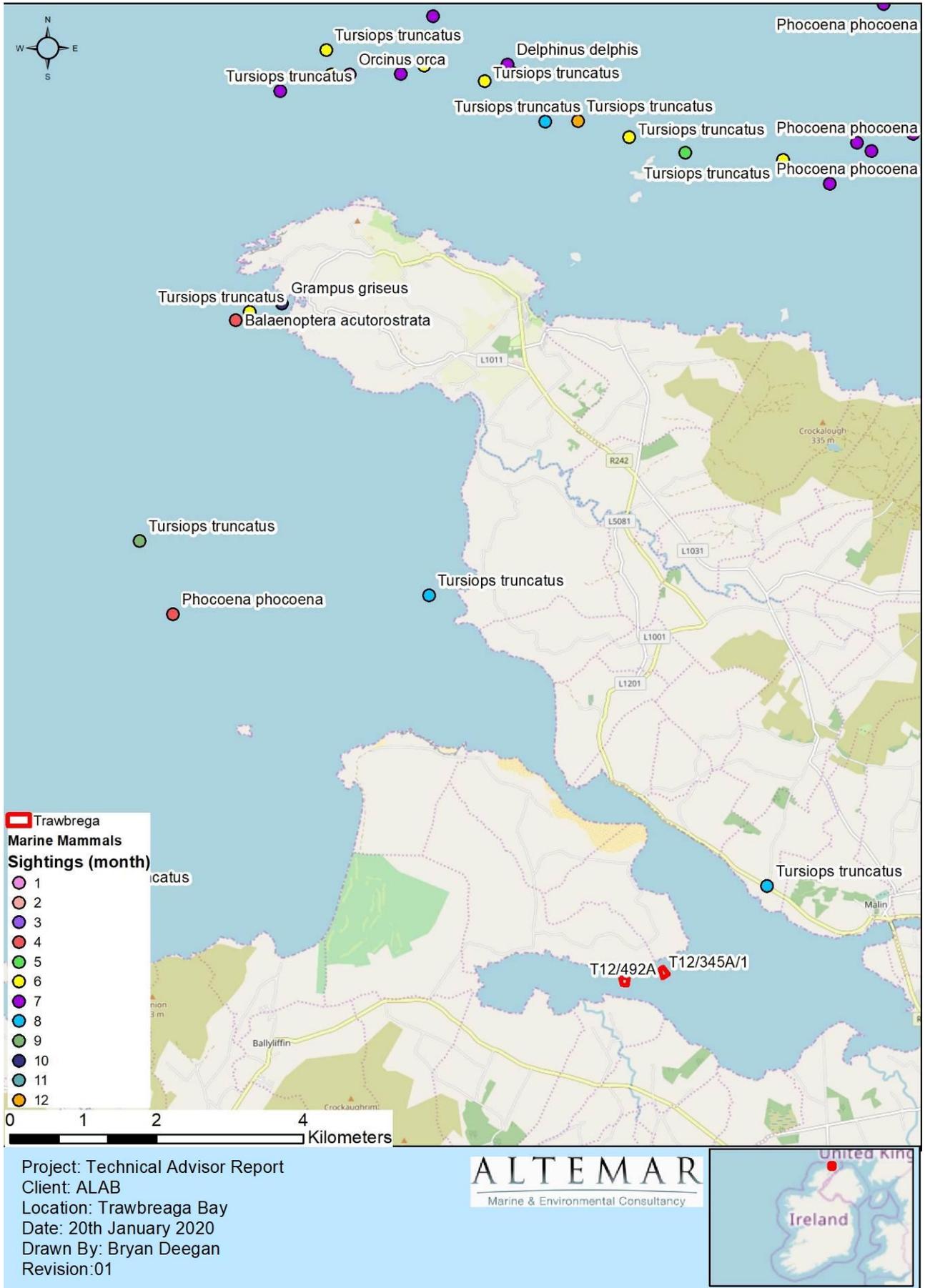
An aerial survey of harbour seals in Ireland from Lough Foyle to Galway Bay was carried out in August 2011 for the National Parks & Wildlife Service of the Department of Arts, Heritage and the Gaeltacht (DAHG)<sup>17</sup>. The report summarises the results from a survey of harbour seals (*Phoca vitulina*) in the north and north-west of Ireland but data was also collected on grey seals (*Halichoerus grypus*) was also presented. As noted in Figure 22 (from the report) between 2 and 5 seals were noted within the Bay. No cetacean sightings were reported to the IWDG sighting scheme<sup>18</sup> in the vicinity of the proposed aquaculture sites. However, there is a single sighting of a Common bottlenose dolphin (*Tursiops truncatus*) within Trawbreaga Bay (Figure 23).



**Figure 22.** Harbour seals noted within Trawbreaga Bay in 2011.

<sup>17</sup> Duck, C. & Morris, C. (2013) An aerial survey of harbour seals in Ireland: Part 1: Lough Foyle to Galway Bay. August 2011. Unpublished report to the National Parks & Wildlife Service, Department of Arts, Heritage & the Gaeltacht, Dublin.

<sup>18</sup> <http://www.iwdg.ie/browsers/sightings.php>



**Figure 22.** Cetacean Sightings in Trawbrega Bay (IWDG Sightings Scheme)

## Statutory Plans

### **County Donegal Development Plan, 2018-2024**

The County Donegal Development Plan, 2018-2024<sup>19</sup> is the current development plan in place for Donegal. The County Donegal Development Plan is the principal statutory land use plan for the County and it sets out a strategic vision for the future growth and development of the County over the 6 year life of the Plan (to 2024) and beyond to a 20 year timeframe (to 2038). Relevant objectives and policies to the licencing of the aquaculture site are as follows:

#### *Chapter 10 The Marine Resource and Coastal Management*

##### Objectives

MRCM-O-1: To maximise the social and economic potential of Donegal's marine sector by:

Supporting the fishing and seafood sector by maintaining and improving harbour infrastructure (in accordance with the Councils Marine Services Capital Investment Programme) and facilitating seafood processing industries and ancillary service developments.

- Consolidating and strengthening our Marine Leisure sector by, protecting the recreational and environmental quality of our coastal areas, maintaining and upgrading existing and providing new marine access infrastructure (in accordance with the Councils Marine Services Capital Investment Programme), facilitating ancillary onshore marine leisure developments, and marketing our marine tourism product.
- Facilitating developments which enable the sustainable harnessing of the offshore energy resource.
- Supporting the offshore primary production sector of the aquaculture industry, subject to adequate environmental assessments and safeguards being provided to the satisfaction of the Council and to the avoidance of the development giving rise to an overbearing visual impact on the locality in which it is proposed.

MRCM-O-3: To manage our coastal environment in a sustainable manner by:

- Avoiding new development in areas at risk from Coastal Flooding in line with the flooding policies of this Plan.
- Managing coastal change in a manner which accepts that coastal erosion/sea level rise is a natural and/or inevitable process and does not permit/provide coastal protection works; in areas subject to significant long term coastal erosion/change or sea level rise unless there is overriding reason of public interest to do (e.g. built up urban areas), where it would damage the visual, scenic or environmental amenities of the area or where it would have a significant impact on natural coastal geomorphological processes and systems.
- Managing development in a manner which protects sensitive coastal environments (e.g. dune environments) and undertaking coastal zone management projects.
- Ensuring that new marine infrastructure developments (e.g. pier, breakwaters) are located, sited and designed in a manner which has minimal impact on natural Coastal Geomorphological process.

##### *Policy*

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<sup>19</sup><http://www.donegalcoco.ie/services/planning/developmentplansbuilttheheritageincludinggrants/county%20donegal%20development%20plan%202018-2024/>

MRCM-P-10: It is a policy of the Council to ensure that development proposals do not adversely compromise the recreational amenity and environmental quality of coastal areas including Flag Beaches, Natura 2000 sites and areas of Especially High Scenic Amenity.

### *Chapter 11 Community Culture and The Gaeltacht*

#### Objectives

CCG-O7: To promote, protect, harness and sustainably develop the Culture of Donegal by inter alia: Implementing the Capital Programme/Infrastructural Plan of the Cultural services strategy 2016-2020 and any subsequent related capital programme/infrastructural plan.

- Supporting the public arts programme of the Council.
- Engaging with local communities to harness the cultural and creative resource of the county.
- Promoting the cultural and creative sector as an integral part of a sustainable tourism sector including the cultural tourism product associated with the Wild Atlantic Way and cultural tourism products associated with the history, geography, folk traditions and language and musical tradition of Donegal.
- Recognising and protecting the landscape and built heritage of Donegal as key elements of our culture.
- Nurturing and harnessing the cultural and creative resource of the Donegal Islands.
- Engaging with the cultural and creative resource that of the worldwide Donegal Diaspora and Donegal's new communities.
- Promoting the artistic sector including: visual arts, performance arts, literature, and contemporary arts including the reuse and redevelopment of vacant and derelict buildings for the arts sector.

#### *Scenic Amenity in the County Donegal Development Plan, 2018-2024*

In the current Donegal County Development Plan the aquaculture site is proximate to Areas of Moderate Scenic Amenity (MSA) (Figure 23). As outlined in the development plan each of the scenic amenity areas are classed as follows.

#### Areas of Especially High Scenic Amenity (EHSA)

Areas of Especially High Scenic Amenity are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.

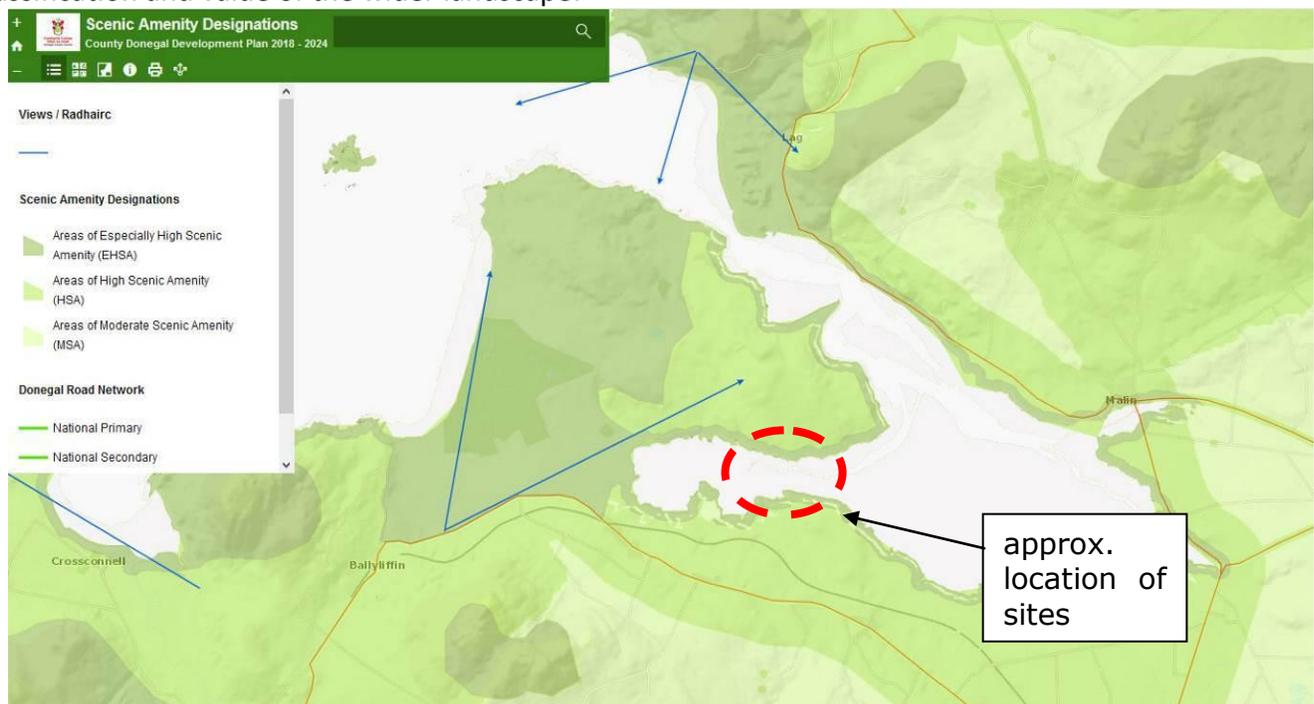
#### Areas of High Scenic Amenity (HSA)

Areas of High Scenic Amenity are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

### Areas of Moderate Scenic Amenity (MSC)

Areas of Moderate Scenic Amenity are primarily landscapes outside Local Area Plan Boundaries and Settlement framework boundaries, that have a unique, rural and generally agricultural quality. These areas have the capacity to absorb additional development that is suitably located, sited and designed subject to compliance with all other objectives and policies of the plan.

Within each of the landscape classifications detailed above (EHSA, HSA and MSA) and along the interface between the designations there may be areas that do not fully meet the definition of the designation. Such anomalies in landscape designation shall be considered individually and in the context of all other objectives and policies contained within this Plan, should an application for development be submitted in these areas (excluding wind energy proposals or ancillary works). The onus shall be on the applicant to demonstrate that the site within which it is situated does not meet the characteristics of the landscape within which it is situated and that any development applied for shall not adversely affect the classification and value of the wider landscape.”



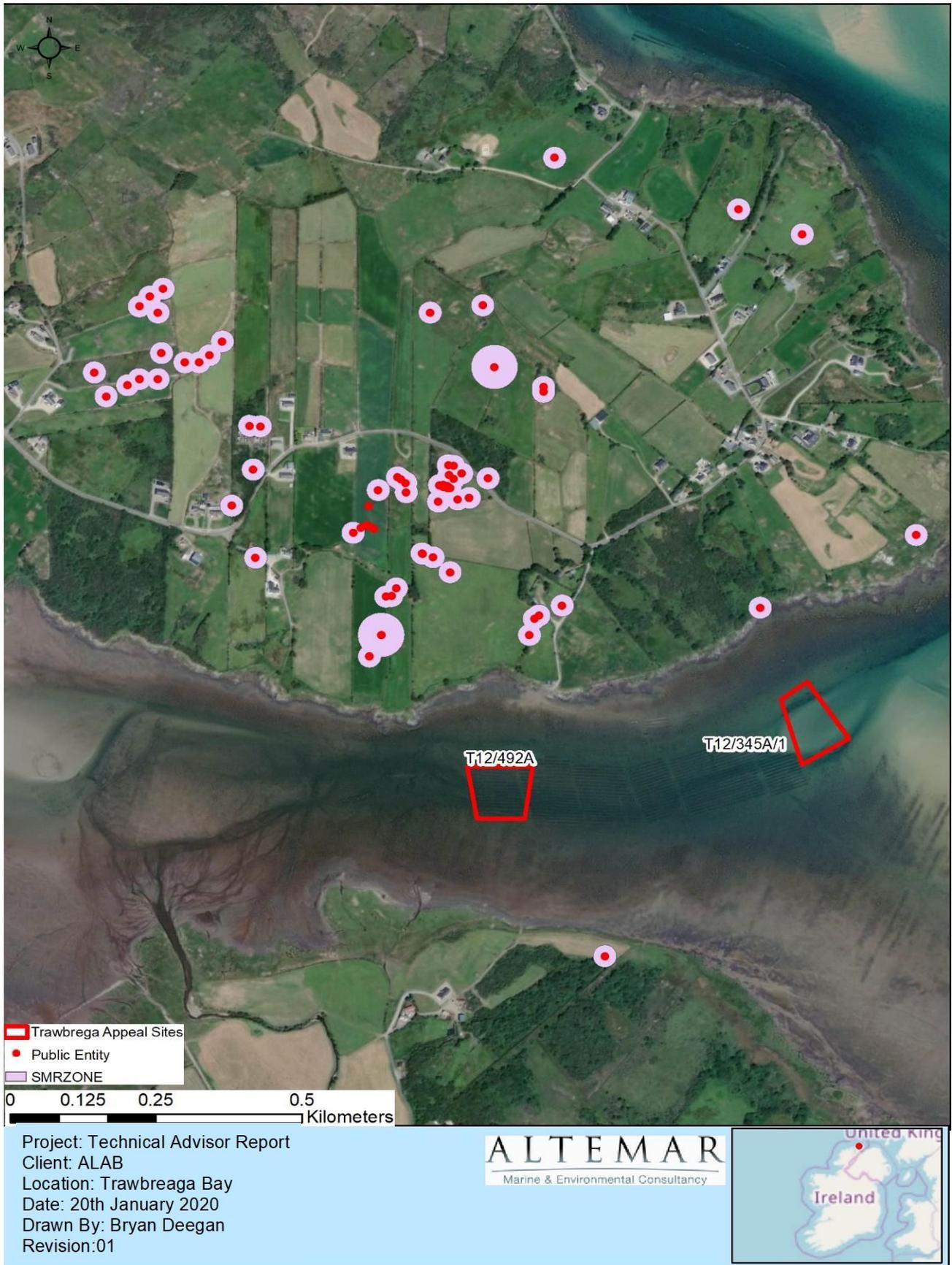
**Figure 23.** Scenic Amenity County Donegal Development Plan, 2018-2024.

### Visual Impact

No concerns of the visual impact were noted in the statutory consultation in the Ministerial file.

### **5.5 Man-made heritage**

The proposed aquaculture sites are in the intertidal. Details of National Monuments are seen in Figure 24. No National monuments are within of the aquaculture site or on main beach access to the site. However, National Monuments are located beside the existing access road to the beach. The proposed sites will not impact on National Monuments. A search of the National Wreck database (Informar) was carried out. No wrecks were noted in the vicinity of the aquaculture site. As outlined in the Ministerial File the Department of Arts, Heritage and the Gaeltacht “raised no objections to the development from an underwater archaeological perspective.”



**Figure 24.** National Monuments in the vicinity of the appeal sites.

## **6.0 Screening for Environmental Impact Assessment.**

### **Note on Environmental Impact Statement Requirements**

S.I. No. 236/1998: AQUACULTURE (LICENCE APPLICATION) REGULATIONS, 1998

Environmental impact statement required for certain applications

5. (1) An application under section 10 of the Act for an aquaculture licence **in respect of seawater salmonid breeding installations shall be accompanied by an environmental impact statement.**

(2) In the case of an application other than one referred to in paragraph (1), the Minister may require the applicant to submit an environmental impact statement **if the Minister considers that the proposed aquaculture is likely to have significant effects on the environment.**

As outlined in Statutory Instruments S.I. No. 410 of 2012 (European Union (Environmental Impact Assessment (Aquaculture) Regulations 2012:

“In the case of an application other than one referred to in paragraph (1), the Minister may require the applicant to submit an environmental impact statement if the Minister considers that the proposed aquaculture is likely to have significant effects on the environment.

“(2) An environmental impact assessment shall be carried out by the Minister in respect of an application for- (a) aquaculture of a class specified in Regulation 5(1)(i) and (ii), unless the application is one which is solely for movement of navigation buoys, internal reconfiguration of the site, upgrading equipment used on the site, technology changes or improvements, or to comply with public safety requirements or a combination of these and which the Minister determines would not be likely to have significant effects on the environment, or

(b ) aquaculture of a class specified in Regulation 5(1) (ii) which does not exceed a quantity, area or other limit specified in that Regulation which the Minister determines would be likely to have significant effects on the environment.”

**This application for an aquaculture licence is not for a “salmonid breeding installation” and the Minister has considered that it is deemed not to have a significant effect on the environment. Therefore, an Environmental Impact Statement is not required.**

## **7.0 Screening For Appropriate Assessment**

The aquaculture site is within North Inishowen Coast Special Area of Conservation and Trawbreaga Bay Special Protection Area. A Report supporting Appropriate Assessment of Aquaculture in North Inishowen Coast SAC (Site code: 002012) was prepared in July 2018 by the Marine Institute<sup>20</sup> and the proposed (not granted) aquaculture sites in question is shown in this report. The Appropriate Assessment Concludes that:

### **“Aquaculture**

In the North Inishowen Coast SAC oyster culture (using bags and trestles) is the only type of aquaculture currently occurring. Based upon this and the information provided in the aquaculture profiling carried out (Section 5 of the report), the likely interaction between this culture methodology and conservation features (habitats and species) of the site were considered.

### *Habitats*

An initial screening exercise resulted in five features and one species being excluded from further consideration by virtue of the fact that no spatial overlap of the culture activities was expected to occur. The habitats excluded from further consideration were 1220 Perennial vegetation of stony banks, 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts, 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes), 21A0 Machairs, 4030 European dry heaths and 1014 Narrow-mouthed Whorl Snail *Vertigo angustior*. A full assessment was carried out on the likely interactions between existing and proposed culture operations and the feature of the Annex 1 habitat 1140 (Mudflats and sandflats not covered by seawater at low tide). The likely effects of the aquaculture activities (Species, structures, transport routes) were considered in light of the sensitivity of three (of the four) constituent habitats and species of the Annex 1 habitat, i.e., Muddy sand to coarse sediment with *Pygospio elegans* community complex, Sand with *Angulus tenuis* and *Scoloplos (Scoloplos) armiger* community complex and Fine to medium sand with *Eurydice pulchra* community complex.

Based upon the scale of spatial overlap of current aquaculture activities and the relatively high tolerance levels of the habitats and associated species, the general conclusion is that current aquaculture activities are non-disturbing to the Natura 2000 feature (1140) and its constituent community types. Any disturbing activities occur at levels below the threshold value of 15% (see Table 8.4). No in-combination impacts are likely to occur. **However, in one instance (T12/492A), the risk of significant disturbance cannot be dismissed as the hydrodynamics of the inner part of the bay (and subsequently, the structure of the constituent community types) may be impacted by the scale of the proposed operation.” (Emphasis added)**

“The risk of establishment of non-native oyster species is considered low in the Trawbreaga Bay portion of North Inishowen Coast SAC. However, given that Trawbreaga Bay (oyster culture area within the SAC) effectively flows into the broader Lough Swilly this presents a risk to the Lough Swilly SAC (Code: 2287) and the factors identified by Kochmann et al (2013) facilitating the successful establishment of populations has been identified for Lough Swilly and indeed, non-native oysters have established in this bay (Lough Swilly). Therefore, it is important that triploid oysters continue to be used in North Inishowen Coast SAC (Code: 2012) in order to minimise any risk to Lough Swilly SAC (Code: 2237).

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<sup>20</sup> <https://www.agriculture.gov.ie/media/migration/seafood/aquacultureforeshoremanagement/aquaculturelicensing/appropriateassessments/donegal/1NorthInishowenSACandTrawbreagaSPAAAJuly2019Report300719.pdf>

It is recommended that there be strict adherence to the access routes identified and that density of culture structures within the sites be maintained at current levels. The movement of stock in and out of the North Inishowen Coast SAC should adhere to relevant fish health legislation and follow best practice guidelines (e.g. <http://invasivespeciesireland.com/cops/aquaculture/>).

## Species

The likely interactions between the proposed aquaculture activities and the Annex II Species Otter were also assessed. The objectives for this species in the SAC focus upon maintaining the good conservation status of the population. The main aspect of the culture activities that could potentially impact otter is the physical presence of trestles that may restrict otter access to certain habitats. Given the nature of the structures and the likely timing of activities the risk of disturbance to otter features posed by aquaculture operations is considered low.”

In the Appropriate Assessment Conclusion Statement by Licensing Authority for aquaculture activities in North Inishowen Coast Special Area of Conservation (SAC) (002012), and Trawbreaga Bay Special Protection Areas (SPA) (004034) (Natura 2000 sites) it was stated in the findings and recommendations that:

### “North Inishowen Coast SAC

- Existing and proposed cultivation and access route activity was shown to overlap with 5.88% of the qualifying interest ‘Mudflats and sandflats not covered by seawater at low tide’ (1140). As this value is below the 15% overlap threshold adverse impact on the qualifying feature can be discounted.
- While the existing and proposed cultivation sites extend over 17.54% and 2.75% of the constituent community types ‘Muddy sand to coarse sediment with *Pygospio elegans*’ community complex and ‘Sand with *Angulus tenuis* and *Scoloplos (Scoloplos) armiger*’ community complex, published literature suggests that aquaculture activities occurring at trestle culture sites are not considered disturbing. The total spatial overlap of the access routes on the above community types is 2.86% and 3.04% respectively (access routes used in inter-tidal areas are considered disturbing). Given that these values (individually and combined) are less than the 15% overlap threshold significant adverse impacts of activities on these community types can be discounted.
- Accordingly, the current levels of aquaculture activities, including access routes, do not pose a risk of significant disturbance to the conservation of the habitat feature of Mudflats and Sandflats not covered by seawater at low tide (1140) or the constituent community and community complexes of ‘Muddy sand to coarse sediment with *Pygospio elegans*’ community complex, and ‘Sand with *Angulus tenuis* and *Scoloplos (Scoloplos) armiger*’ community complex.
- **In one instance, the proposed aquaculture activity at site T12/492A, the risk of significant disturbance cannot be dismissed as the hydrodynamics of the inner part of the bay (and subsequently, the structure of the constituent community types) may be impacted by the scale of the proposed operation. (Emphasis added)**
- The risk of establishment of non-native oyster species is considered low in Trawbreaga Bay. Long residence times (>21 days) and large intertidal areas are factors contributing to the successful recruitment of oysters in Irish bays. Heavy macroalgal cover is a potential factor governing recruitment, with higher cover resulting in lower recruitment. Oyster cover in the SAC does not fulfill these criteria in that residence time is approximately 10 days and there is heavy cover of macroalgae in intertidal areas. However, Trawbreaga Bay effectively flows into the broader Lough Swilly presenting a risk to the Lough Swilly SAC. Any licences issued will contain a recommendation

that triploid oysters continue to be used in North Inishowen Coast SAC in order to minimize any risks to Lough Swilly SAC.

- The main aspect of the culture activities that could potentially impact Otter (*Lutra lutra*) is the physical presence of trestles that may restrict Otter access to certain habitats. Given the nature of the structures and the likely timing of activities the risk of disturbance to Otter features posed by aquaculture is considered low.

#### *Trawbreaga Bay SPA*

- Due to the proposed scale of oyster cultivation; the lack of any significant use of the intertidal habitat by the Chough; and the separation of known foraging, roosting or nesting sites, from the proposed oyster cultivation, negative impact on the Chough using Trawbreaga Bay is considered unlikely.
- Barnacle Geese are in favourable conservation status with a growing population in Trawbreaga/Malin (NPWS, 2014a). The Trawbreaga flock would appear to be closely linked with the wider Malin flock and should be considered as a single unit. Barnacle Geese are not a qualifying interest of the neighbouring Malin Head SPA. The species is primarily a land-based bird, foraging terrestrially while roosting can occur on sandbanks, saltmarsh and offshore islands. As Barnacle Geese do not feed in the inter-tidal area the placement of trestles would not result in any direct loss of foraging grounds. While there is evidence for intertidal roosting, observed flocks have been small and ample alternate intertidal habitat exists to accommodate such day-time roosting
- **Proposed aquaculture site T12/492 is larger in scale than others in the bay and located close to areas highlighted as being used by Barnacle Geese at Magheranaul/Strath. Disturbance of Barnacle Geese at this location cannot be discounted. There is a potential for conflict from access points where there may be increased activity close to feeding birds and/or from increased levels of activity on the shoreline. (Emphasis added)**
- The site conservation condition for Light-bellied Brent Goose at Trawbreaga Bay SPA has been assessed as favourable based on increasing population. However, looking solely at area of subsites; areas of intertidal habitat/subsite; and area of intertidal habitat under aquaculture there is a potential for displacement of marginally more than 5% with reference to two subsites. The current and proposed location of trestles with respect Light-bellied Brent Geese behavior and feeding ecology were therefore considered further. The favourable conservation status of the species; large area of suitable habitat; foraging opportunities provided by green algae on trestles and displacement of birds feeding in and around trestles during the course of routine maintenance all combine to determine how Light-bellied Brent Geese would be impacted by oyster cultivation. In reality displacement of birds is therefore likely to be much less than 5%. Accordingly, aquaculture activities, existing and proposed are not considered disturbing to Light-bellied Brent Geese.”

As outlined in the Marine Institute (2018) Bird Studies Trawbreaga Bay Special Protection Area (4034) Appropriate Assessment of Aquaculture & Shellfisheries Assessment of aquaculture activities the assessment of aquaculture activities on the following species was carried out and concluded (It should be noted that the appeal sites are OA438, emphasis added below):

#### **Chough**

*“Overall, due to the proposed scale of oyster cultivation; the lack of any significant use of intertidal habitat by Chough; and the separation of proposed oyster cultivation from known foraging, roosting or nesting sites it is unlikely that the intertidal oyster would have a negative impact on Chough using Trawbreaga Bay SPA.”*

### **Barnacle Geese**

*“In Ireland, Barnacle Geese (from the Greenland breeding population) is mainly recorded along the west and northwest coasts, at sites such as Trawbreaga Bay. In the case of Trawbreaga, the flock would appear to be closely linked with the wider Malin flock and should be considered as a single unit. The population trend for Barnacle Goose was calculated by NPWS using IWeBS data and is based on the change between the baseline period (mean 1995/96 to 1999/00) and recent counts (mean 2007/08 to 2009/10). A mean number of 645 individuals were recorded for the baseline period with a mean number of 1,421 recorded from the recent period. This represents a 120 percent increase in numbers at Trawbreaga Bay. The site conservation condition for Barnacle Goose at Trawbreaga Bay SPA has therefore been assessed as favourable based on the increasing population. Unlike Light-bellied Brent Geese, Barnacle Geese do not feed on intertidal habitats, but favour terrestrial grassland or saltmarsh. Placement of trestles will not therefore result in direct habitat loss. While there is evidence for intertidal roosting, observed flocks have been small and ample alternate intertidal habitat exists to accommodate such day-time roosting. The main potential for conflict is from access points where there may be increased activity close to feeding birds and / or from increased levels of activity on the shoreline; key areas noted include risk of disturbance to Barnacle Geese at Magheranaul / Strath; close to Malin and close to the Glassagh access point. The large aquaculture site close to Magheranaul / Strath (T12/492) is intended only as a nursery area for seed oyster; it will only be accessed three times in the year by a maximum of two workers and therefore, based on the level of activity proposed, it does not represent a significant source of disturbance. While the risk of negative impacts cannot be entirely discounted, geese are likely to habituate to repeated patterns of work at trestles on the intertidal close to foraging fields. That said, development of a clear Code of Practice is strongly recommended; as is close consultation with NPWS. Continuation of annual monitoring of Barnacle Geese is also recommended to identify and address any disturbance issues that might arise, with particular emphasis on areas around Magheranaul / Strath; Malin and Glassagh Point. In particular, any proposed intensification of activity at T12/492 would need to be reconsidered as part of this process.”*

### **Light-bellied Brent Geese**

*“The hrota population of Light-bellied Brent Geese that over winter in Ireland and breed in the Canadian high Arctic have shown increases in population since the early 1990’s (Boland and Crowe, 2012) with a peak population estimate of 39,000 in 2007 (Hall and Colhoun, 2007). The population has been calculated to be increasing at an annual rate of 5.1 percent overall (Boland and Crowe, 2012). The site population trend for Light-bellied Brent Goose at Trawbreaga Bay published by NPWS is calculated using IWeBS data and is based on the change between the baseline period (mean 1995/96 to 1999/00) and recent counts (mean 2007/08 to 2008/09). A mean number of 362 individuals were recorded for the baseline period with a mean number of 366 recorded from the recent period (2-yr mean 2007/2008 – 2008/2009). This represents a 1 percent increase in numbers at Trawbreaga Bay. As a result, the site conservation condition for Light-bellied Brent Goose at Trawbreaga Bay SPA has been assessed as favourable based on the increasing population.*

*Light-bellied Brent Geese were recorded in all but one subsite (OA441 – Malin) during the NPWS baseline waterbird surveys. Intertidal foraging was recorded them within five subsites overall: **OA438**, OA439, OA440, OA442 and OA443 (NPWS, 2014a). Brent Geese were recorded most frequently in subsite OA443 (Northwest) with geese present during all low tide counts. In addition this subsite held the highest mean*

number of Brent Geese across all low tide counts. The other two subsites where Brent Geese were consistently recorded across the low tide counts were OA439 (Trawbreaga South) and OA442 (North central); aquaculture sites are already in place in both OA439 and OA442. These two subsites also held high peak and mean numbers of Brent Geese.

Proposals for trestles are located in **OA438**, OA439, OA442 and OA443. Looking solely at area of subsites; areas of intertidal habitat / subsite; and area of intertidal habitat under aquaculture there is a potential for displacement of 0.34%, 2.83%, 2.4% and 0.55% in **OA438**, OA439, OA442 and OA443, respectively; a cumulative displacement of 6.1% of birds within the SPA. As noted, impacts that will cause displacement of 5% or more of the total SPA population of a nonbreeding SCI species (for each site) have been assessed as potentially having a significant negative impact and require detailed consideration in the context of species behaviour; relationship with aquaculture types; population trends etc. The current and proposed location of trestles with respect to Light-bellied Brent Geese behaviour and feeding ecology is discussed. The favourable conservation status of the species; large area of available suitable habitat; foraging opportunities provided by green algae on trestles and displacement of birds feeding in and around trestles during the course of routine maintenance all combine to determine how Light-bellied Brent Geese would be impacted by oyster cultivation. In reality displacement of birds is therefore likely to be much less than 6.1%. The risk of negative impacts cannot, however, be completely discounted. **A clear Code of Practice; close consultation with NPWS and continuation of annual monitoring of Light-bellied Brent Geese is recommended to identify and address any disturbance issues that might arise."**

## **8.0 Section 61 Assessment**

### **Section 61 of the Fisheries Amendment Act 1997**

This act states that “The licensing authority, in considering an application for an aquaculture licence or an appeal against a decision on an application for a licence or 11 revocation or amendment of a licence, shall take account, as may be appropriate in the circumstances of the particular case, of-

- (a) the suitability of the place or waters at or in which the aquaculture is or is proposed to be carried on for the activity in question,
- (b) other beneficial uses, existing or potential, of the place or waters concerned,
- (c) the particular statutory status, if any, (including the provisions of any development plan, within the meaning of the Local Government (Planning and Development) Act, 1963 as amended) of the place or waters,
- (d) the likely effects of the proposed aquaculture, revocation or amendment on the economy of the area in which the aquaculture is or is proposed to be carried on,
- (e) the likely ecological effects of the aquaculture or proposed aquaculture on wild fisheries, natural habitats and flora and fauna, and
- (f) the effect or likely effect on the environment generally in the vicinity of the place or water on or in which that aqua-culture is or is proposed to be carried on-
  - (i) on the foreshore, or
  - (ii) at any other place, if there is or would be no discharge of trade or sewage effluent within the meaning of, and requiring a licence under section 4 of the Local Government (Water Pollution) Act, 1977, and
- (g) the effect or likely effect on the man-made environment of heritage value in the vicinity of the place or waters.”

### **6.1 Site Suitability**

1. There is sufficient space in this area of Trawbreaga Bay for the development. However, the application for the site T12/492A appears to be partially outside the designated shellfish area, while the reduced granted licence is totally within the designated shellfish area. Site T12/345/1A is within the designated shellfish area.
2. Based on the contents of, the Ministerial File, Appropriate Assessment, this report and comments from consultees it is likely that the proposed developments (as granted with variation by the Minister) will not significantly impact on NATURA 2000 sites, man made heritage, beneficial users,

statutory status or the economy.

## **6.2 Other Uses**

### **Tourism/Recreation/Leisure**

The aquaculture sites T12/492A and T12/345/1A are not located an area of high Tourism/Recreation/Leisure activity. The proposed aquaculture licences as granted with variation, would not be expected to significantly impact on the scenic landscape.

### **Fishing/ Harvesting**

The aquaculture sites T12/492A and T12/345/1A as granted with variation, is within a designated shellfish waters with limited inshore fishing and harvesting. Angling is present throughout the Bay.

The proposed aquaculture sites as granted with variation will not significantly impact on fishing and harvesting users of the area

## **6.3 Statutory Status**

The sites are within an Areas of Moderate Scenic Amenity. As outlined in the Donegal County Development Plan. “These areas have the capacity to absorb additional development that is suitably located, sited and designed subject to compliance with all other objectives and policies of the plan.” It is not foreseen that the aquaculture operations at the sites would impact on current or potential development plans due to the visual impact.

The proposed aquaculture sites T12/492A and T12/345/1A as granted with variation will have not a significant impact on the statutory status of the area.

## **6.4 Economic Effects**

The scale of the proposed aquaculture sites are moderate and would only be expected to benefit the applicant and his employees. The granting of the licences with variation i.e. a restriction in the licenced area is not relevant to this economic assessment.

The proposed sites T12/492A and T12/345/1A likely to have a **non-significant positive effect** on the local economy of the area and has the potential for long term non-significant positive effect on the Irish economy.

## **6.5 Ecological Effects**

The proposed aquaculture site is located at the entrance of a salmonid river that has historically been classed as a salmon river, but is now classed in the NASCO river database as “Lost” due to “Agricultural Enrichment”. This implies that the Straid River no longer supports salmon. It should be noted that this may change in the future if the catchments water quality improves or salmonid habitat enhancement works take place.

As outlined in the Appropriate Assessment of the site. *“in one instance (T12/492A), the risk of significant disturbance cannot be dismissed as the hydrodynamics of the inner part of the bay (and subsequently, the structure of the constituent community types) may be impacted by the scale of the proposed operation.”*

The granting of these sites with variation (i.e. T12/345/1A (reducing site footprint from 3.757ha to 0.9030) and T12/492A (reducing site footprint from 8.21ha to 0.902ha)”) would not have a significant impact on designated sites or significant ecological effects. However, significant effects would be envisaged if the entire sites as applied were granted.

The proposed aquaculture sites T12/492A and T12/345/1A (with variation) will not have a significant impact on the designated sites or significant ecological effects.

### **6.6.1 Potential impacts**

Having assessed the potential environmental impacts outlined above, the proposed sites T12/492A and T12/345/1A (with variation) will not have a significant impact on the environment.

### **6.7 Effect on Man-Made Heritage**

See section 5.9 for additional details. No National Monuments are in the vicinity of the proposed aquaculture development.

The proposed aquaculture sites T12/492A and T12/345/1A will not significantly impact on man-made heritage of the area

## **9.0 Technical Advisor’s Evaluation of the Substantive Issues in Respect of Appeal and Submissions/Observations Received**

A technical review was carried out by Altamar Ltd. in relation to an aquaculture licences granted (with variation) to Derek Diver of Crocknagee, Rostown, Clonmany, Co. Donegal. The applicant is the Appellant.

As outlined in the determinations the Minister has:

- A. T12/345/1A *“approved the granting to you a variation of 4 (four) 10-year Aquaculture Licences and accompanying Foreshore Licences, for the cultivation of oysters using bags and trestles on site No: T12/345/1A (reducing site footprint from 3.757ha to 0.9030)”*
- B. T12/492 *“approved the granting to you a variation of 4 (four) 10-year Aquaculture Licences and accompanying Foreshore Licences, for the cultivation of oysters using bags and trestles on T12/492A (reducing site footprint from 8.21ha to 0.902ha)”*

A review of the appeal and Ministerial file was also carried out. The Minister granted the licence with variation. As outlined in the determination (Appendix I and II) “

- A) T12/345/1- “The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant two licences with a variation of one of the licences sought i.e. reducing the footprint of site T12/345A/1 from 3.757 ha to 0.903 ha. This is in order to take into account the possibility of interference with the passage of wild fish and is also in keeping with the policy of evenly distributing the licensed area to all applicants.”
- B) T12/492 “The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant a variation of the licences sought i.e. reducing the footprint of the site from 8.21 ha to 0.902 ha. This is in keeping with the policy of evenly distributing the licensed area to all applicants. It also takes account of the possible effects the larger site would have on migratory salmonids or physical alteration of the shore.”

**It is concluded that the licences granted, with variation by the Minister, is not likely to significantly impact on the environment, navigation or man-made heritage and visual landscape.**

The proposed licences T12/492A and T12/345/1A with variation pose *no significant impact* on:

- 1) other users of the area,
- 2) the particular statutory status of the place or waters,
- 3) the economy of the area,
- 4) the environment generally in the vicinity of the place or water on or in
- 5) the foreshore,
- 6) on the man-made environment or heritage value in the vicinity
- 7) visual landscape.

## **10.0 Recommendation of Technical Advisor with Reasons and Considerations.**

Following the assessment of the Appeal, it is recommended to confirm the Minister’s decision and grant the licence with variation for a reduction in area for both licences T12/492A and T12/345/1A .

## **11.0 Draft Determination Refusal /or Grant**

Having carried out an inspection of the proposed site and in accordance with Sections 59 & 61 of the Fisheries (Amendment) Act 1997, it is **recommended to confirm the Ministers decision and grant the licences for the sites to Derek Diver with variation.**

**Technical Advisor:** *Bryan Deegan*

**Date:** 2<sup>nd</sup> December 2020



## **Appendix I-Determination of Aquaculture/ Foreshore Licensing application –T12/492**

“Derek Diver has submitted an application to cultivate Pacific Oysters using bags and trestles on the foreshore on a 8.21 ha site(T12/492A) in Trawbreaga Bay, Co. Donegal. The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant a variation of the licences sought i.e. reducing the footprint of the site from 8.21 ha to 0.902 ha. This is in keeping with the policy of evenly distributing the licensed area to all applicants. It also takes account of the possible effects the larger site would have on migratory salmonids or physical alteration of the shore. 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 submission and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to grant a variation of the licence sought:

- a) Scientific advice is to the effect that the waters are suitable. The site is located within Trawbreaga Bay Shellfish Designated Waters. Oysters in these waters currently have a "B" classification;
- b) Other beneficial public access to recreational and other activities can be accommodated by this project;
- c) The proposed development should have a positive effect on the economy of the local area;
- d) All issues raised during Public and Statutory consultation phase;
- e) There are no effects anticipated on the man-made environment heritage of value in the area;
- f) No significant effects arise regarding wild fisheries.
- g) The site is located within the North Inishowen Coast SAC and Trawbreaga Bay SPA. An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC/SPA. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in this SAC/SPA, including this site, are being licensed and managed so as not to significantly and adversely affect the integrity of the North Inishowen Coast SAC and Trawbreaga Bay SPA.
- h) Scientific observations related to the Appropriate Assessment received during the licensing consultation process are addressed in the Licensing Authority's Appropriate Assessment Conclusion Statement;
- i) Taking account of the recommendations of the Appropriate Assessment the aquaculture activity at this site is consistent with the Conservation Objectives for the SAC/SPA;
- j) No significant impacts on the marine environment and the quality status of the area will not be adversely impacted;
- k) The updated and enhanced Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection required under EU and National law."

## **Appendix II-Determination of Aquaculture/ Foreshore Licensing application –T12/345/1**

Derek Diver has applied for authorisation to cultivate Pacific Oysters using bags and trestles on the foreshore on two sites:-T12/345A/1 totalling 3.757 ha (now proposed to be reduced to 0.903 ha) and T12/345B/1, totalling 0.8842 ha) on the foreshore in Trawbreaga Bay, Co. Donegal. The Minister for Agriculture, Food and the Marine has determined that it is in public interest to grant two licences with a variation of one of the licences sought i.e. reducing the footprint of site T12/345A/1 from 3.757 ha to 0.903 ha. This is in order to take into account the possibility of interference with the passage of wild fish and is also in keeping with the policy of evenly distributing the licensed area to all applicants. 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 submission and observations received in accordance with statutory provisions. The following are the reasons and considerations for the Minister's determination to grant (with a variation) the licences sought:

- a) Scientific advice is to the effect that the waters are suitable. The sites are located within Trawbreaga Bay Shellfish Designated Waters. Oysters in these waters currently have a "B" classification;
- b) Other beneficial public access to recreational and other activities can be accommodated by this project;
- c) The proposed development should have a positive effect on the economy of the local area;
- d) All issues raised during Public and Statutory consultation phase;
- e) There are no effects anticipated on the man-made environment heritage of value in the area;
- f) No significant effects arise regarding wild fisheries.
- g) The sites are located within the North Inishowen Coast SAC and Trawbreaga Bay SPA. An Article 6 Assessment has been carried out in relation to aquaculture activities in the SAC / SPA. The Licensing Authority's Conclusion Statement (available on the Department's website) outlines how aquaculture activities in this SAC / SPA, including these sites, are being licensed and managed so as not to significantly and adversely affect the integrity of the North Inishowen Coast SAC and Trawbreaga Bay SPA.
- h) Scientific observations related to the Appropriate Assessment received during the licencing consultation process are addressed in the Licensing Authority's Appropriate Assessment Conclusion Statement;
- i) Taking account of the recommendations of the Appropriate Assessment the aquaculture activity at these sites is consistent with the Conservation Objectives for the SAC / SPA;
- j) No significant impacts on the marine environment and the quality status of the area will not be adversely impacted;
- k) The updated and enhanced Aquaculture and Foreshore licences contain terms and conditions which reflect the environmental protection required under EU and National law."

## **Appendix III Site Synopsis North Inishowen Coast SAC**

Site Code: 002012

The North Inishowen Coast SAC stretches from Crummies Bay in the west up to Malin Head and back down to Inishowen Head to the east. It encompasses an excellent variety of coastal habitats including high rocky cliffs, offshore islands, sand dunes, saltmarsh, a large intertidal bay, and rocky, shingle and sand beaches. There are excellent raised beaches along the east coast including the oldest and best preserved late-glacial fossil coast in Ireland (between Ineuran Bay and Esky Bay). Indeed it is the only well preserved such coast in Europe and so is of international importance. Also of geomorphological interest is the small area of stone polygons near Malin Tower. 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):

[1140] Tidal Mudflats and Sandflats

[1220] Perennial Vegetation of Stony Banks

[1230] Vegetated Sea Cliffs [2130] Fixed Dunes (Grey Dunes)\*

[21A0] Machairs\*

[4030] Dry Heath

[1014] Narrow-mouthed Whorl Snail (*Vertigo angustior*)

[1355] Otter (*Lutra lutra*)

Sea cliffs are a feature of the site, with the best examples found in the west of the site (Dunree to Leenan Head and Dunaff Head) and in the area to the north-west of Glengad Head. Cliffs are often less than 50 m in height, though they reach over 200 m at Dunaff and to the north-west of Glengad Head. The dominant rock type is quartzite which is particularly hard and unyielding. The vegetation cover of the cliffs is variable, depending on factors such as underlying geology, aspect and the degree of exposure to winds and sea spray. Common plant species of the rocky cliffs are Thrift (*Armeria maritima*), sea-purrey (*Spergularia* spp.), Sea Aster (*Aster tripolium*), Red Fescue (*Festuca rubra*), Common Scurvygrass (*Cochlearia officinalis*), Sea Campion (*Silene vulgaris* subsp. *maritima*) and Buck's-horn Plantain (*Plantago coronopus*). In addition to the higher plants, the saxicolous lichen *Ramalina siliquosa* is a very characteristic feature of cliffs throughout the site. The cliffs contain a number of rare plant species, notably Scots Lovage (*Ligusticum scoticum*), a legally protected species. Two other scarce species recorded at the site, Moss Campion (*Silene acaulis*) and Purple Saxifrage (*Saxifraga oppositifolia*), are listed in the Red Data Book. Ivy Broomrape (*Orobanche hederaceae*), a locally rare species that is parasitic on Ivy (*Hedera helix*), has been recorded from sea cliffs to the north of Leenan Bay. The striking succulent species Roseroot (*Rhodiola rosea*), which is largely restricted to high mountain cliffs and sea cliffs in the west and the north of the country, is frequent throughout the site. In many parts of the site sea cliff areas support dry heath and grassland vegetation. Shingle beaches are well represented at the site, with the best examples at Rockstown harbour/Tullagh Point and along the north-western shoreline of Malin Head promontory. These areas contain good examples of raised beaches, characterised by large mounds of shingle, which may be interspersed by low cliffs (as seen at Tullagh Point). Although the vegetation of these shingle areas is usually quite sparse, plant species such as Sea Sandwort (*Honkenya peploides*), Sea Mayweed (*Matricaria maritima*) and Curled Dock (*Rumex crispus*) are locally frequent. The rare species Oysterplant (*Mertensia maritima*), which is listed in the Flora (Protection) Order, 1999, has been recorded growing on shingle substrate within the site. Sand dune systems occur within the site at several locations, with good examples of fixed dunes and machair. The dune habitat at the Isle of Doagh is by far the most extensive. Typical species of the fixed dunes include Marram (*Ammophila arenaria*) and Red Fescue, accompanied by Common Bird's-foot-trefoil (*Lotus corniculatus*), Sand Sedge (*Carex arenaria*), mouse-

ears(*Cerastium* spp.), Wild Thyme (*Thymus praecox*), Smooth Meadow-grass(*Poa pratensis*) and Mouse-ear Hawkweed (*Hieracium pilosella*). Bryophyte cover is usually well developed, with species such as *Rhytidiadelphus squarrosus*, *Hypnum cupressiforme* and *Calliergon cuspidatum* being frequent. Although much of the botanical character of the machair habitat at Doagh Isle has been modified due to agricultural reclamation, re-seeding and over-grazing, significant areas with a typical machair flora remain. The sward is typically dominated by low herb species such as Red Fescue, Ribwort Plantain (*Plantago lanceolata*), Daisy(*Bellis perennis*), Red Clover(*Trifolium repens*) and Lady's Bedstraw(*Galium verum*). Shifting dunes and fixed dunes also occur above the rocky shore at Meallalaghtra/Lenan Head. This area also contains marsh with Mare's-tail (*Hippuris vulgaris*), Brookweed (*Samolus valerandi*) and sedges (*Carex* spp.). *Hygrocybe* species, fungi that are indicators of unimproved grassland, occur in the coastal grassland sward. Significant areas of dry heath occur in the site at both low and high altitudes. The best-developed and most extensive areas are to be found at Dunaff Head, Binnion Hill and in the Urris Hills from Mamore Gap, south-west to Lough Fad and beyond to Crockfadda. However the habitat is also encountered at sea level where it tends to form a mosaic with grassland vegetation. Typically the vegetation develops on shallow peats less than 50 cm deep and is dominated by Heather (*Calluna vulgaris*). Other frequent shrub species include Bell Heather (*Erica cinerea*), Cross-leaved Heath(*Erica tetralix*), Crowberry(*Empetrum nigrum*) and Bilberry (*Vaccinium myrtillus*). Fir Clubmoss (*Huperzia selago*) and the diminutive Lesser Twayblade (*Listera cordata*) are

Version date: 10.02.20143 of 4 002012\_Rev13. Doc present in the heath on the Urris Hills. In addition to the dwarf ericoid component, acid grassland species such as Mat-grass (*Nardus stricta*), Velvet Bent(*Agrostis canina*), Tormentil(*Potentilla erecta*) and Heath-grass (*Danthonia decumbens*) are frequent components. This combination of plant species gives rise to a mosaic of dwarf heath and acid grassland, the relative proportion of which depends on factors such as degree of exposure, grazing intensity and the frequency of fire. Often there is much outcropping rock present and invasion by Bracken (*Pteridium aquilinum*) is a frequent feature of the habitat (as seen at Binnion Hill). At Dunaff Head the habitat forms a mosaic with blanket bog, containing Common Cottongrass (*Eriophorum angustifolium*), Hare's-tail Cottongrass (*E. vaginatum*), Cross-leaved Heath and Eared Willow (*Salix aurita*). The main threats to the heath habitat at present are over-grazing and uncontrolled burning. A diverse fern flora is found on damp, north-facing rock outcrops in the Urris Hills, including Wilson's Filmy-fern (*Hymenophyllum wilsonii*), Broad Buckler-fern (*Dryopteris dilatata*), Hay-s cented Buckler-fern (*D. aemula*), Black Spleenwort (*Asplenium adiantum-nigrum*) and polypody ferns (*Polypodium* spp.). The Urris Hills also contain the oligotrophic lakes Crunlough and Lough Fad, and on their lower slopes dry and wet acid grassland, Hazel (*Corylus avellana*) scrub, dense Bracken, blanket bog and wet heath occur. Trawbreaga Bay is a very sheltered sea bay with a narrow strait to the open sea at the north end. It is fed by a number of small rivers or streams. An estimated 80% of the bay area is exposed at each low tide to expose a mixture of mudflats, sandbanks and stony/rocky substrates. In the inner reaches of the bay, the substrate consists of muddy sand and coarse sediments with an infaunal community of polychaetes, oligochaetes and crustaceans. Within the narrow strait, the community is comprised of bivalves and polychaetes within a sandy substrate. The polychaete *Arenicola marinai* is a conspicuous species within the intertidal soft sediments of the bay. Beds of Dwarf Eelgrass (*Zostera noltii*) display temporal variation in occurrence within the bay; they were recorded on the shore at Doaghmore and currently present southwest of Glassagh Point. Mats of green algae occur on the open flats. Some areas of saltmarsh fringe the bay. Throughout the site, exposed sandy beaches occur in embayments and in coves bordered by bedrock and in the outer reaches of Trawbreaga Bay. Here a sand community with crustaceans and polychaetes occurs. Where the intertidal reef is present on exposed shores the community consists of the bivalve *Mytilus edulis* and barnacles. In such areas where reef extends into the subtidal the kelp *Laminaria hyperborea* occurs. In the less exposed areas and within Trawbreaga Bay the brown algae *Pelvetia canaliculata*, *Fucus vesiculosus*, *F. spiralis* and *Ascophyllum nodosum* are found. Otter are regularly seen

along the shoreline and may breed within the site. Otter is a species listed on Annex II of the E.U. Habitats Directive. Another Annex II species, the tiny whorl snail *Vertigo angustior*, is also known from this site.

This site has important bird interests. An internationally important population of Barnacle Goose occurs in the area, with Trawbreaga Bay their most important haunt. For the four winters 1994/95 - 1997/98 the mean peak count was 673 birds. Barnacle Goose is listed on Annex I of the E.U. Birds Directive. A range of other waterfowl species winter at Trawbreaga Bay, with an internationally important population of Brent Goose (338 in winters 1994/95-97/98). Other species which occur in regionally or locally important numbers include Wigeon, Mallard, Oystercatcher, Ringed Plover, Dunlin, Curlew and Redshank. Two Annex I E.U. Birds Directive species breed within the site. There are up to 12 breeding territories of Peregrine and 12 pairs of Chough. Both of these species are associated with the rocky sea cliffs, with the Choughs utilising the heath and sandy habitats for feeding. Several species of seabird breed on the cliffs and islets. These include Fulmar (150+ pairs), Cormorant (270+ pairs), Shag (330+ pairs), Kittiwake (<500 pairs), Guillemots (approx. 1,000 individuals), Razorbills (approx. 1,000 individuals) and Black Guillemots (approx. 80 individuals) (All data from 1970s). The machair and dunes at Doagh Isle and elsewhere support breeding waders. In 1996 the following were recorded: Oystercatcher (2+ pairs), Ringed Plover (7 pairs), Lapwing (15 pairs) and Snipe (3 pairs). This northern site is of high conservation value because of the extensive area of relatively unspoilt coastal and heath habitats and the range of plant and animal species that these habitats support. Of particular note is the presence of good examples of two E.U. Habitats Directive Annex I priority habitats, fixed dunes and machair. Very good examples of several other Annex I habitats are found, notably sea cliffs, vegetated shingle banks, dry heath and intertidal sand and mudflats. There are two legally protected plant species and a range of scarce species. The diversity of bird species is of particular note, with wintering waterfowl, breeding seabirds and breeding waders. Important populations of three E.U. Birds Directive Annex I species occur - Barnacle Goose, Peregrine and Chough.

#### **Appendix IV- Site Synopsis Trawbreaga Bay SPA**

Site Code: 004034

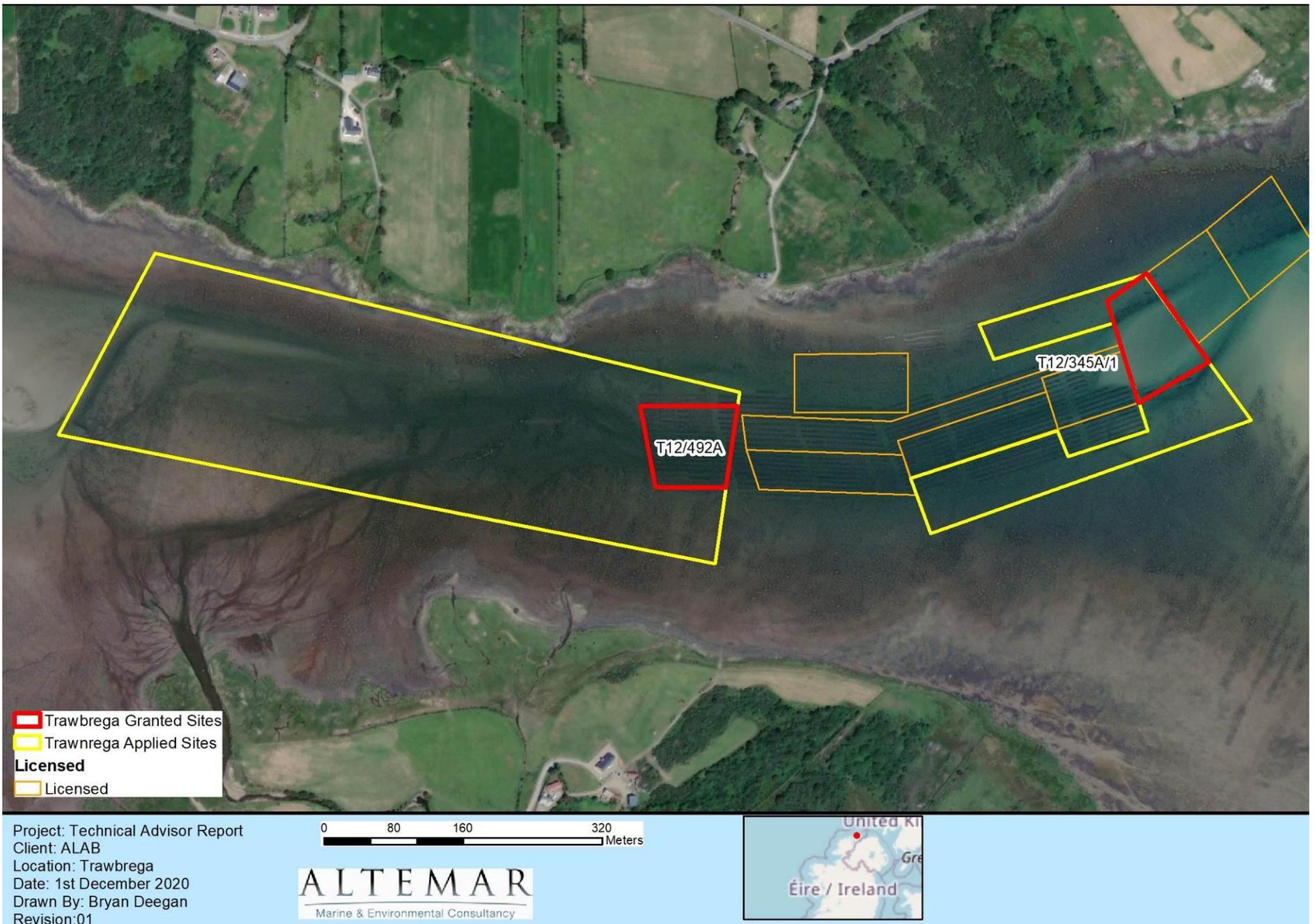
Trawbreaga Bay is a well-sheltered sea bay situated on the north-western coast of the Inishowen Peninsula, Co. Donegal. Doagh Isle, a low-lying, sandy promontory, stretches across the mouth of the bay, leaving only a narrow strait to the open sea. The bay is fed by a number of small rivers and streams, chiefly the Ballyboe, Donagh and Glennagannon rivers. The site includes Glashedy Island which lies approximately 1 km offshore. The village of Malin is situated on the eastern shore of the bay. An estimated 80% of the bay area empties at low tide to expose a mixture of mudflats, sandbanks and stony/rocky substrates. Mats of green algae occur on the open flats and brown algae (*Fucus* spp.) on the stones. Some areas of saltmarsh fringe the bay. The intertidal flats provide the main feeding area for the majority of the wintering waterfowl. This site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Barnacle Goose, Light-bellied Brent Goose and Chough. The E.U. Birds Directive pays particular attention to wetlands, and as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. Trawbreaga Bay supports a good diversity of wintering waterfowl though numbers of most species are relatively low. The main importance of the site lies in the Barnacle Goose (236 – 4 survey mean between 1993 and 2004) and Light-bellied Brent Goose (362 - five year mean peak count for the winters 1995/96 to 1999/2000) populations. The Light-bellied Brent Goose population is internationally important. The site is also an important feeding and roosting area for Chough. In 2005 a total of 55 birds were recorded at the coastal roost at Five Fingers. Flocks of up to 100 birds have also been recorded foraging within the site. Other species which occur include Whooper Swan (10), Wigeon (14), Mallard (161), Oystercatcher (163), Ringed Plover (89), Lapwing (247), Dunlin (288), Bar-tailed Godwit (37), Curlew (190), Redshank (34), Black-headed Gull (206), Common Gull (75) and Herring Gull (325). Trawbreaga Bay SPA, is of international importance for its Light-bellied Brent Goose population and also supports a nationally important population of Barnacle Goose. The regular occurrence of Barnacle Goose, Chough, Whooper Swan and Bar-tailed Godwit, which are listed on Annex I of the E.U. Birds Directive, is of note. Trawbreaga Bay is a Ramsar Convention site and part of the Trawbreaga Bay SPA is a Wildfowl Sanctuary.

## **Appendix V- Site Visits and distribution of trestles on site.**

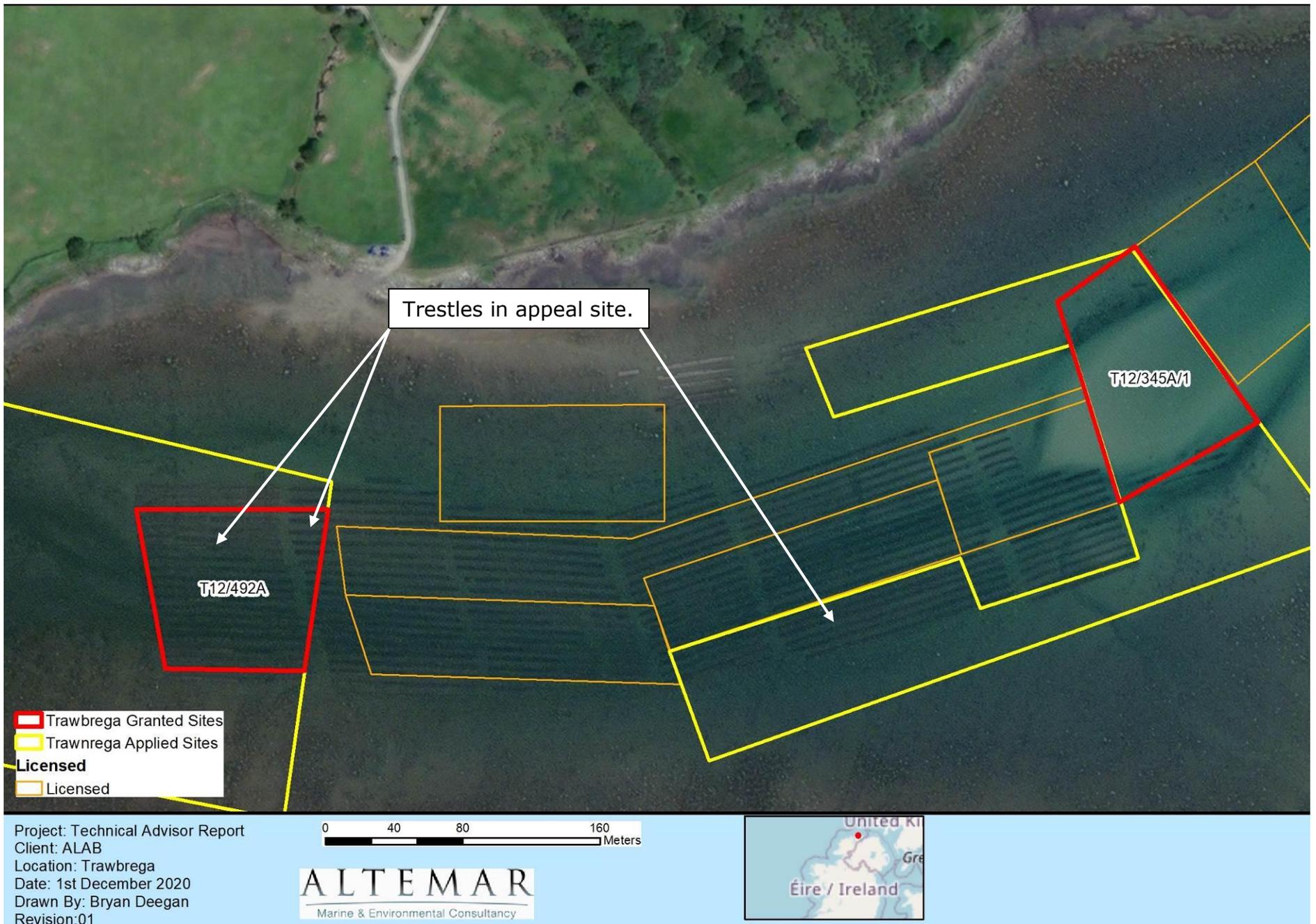
The application and granted sites under appeal are seen in Figure APV-1. During the site visit 15<sup>th</sup> January 2020 trestles were noted within the appealed site area of T12/492A. These were not mapped using GPS. However, their distribution was similar to that noted in the satellite imagery of the site seen in Figure APV-2. Based on an assessment of historic satellite imagery (Google Earth Pro) the trestles were present on this site on all satellite imagery from the 14<sup>th</sup> March 2016 to 21<sup>st</sup> September 2019 (8 images in total) and on the site visit on the 15<sup>th</sup> January 2020. On the 24<sup>th</sup> May 2012, the next image preceding the 2016 image, no trestles were noted on this application site.

On the 23<sup>rd</sup> of July 2020 the site was revisited and the trestles plotted using a Thales Mobile mapper (dGPS) following a request by ALAB to clarify if the trestles were removed from T12/492A. However, based on the dGPS assessment trestle locations, trestles were also noted within the recently licenced (under appeal) and the unlicensed section of the T12/345A/1 site. A further reassessment of the site was requested by ALAB and carried out on site on the 17<sup>th</sup> November 2020, in the presence of a member of ALAB Staff. The trestles within the T12/345A/1 (under appeal) had been removed by November 2020. However, a small number of trestles approx. 20 linear meters, were noted within the T12/492A in November 2020.

Communication between ALAB and the Applicant including two Section 46 submissions are seen below.



**Figure V-1.** Appeal and granted sites under appeal in addition to licenced sites (orange).



**Figure V-2.** Appeal and granted sites under appeal in addition to licenced sites (orange). Trestles within the appeal site.

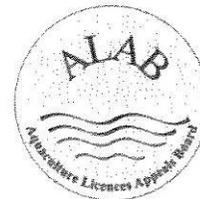


Figure V-3. Site visit 23rd July 2020. Appeal and granted sites under appeal in addition to licenced sites (orange).



**Figure V-4.** Site visit 17<sup>th</sup> November 2020. Appeal and granted sites under appeal in addition to licenced sites (orange).

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



Derek Diver  
Croknagee  
Roxtown  
Clonmany  
Co. Donegal

By email & registered post.

2 June 2020

Our Ref: AP3/2019  
Site Ref: T12/492A

**Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to grant licence variations on Aquaculture and Foreshore Licences for the cultivation of Pacific Oysters to Derek Diver at Site Ref T12/492A Trawbreaga Bay, Co. Donegal (the Site)**

Dear Mr Diver

I refer to the above Appeal.

In the course of assessing your appeal in respect of the Site, the Technical Advisor retained by the Aquaculture Licences Appeals Board ("the Board") inspected the Site during May 2020 and also inspected satellite imagery of the Site. The inspection disclosed that the Site has oyster trestles on it, which is confirmed by the satellite imagery. A copy of the satellite image is attached for reference.

The Board notes that this appeal concerns the Minister's decision in respect of an application for a new aquaculture licence on the Site.

Section 4 of the Fisheries and Foreshore (Amendment) Act, 1998 (the '1998 Act') provides:

*"On and from the 10th day of December, 1998, an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997."*

Section 46(1)(a) of the Fisheries (Amendment) Act, 1997 ("the 1997 Act") provides that the Board may, if it is of the opinion that in the particular circumstances of an appeal, it is appropriate in the interests of justice to request submissions or observations in relation to any matter which has arisen in relation to the appeal, serve a Notice requesting submissions or observations in relation to the matter to the Board.

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

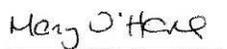
Guthán/Telephone: 057 8631912 R-phost/Email: [info@alab.ie](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

In accordance with the provisions of section 46(1)(a) of the 1997 Act, the Board HEREBY REQUIRES you to make submissions or observations in relation to the evidence before the Board that you have commenced to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997 and that in such circumstances, pursuant to section 4 of the 1998 Act, the application shall not be determined.

Such submissions or observations are required within 30 days of the date of this letter.

Please note that if the submissions or observations are not received before the expiration of the specified 30-day period, the Board may, without further notice to you, pursuant to section 48 of the Act, determine the appeal.

Yours sincerely,



Mary O'Hara  
Secretary to the Board

---

Cúirt Choill Mhínsí, 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](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

**Re: AP3/2019 Trawbreaga**

Derek Diver &lt;crocknageeoysters@hotmail.com&gt;

Mon 08/06/2020 12:36

To: Alab, Info &lt;Info@alab.ie&gt;

1 attachments (227 KB)

Revised site area.jpg;

Dear Mary,

All the trestles that were encroaching into the applied site have been removed as of today.

I also noticed that the drawing you sent showed the initial site applied for, but we significantly reduced this in 2017 in line with recommendations made by the department, please find revised map attached.

Kind Regards

Derek

Sent from [Outlook](#)


---

**From:** Alab, Info <Info@alab.ie>  
**Sent:** Tuesday 2 June 2020 15:12  
**To:** 'Derek Diver' <crocknageeoysters@hotmail.com>  
**Cc:** Alab, Info <Info@alab.ie>  
**Subject:** AP3/2019 Trawbreaga

Dear Mr Diver

Please find attached letter for your attention which has issued by registered post.

Regards

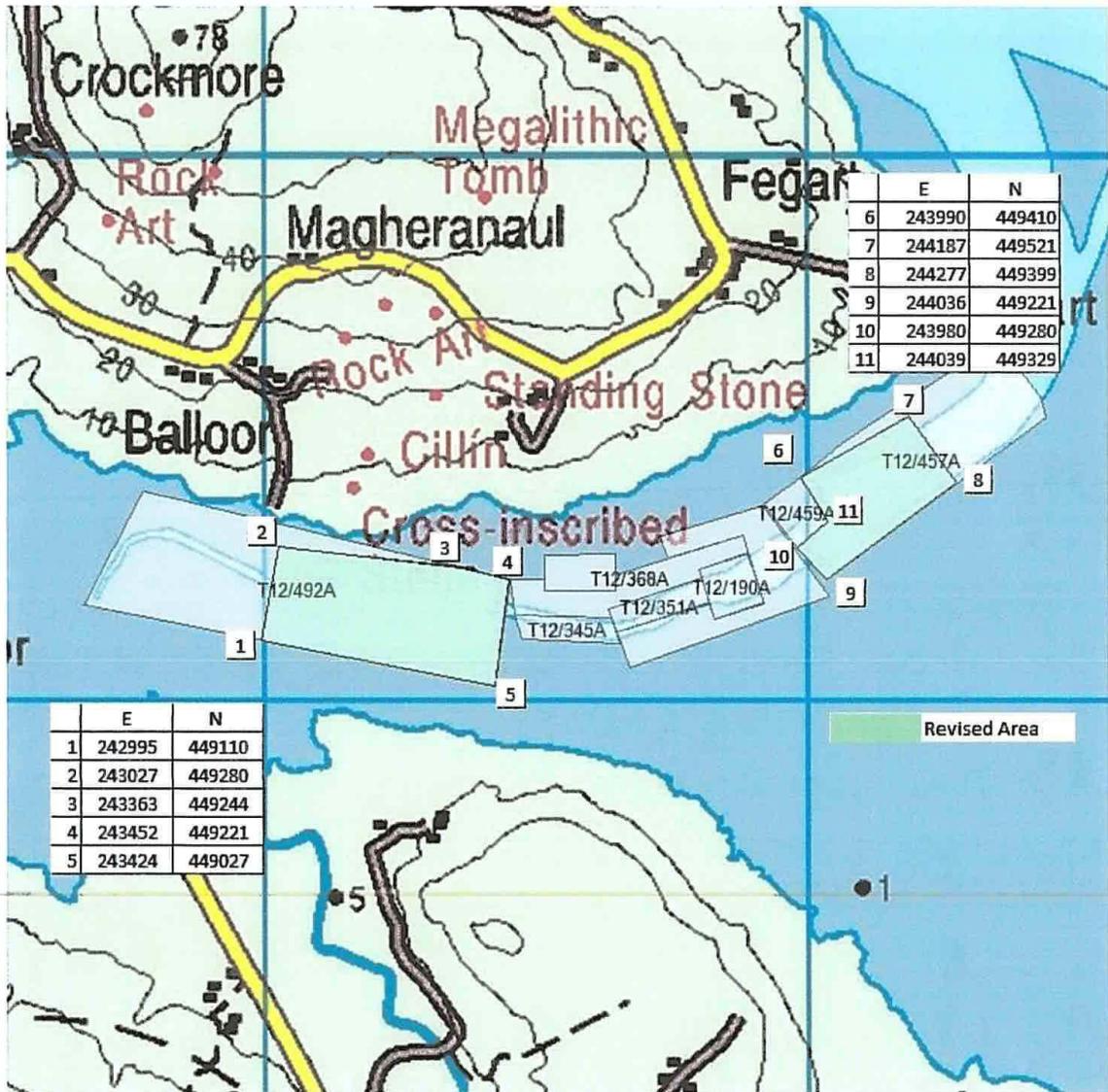
Mary

**Mary O'Hara**  
 Secretary

**An Bord Achomharc Um Cheadúnais Dobharshaothraith**  
 Aquaculture Licences Appeals Board

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

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 R-phost/Email: [info@alab.ie](mailto:info@alab.ie)  
 Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)



**An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board**



Derek Diver  
Crochnagee  
Roxtown  
Clonmany  
Co. Donegal

31 August 2020

Our Ref: AP2/2019  
Site Ref: T12/345A

**Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to grant licence variations on Aquaculture and Foreshore Licences for the cultivation of Pacific Oysters to Derek Diver at Site Ref T12/345A Trawbreaga Bay, Co. Donegal ("the Site")**

Dear Mr Diver

I refer to the above appeal.

In the course of assessing your appeal in respect of this Site, the Technical Advisor retained by the Aquaculture Licence Appeals Board ("the Board") inspected the Site on 23 July 2020.

In the course of the inspection, the Technical Advisor noted a number of trestles which appeared to encroach 25m into the Site.

The Board notes that this appeal concerns the Minister's decision in respect of an application for a new aquaculture licence on the Site.

Section 4 of the Fisheries and Foreshore (Amendment) Act, 1998 (the '1998 Act') provides:

*"On and from the 10th day of December, 1998, an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997."*

Section 46(1)(a) of the Fisheries (Amendment) Act, 1997 ("the 1997 Act") provides that the Board may, if it is of the opinion that in the particular circumstances of an appeal, it is appropriate in the interests of justice to request submissions or observations in relation to any matter which has arisen in relation to the appeal, serve a Notice requesting submissions or observations in relation to the matter to the Board.

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

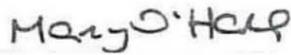
Guthán/Telephone: 057 8631912 R-phost/Email: [info@alab.ie](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

In accordance with the provisions of section 46(1)(a) of the 1997 Act, the Board **HEREBY REQUIRES** you to make submissions or observations in relation to the evidence before the Board that you have commenced to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act of 1997 and that in such circumstances, pursuant to section 4 of the 1998 Act, the application shall not be determined.

Such submissions or observations are required within 30 days of the date of this letter.

Please note that if the submissions or observations are not received before the expiration of the specified 30-day period, the Board may, without further notice to you, pursuant to section 48 of the Act, determine the appeal.

Yours sincerely,



---

Mary O'Hara  
Secretary to the Board

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

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

2<sup>nd</sup> September 2020

Dear Sir/ Madam,

In response to your letter dated 31<sup>st</sup> August 2020, I have been in contact with BIM who have both the equipment and expertise to assist us to mark out the sites correctly.

This will be done as soon as possible

If you require any additional information please contact me on the above phone number.

Yours sincerely,

Derek Diver – Managing Director

## Appendix VI Communications between ALAB and DAFM

### **An Bord Achomharc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board**



Mr Michael Creed TD  
Minister for Agriculture, Food and the Marine  
Agriculture House  
Kildare Street  
Dublin 2

16 April 2020

Our Ref: AP2-3/2019  
Site Ref: T12/345A/1 and T12/492A

**Re: Appeals against the decision of the Minister for Agriculture, Food and the Marine to grant licence variations on Aquaculture and Foreshore Licences for the cultivation of Pacific Oysters to Derek Diver at Site Refs T12/345A/1 and T12/492A Trawbreaga Bay, Co. Donegal**

Dear Minister

I refer to the above appeals.

Pursuant to Section 47(1) (a) of the Fisheries (Amendment) Act, 1997, as amended, ("the Act"), where the Board is of the opinion that any document, particulars or other information is or are necessary for the purposes of enabling the Board determine the Appeal it may serve a notice on a party requiring that party to submit to the Board such documents, particulars or other information as are specified in the Notice.

Having considered the information provided to it, the Board has determined that further documents are necessary for the purposes of enabling the Board determine the Appeal.

The Board hereby requires the following information:

- Please confirm whether the applications made in respect of each of Sites T12/345A/1 and T12/492A relates to a new licence application or a renewal of a licence application;
- Please provide a map which includes up to date satellite imagery for each of the sites confirming the licence application area and the granted licence area on satellite imagery;
- The Board notes that your decision in respect of each application under appeal refers to the "*policy of evenly distributing the licensed area to all applicants*". Please provide the Board with a copy of that policy for review.

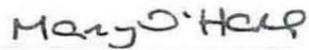
Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5  
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

Guthán/Telephone: 057 8631912 R-phost/Email: [info@alab.ie](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

In accordance with section 47 (1) (a) of the Act, the Board requires this information within **30 days** of receipt of this letter. Please note that if the documents, particulars or other information specified above are not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

Please also note that a person who refuses or fails to comply with a requirement under section 47 (1)(a) shall be guilty of an offence.

Yours sincerely,



---

Mary O'Hara  
Secretary to the Board

cc Mr John Quinlan, Aquaculture and Foreshore Management Division

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](mailto:info@alab.ie) Láithreán Gréasáin/Website: [www.alab.ie](http://www.alab.ie)

An Roinn Talmhaíochta,  
Bia agus Mara  
Department of Agriculture,  
Food and the Marine



April 30, 2020

Mary O'Hara  
Secretary to the Board  
Aquaculture Licences Appeals Board  
Kilminchy Court  
Dublin Road  
Portlaoise  
Co. Laois  
R32 DTW5

Our Ref: T12/345A and T12/492A  
Your Ref: AP2-3/2019

**Re: Appeals against the decision of the Minister for Agriculture, Food and the Marine to grant licence variations on Aquaculture and Foreshore Licences for the cultivation of Pacific Oysters to Derek Diver at Site Refs T12/345A and T12/492A Trawbreaga Bay, Co. Donegal**

Dear Ms. O'Hara,

I wish to refer to your letter to the Minister of 16 April 2020. Please see below, in bold, responses to your queries.

- Please confirm whether the applications made in respect of each of sites T12/345A/1 and T12/492A relates to a new licence application or a renewal of a licence application.  
**Both of the applications referred to are new applications for aquaculture and foreshore licences.**
- Please provide a map which includes up to date satellite imagery for each of the sites confirming the licence application area and the granted licence area on satellite imagery.

An Láirionad Bia Mara Náisiúnta, An Cloichín, Cloich na Coillte, Corcaigh, P85 TX47  
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The Department of Agriculture, Food and the Marine has not produced satellite imagery for these sites and so it is not possible to provide this information.

- The Board notes that your decision in respect of each application under appeal refers to the "policy of equally distributing the licensed area to all applicants". Please provide the Board with a copy of that policy for review.  
**Aquaculture activity in Trawbreaga Bay is characterized by a large number of small sites. The areas applied for in the applications under appeal were significantly larger relative to other areas licensed in the Bay. In order to manage the development of aquaculture in the Bay, having regard to the efficient and effective management of such activity, and in line with similar reductions recommended in 2017 and granted by the Minister for other applications in the area, a reduction for the sites in question was considered appropriate to ensure equal distribution of the licensed area to all applicants in Trawbreaga Bay. This practice can be clearly seen on the map which the Department has provided to ALAB previously (copy attached).**

I hope you find the above helpful. If you have any further queries please feel free to contact this Division.

Yours Sincerely,



Helena Horan  
Assistant Principal Officer  
Aquaculture and Foreshore Management Division