



# AQUAFAC

AP3/2013

Oysterhaven Aquaculture Licence Renewal Appeal

Technical Advisors Report

**Produced by**

**AQUAFAC International Services Ltd**

**On behalf of**

**Aquaculture Licences Appeals Board**

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## 1 Executive Summary

<b>Description</b>	Objection to the Renewal of Shellfish Aquaculture Licences in Ballinclashet Creek, Oysterhaven, Co. Cork
<b>Appeal Reference</b>	AP3/2013
<b>Licence Applications</b>	T5/231, T5/392
Department Reference Number	
Applicants	Desmond T. Morrissey, "The Moorings" Fountainstown, Co. Cork (T5/231)  David & Mary Lane, Lanlyn, Ballinluska Myrtleville, Co. Cork (T5/392)
Minister Decision	Licence granted
<b>Appeal</b>	
Type of Appeal	
Appellants	(a) Oysterhaven Centre (b) Oysterhaven & Nohoval Residents Association
Observers	
Technical Advisor	AQUAFACT International Services Ltd.
Site Inspection	

## 2 Appeals Detail & Observer Comment/Submission

### 2.1 Appeal Timeframe

Date Appeals Received: 5<sup>th</sup> April 2013

Oliver & Kate Hart

Oysterhaven Centre

8<sup>th</sup> April 2013

Oysterhaven & Nohoval Residents Association

**Table 2.1 Location, site reference numbers and identity of applicants.**

Ref. Site No.	Applicant Location
	<b>Ballinaclesh Creek, Oysterhaven, Co. Cork</b>
T5/231	Desmond T. Morrissey, "The Moorings" Fountainstown, Co. Cork
T5/392	David & Mary Lane, Lanlyn, Ballinluska Myrtleville, Co. Cork

Publication notice of the decision to grant aquaculture and foreshore licences was published in 'The Southern Star' on Saturday March 9<sup>th</sup> 2013. The appeals were submitted within the statutory timeframe of one month from the date of the publication notice in The Southern Star as set out under Section 40 of the Fisheries (Amendment) Act, 1997.

**The Oysterhaven Centre** submitted its appeal on 4<sup>th</sup> April 2013. The appeal was received by ALAB on 5<sup>th</sup> April 2013.

**The Oysterhaven & Nohoval Residents Association** submitted its appeal on 7<sup>th</sup> April 2013. It was received by ALAB on 8<sup>th</sup> April 2013.

### 2.2 Name of Appellants

(a) Oliver & Kate Hart  
The Oysterhaven Centre  
Oysterhaven  
Kinsale  
Co. Cork

(b) Oysterhaven & Nohoval Residents Association  
c/o Cronin Millar Consulting Engineers  
Ivyfort House  
5 Cathedral Place  
Cobh  
Co. Cork

## 2.3 Name of Observers

There have been no further submissions or observations since the appeal has been submitted.

## 2.4 Grounds for Appeal

The licences for the sites under appeal (T5/231 & T5/392 in Ballinclashet Creek, Oysterhaven Bay, Co. Cork) expired in July 2007. They had been in operation since first granted in 1997. Applications for renewal of the licences on the same sites were lodged in August 2007. Because of a backlog in processing new or renewal licences, there was a period of uncertainty about the licence between 2010 and 2013 when the applicants did not farm oysters on site. On granting the aquaculture licences to the applicants (in February 2013), the Minister stipulated a reduction in the size of the licensed areas within Ballinclashet Creek to minimise the impact on other users. A full time line of licensing within the area is outlined in Table 2.2 below.

### AP3/1/2013 – The Oysterhaven Centre

The appellants acknowledge the reduction in licensed area as stipulated by the Department as a compromise to facilitate both navigation and oyster cultivation. However, they would attest that the location and extent of the new licensed areas (redrawn to facilitate other users), as a result of this compromise, are unsuitable or hazardous.

The appellants state that the granting of licences will result in the loss of an area traditionally used for sailing and marine recreation. They state that the area that will be lost is the most suitable area accessible to the Oysterhaven Activity Centre in periods of adverse weather.

The appellants state that there will be a danger to navigation while sailing activities take place on the west side of the creek during adverse westerly weather as the location of the blocks of trestles on the north east side will be on a lee shore. Vessels would therefore be liable to fetch up on the steel trestles posing danger to the vessel crews and those carrying out rescue operations

A compromise cultivation area is proposed by the appellants within the bay as a means to address their concerns. A site directly to the south of licence site T5/231 is proposed for the oyster trestle. This, according to the appellants would facilitate maximum usage of Ballinclashet Creek for all users. This would involve relocating some of the licensed areas.

### AP3/2/2013 – Oysterhaven & Nohoval Residents Association (ONRA)

It is the opinion of the appellants that the proposed aquaculture licences do not comply with the relevant fisheries and foreshore legislation and are in breach of Irish common law rights in relation to navigation.

The appellants state that insufficient information was supplied in the application with regard to site layout and that this demonstrates a lack of understanding about the sites, the local conditions and aquaculture operations in general.

The appellants believe that as the renewal applications were not made until after the licence expired in 2007 the applications should be for new aquaculture licences rather than renewals. They state that it is their opinion that Section 19 of the 1997 Fisheries (Amendment) Act is only applicable if the renewal application is received prior to the expiration of the original licence period.

The appellants attest that the sites were never farmed properly and had fallen into a state of disrepair. They state that the licence holders did not comply with the terms of their licence and had installed illegal structures on the foreshore in 2009. In addition, they state that the current operation of the site by the applicant's French partners, while the licence is still pending, is in breach of the lease/licence terms and the legislation.

The appellants state that the development currently presents a significant risk to local navigation and vessels transiting further up the creek. They believe that the navigation channel or thalweg is liable to move in both horizontal and vertical alignment seasonally and that this would render navigation in the channel unsafe due to shallower water depths in the marked channel.

The appellants believe that the proposed development will have a significant negative visual impact in a scenic area.

The appellants claim that permission for the use of the land to the west of the road at Access Site 'B' has not been obtained.

The appellants claim that site access for the proposed operation of the site will pose a significant hazard particularly in relation to access to the sites from the public highway. They present a Traffic and Road Safety Review Report produced by an engineering consultancy firm.

The appellants state that there is inadequate storage and working area available to service the sites resulting in use of the highway and foreshore for storage of materials and product. This they say would have a significant negative visual, noise and navigation impact.

The appellants claim that based on prior operation of the licensed site, and current disregard for the conditions of the licence, the applicants are not suitable to hold the licence. They believe that the applicants will operate illegally and claim they have done so in the past.

## 2.5 Minister's Submission

Section 44 Part 2 of the Fisheries (Amendment) Act 1997 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'*.

The Minister has made no further submissions since the appeals were made.

## 2.6 Applicant Response

### 2.6.1 Time line of Aquaculture Licence Renewal Process

As the licensing process has extended over a period of six years, a time line of the history of licensing at the sites is presented in Table 2.2 for clarification.

**Table 2.2 Time line and history of the licensing process for sites T5/231 and T5/392 in Ballinlashet Creek, Oysterhaven Bay, Co. Cork.**

Date	Details
July 1999	Licences granted for oyster cultivation at site T5/231 & T5/392 which covered an area of 6.69 and 8.54 hectares respectively.
July 2007	The licences (T5/231 & T5/392) expire
Aug 2007	Applications for renewal of the licences were lodged
July 2009	Department engineering report on unauthorised aquaculture structures ("jumbo trestles"). Recommends removal of structures
March 2010	Department engineering report on abandoned and derelict trestles on site. Recommends removal of these structures by licence holders
April 2010	Department engineering report on application for renewal of licences. Highlights abandoned and disintegrating trestles on site. Also states that details of trestles in application are outdated and should be of a newer type. Engineer recommends revoking the licence.
Sept 2010	Department engineering report on the application for renewal of licences following a further site inspection. Recommendation to revoke the licence removed as the site had been cleared of abandoned trestles and debris.
Sept 2010	Because of a delay in processing licence applications due to compliance with obligations under the Habitats Directive, a letter was sent to the applicant from the Aquaculture and Foreshore Management Division of the Department of Agriculture, Food and Fisheries (DAFF) indicating that "pursuant to Section 19A(4) of the 1997 Act, a licensee who has applied for the renewal of an aquaculture licence is entitled to continue its aquaculture operations authorised by the original licence." Thus as the applicants had applied for renewal of their licences, they were still bound by the terms and conditions of their original licence and could operate as such.
Sept 25 <sup>th</sup> 2010	Notice of the application for the renewal of licences were posted in the "The Southern Star" newspaper and Kinsale and Bandon Garda stations as part of



Date	Details
	the public consultation process.
Oct 2010	26 objections were received from the public consultation process
Nov 2010	An EIA Screening Assessment in respect of the applications for aquaculture licences T5/231 and T5/392 was prepared by the EIA Screening group (comprising technical experts and Department officials) and concluded that the environmental impacts from the proposed activity would be minimal and not significant and that an Environmental Impact Statement was not required for the project.
May 2012	Site Access Risk Assessment report was produced on request on behalf of the applicant by an environmental consultancy firm. The assessment was reviewed by the Local Area Engineer who had no issue with regard to the assessment of safety as outlined in the report.
Dec 2012	The Minister requested that the extent of the sites to be licensed be reduced to mitigate against any perceived issues arising due to proximity to marine leisure activities
Feb 2013	Recommendations to grant a renewal of the aquaculture and foreshore licences were sent to the Minister from the Aquaculture and Foreshores Division of the DAFF. The sites are reduced in extent: T5/231 from 6.69 hectares to 2.13 hectares; T5/392 from 8.54 hectares to 0.89 hectares.
Feb 20 <sup>th</sup> 2013	Decision made to grant the licence subject to conditions
March 7 <sup>th</sup> 2013	Notice given to the applicant of the decision to grant the aquaculture and foreshore licences for a period of ten years subject to conditions.
March 9 <sup>th</sup> 2013	Notice posted in "The Southern Star" that the aquaculture and foreshore licences were granted for T5/231 and T5/392
April 2013	Appeals against the licence renewals made by the Oysterhaven Centre and ONRA.

### 2.6.2 General Comments

As per Section 44 Part 2 of the Fisheries (Amendment) Act 1997 which 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'*, the licence applicants were given the opportunity to reply in writing to the appeal against the granting of their licences.

There were two appeals against each of the licence renewal applications. Both of the appellants presented a single document each outlining their appeals against the renewal of T5/231 and T5/392. The appeals were presented in this manner because of the close proximity of the licensed sites to each other within Ballinclashet Creek in Oysterhaven Bay.

The applicants (Mr Desmond T. Morrissey & Mrs Mary Lane) have responded to both of the appeals. The submissions were received by the Secretary of the Aquaculture Licences Appeal Board on 10<sup>th</sup>

May 2013 (with reference to AP3/2/2013) and 21<sup>st</sup> May 2013 (with reference to AP3/2/2013). A summary of their responses will be presented below and each response will be outlined separately.

In each of the responses the applicants make some initial comments on the legitimacy of the oyster cultivation operations undertaken by them:

1. Designations. As Oysterhaven is designated as Oysterhaven Bay Shellfish area and a Pollution Reduction Programme (PRP) has been in effect since January 2010, the use of the intertidal areas within the bay for shellfish cultivation is well established and the continuing suitability for shellfish production falls under the Department of the Environment.
2. Site History. The sites in question have been the subject of formal oyster cultivation activities since originally licensed by the then Department of the Marine and Natural Resources in July 1999. The licences covered the period from then until July 2007. Following the 2007 judgement against Ireland by the European Court of Justice [*reference to case C418/04 that, whereby Ireland was judged to have failed to take all the measures necessary to comply with Article 6(3) of Directive 92/43 (Habitats Directive) in respect of authorisation of aquaculture programmes*], a backlog of aquaculture licence applications awaiting approval developed. This resulted in a significant waiting period for the current applicants as the licences were being processed. The applicants received a letter from the DAFF in September 2010 indicating that “pursuant to Section 19A(4) of the 1997 Act, a licensee who has applied for the renewal of an aquaculture licence is entitled to continue its aquaculture operations authorised by the original licence.” Thus as the applicants had applied for renewal of their licences, they were still bound by the terms and conditions of their original licence and could operate legitimately as such.

### 2.6.3 Response to AP3/1/2013 from the Oysterhaven Centre

#### 2.6.3.1 Sailing Area.

The applicant agrees that the area where the trestles will be located does offer sheltered sailing from westerly winds. However, they would highlight the fact that it is not the only area within the overall Oysterhaven Bay area where such shelter may be obtained. They also indicate that the oyster trestles, located in the intertidal as they are, will be exposed for up to 12 hours a day and would therefore not be suitable for navigation over large periods of time irrespective of the trestles.

The applicant states that the area occupied by the oyster trestle is approximately 3 hectares, which represents a very insignificant proportion of the overall bay area (>100ha). While they acknowledge that the use of these 3 hectares for sailing is convenient at times, the suggestion that the granting of the licences will result in a significant loss of traditional sailing area does not take into account the overall area both to north of the trestles and particularly within the overall bay to the south.

### ***2.6.3.2 Navigational Hazard.***

The applicants indicate that under the terms of the aquaculture licence, as issued by the Department, due regard must be taken of the navigational rights of other marine users. As such the deeper sections of Ballinclashet Creek must be adequately marked with navigation signage. This channel will be a required 40m in width from the southernmost line in the licensed area, running north and north eastward up the river.

The applicants state that based on the available water depths, navigation upstream will be under power at high water and limited to shallow draft vessels. They point out that there is a significant overall area of sheltered sailing waters within the larger bay to the south of Ballinclashet Creek, where access for training or other purposes is not restricted to the available depths.

They would also consider the risk to marine safety as negligible as both the extents of the cultivation areas are marked and most of the small craft sailing predominately originates from the Oysterhaven Centre who are well aware of the presence of the oyster farm.

The applicants note that Oysterhaven Bay is designated for shellfish growing and that this is clearly marked on all charts as well as the British Admiralty Charts for navigation for the last five years. Their placement of oyster trestles and associated navigation marks will follow the precedent already well established in Ireland and abroad.

### ***2.6.3.3 Compromise site layout.***

The applicants would consider that the compromise layout as proposed by the Oysterhaven Centre does not take into account the operational requirements of the oyster on-growing activity. They state that, subject to the licence conditions, the operator would require flexibility in the positioning of trestles within the licensed area to optimise growing conditions.

The applicants have also highlighted the point that the Department has significantly reduced the size of the licensed area at request of the Minister. As this was to mitigate against any perceived issues arising due to the proximity to marine leisure activities, the applicants would suggest that the substance of the Oysterhaven appeal had already been addressed by the licensing process.

Finally the applicants would take issue with the assertion by the Oysterhaven Centre that the licence holders are "...a business that is not rooted in the locality, has a poor track record of managing the site and creates nothing for the local economy in terms of either revenue or employment". They reply that they have carried out oyster cultivation in the area for over 15 years without complaint and that both of the applicants live in the locality. The applicants consider this allegation as defamatory and wholly unsubstantiated in the documentation submitted in the appeal.

## **2.6.4 Response to AP3/2/2013 from Oysterhaven & Nohoval Residents Association**

The applicants note that many of the issues raised in the appeal submitted by the Oysterhaven & Nohoval Residents Association (ONRA) would appear to be directed at the DAFF and the procedures used by the Department to process aquaculture licences rather than the applicants.

#### ***2.6.4.1 Licence Process & Protocols.***

The applicants state that issues surrounding previous objections to the renewal of the aquaculture licences and the transfer of information between the Department and the ONRA are outside of their control. They indicate that throughout the licence renewal process they have supplied all requested information to the Department.

#### ***2.6.4.2 History of Aquaculture Operations in Ballinlashet Creek, Oysterhaven.***

The applicants confirm that in September 2010 the Department wrote to them advising them that they could continue operations as they had made an application for the renewal of their licence. This was confirmed in writing. They would consider the issue of interpretation of the provisions of Section 19 A (4) as referred to in the Department letter of September 2010 as a matter for the courts.

In reference to assertion that they had installed illegal structures on the foreshore, the applicants acknowledge the installation of experimental five-tiered or jumbo trestles, but assert that these were removed following consultations with the Department.

The applicants further stress that as the sites have been licensed since 1999 and lie entirely within the designated Shellfish Area, they have complied fully with the relevant Acts and Statutory Instruments applied through the grant of the aquaculture licences.

#### ***2.6.4.3 Licences Application Documentation.***

The allegation by the appellants of insufficient supply of information in the licence renewal documentation is refuted by the applicants who state that the level of information they supplied was significantly increased following requests from the Department.

##### ***2.6.4.3.1 Access to site***

The applicants hired OES environmental consultants to carry out a site risk assessment which they say was to the satisfaction of the Department of the Marine and Cork County Council at the time of preparation (March 2012). They also state that in the 15 years that they have been involved with oyster cultivation at the licensed sites there has never been a road traffic incident associated with their operations at what is they say an existing access point to the foreshore.

The applicants state that access to the sites typically occurs most during the growing season (summer months) and can run to 2 to 6 hours per day to turn and shake oyster bags. These operations are manual and do not require the use of Access point 'B' as they applicants state they have an amphibious vehicle and a boat which access the site from the public slipway.

Any access by commercial type vehicles to the site at Access Point 'B' will be, according to the applicants, to deliver stock and materials to the ongrowing site and to collect fully grown oysters for dispatch on to the market. Unloading and loading at this access point should last, they say, from between 30 minutes to an hour after which the vehicle is removed to a parking area 2km distant. This procedure will be infrequent.

Incidents of vehicles remaining at the site for longer periods of time are acknowledged by the applicants but will no longer be permitted under their operating protocols. They state that their proposed arrangements for Access Point 'B' for loading and unloading are in line with provisions in the Road Traffic Acts and Regulations covering goods deliveries in Ireland.

#### 2.6.4.3.2 Storage/Working Areas

The concerns raised in the appeal about the lack of proper storage/working area available adjacent to the sites have been addressed by the applicants in their response indicating that a commercial storage unit at Ballyvorane, Nohoval has been leased for the purpose of storing and maintaining materials and equipment associated with the operations of the Oysterhaven site. They stress that no roadside or foreshore storage of materials or product as described in the appeal will occur.

#### 2.6.4.3.3 Site Layout

The applicants, in reference to complaints about the lack of detailed trestle layout plans, stress the fact that this amount of detail is not required in the aquaculture licence renewal process. This approach, they say, is favoured by both the Department and the licensee as operational flexibility is provided within an overall area where trestles may be placed.

#### 2.6.4.4 Navigation and Navigational Safety

Oysterhaven is designated for shellfish culture and, as the applicants highlight, the Department has specified the areas where oyster culture may take place subject to the navigational rights of other marine users. This involves the provision of an adequately marked navigation channel through the deeper sections of Ballinclashet Creek. This channel under the terms of the licence is required to be 40m in width from the southernmost edge of the licensed area running north and north eastward up the river.

The applicants state that based on available water depths, navigation upstream will be under power and at high water and limited to shallow draft vessels. As the oyster-growing area is in the intertidal, the availability of sufficient water for sailing is restricted irrespective of the presence of oyster trestles. Issues surrounding the use of the creek by the Oysterhaven Centre have been addressed in Section 2.6.3.2 above.

With respect to the issues surrounding the natural movement of the thalweg within the creek, the applicants would suggest that the available information indicates a relatively stable channel position. However, the applicants submit that if there are problems with the depth and location of the channel due to the thalweg, then they will undertake to restore the depth through dredging in order to keep the channel open for navigation.

The applicants state that the placement of trestles and associated navigation marks will follow established precedent in Ireland and abroad for safe navigation in coastal waters with a wide range of manmade structures, including aquaculture, (mussel, finfish and oysters), piers, jetties, breakwaters *etc.*, all of which will appear on Admiralty charts and will be appropriately marked.

#### 2.6.4.5 Visual Impact

The applicants would contend that as the scenic or landscape designation of the Oysterhaven area in the Cork County Development Plan was instigated subsequent to years of licensed aquaculture activity in the bay (since 1997), the scenic baseline for the County Plan included the presence of shellfish cultivation.

The applicants state that the licensing process, including the EIA screening assessment of the proposed development, raised no major issues with regards to visual impact (the project was judged to be minor in scale, with no permanent fixed structures, with trestles submerged for the majority of the tidal cycle and insignificant impact of navigation markers).

#### 2.6.4.6 Road Safety

The applicants would attest that issues, alleged by the appellants, surrounding road safety during access to licensed site from the road at Access Point 'B' are minor in nature. They state they should not pose a road safety threat for the following reasons:

- (1) Site establishment is complete at this stage and loading or unloading at the access point will only be required for delivery of juvenile oysters, occasional delivery of oyster trestles and collection of harvested stock.
- (2) Visits to sites using Access Point 'B' will be kept to a minimum (approximately monthly intervals)
- (3) Visits will be of short duration (<1 hour)
- (4) Visits will be outside of peak traffic hours
- (5) Appropriate traffic and safety signage will be employed
- (6) The access point is they say within a 60kph zone with the required line of sight distances in both directions
- (7) At a location which has been safely used for 15 years
- (8) At a location that is not subject to parking restrictions

### 3 Consideration of Non-Substantive Issues

There were no non-substantive issues with regard to the appeal

### 4 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.*

An oral hearing has not been requested by either of the appellants or the applicant at this stage.

## 5 Minister's File

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

- Copy of the Licence Application Form
- Copy of the Aquaculture Licence with maps, charts, co-ordinates and drawings
- Copy of the Foreshore Licence
- Copy of the E.I.A. Screening Assessment
- Copy of the Submission to the Minister
- Copy of the Applicants responses to concerns and objections
- Copy of Notification to Applicant of the Minister's Decision
- Copy of the Advertisement of the Minister's Decision
- Overview map of sites in Oysterhaven

## 6 Context of the Area

### 6.1 Physical Description

Oysterhaven Bay is situated on the coast of County Cork in the South Western River Basin District (Figure 6.1). The area of this water body according to the Water Framework Directive is approximately 3.6km<sup>2</sup>. The bay complex comprises the Stick Estuary and Ballinclashet Creek. The designated shellfish area within the bay is 1.5km<sup>2</sup> (Figure 6.3). It encompasses the shoreline southwest of Mountlong to the shoreline east of Garraha, along the shoreline to a point southwest of Rathmore to a sight line running west to east to Ringville and up the inlet to Ballinclashet and including Ballinclashet Creek. The contributing catchment of the shellfish area is almost 100.3 km<sup>2</sup> in area with the River Stick being the main freshwater input into the area. The population of the catchment is approximately 25,633 (CSO 2006 Survey). However, there is no single large centre of population. Farming in the region is mainly based on sheep and cattle rearing. Approximately 63,190 cattle and 6,165 sheep are grazed in the catchment (Shellfish PRP Characterisation Report, 2010). The depth of water in the bay ranges from 1m in the centre of the bay to 10m at the entrance to Oysterhaven Bay. The tidal range in Oysterhaven Bay has a maximum of 4.37m. Much of the Stick Estuary is intertidal mud and sand. Ballinclashet Creek, which is fed by a relatively small stream includes area of salt marsh, mudflats and a pebble shore.

Figure 6.2 illustrates the extent of the two licensed sites (T5/231 & T5/392), located in Ballinclashet Creek, that are in the process of renewal and are the subject of the current appeal.



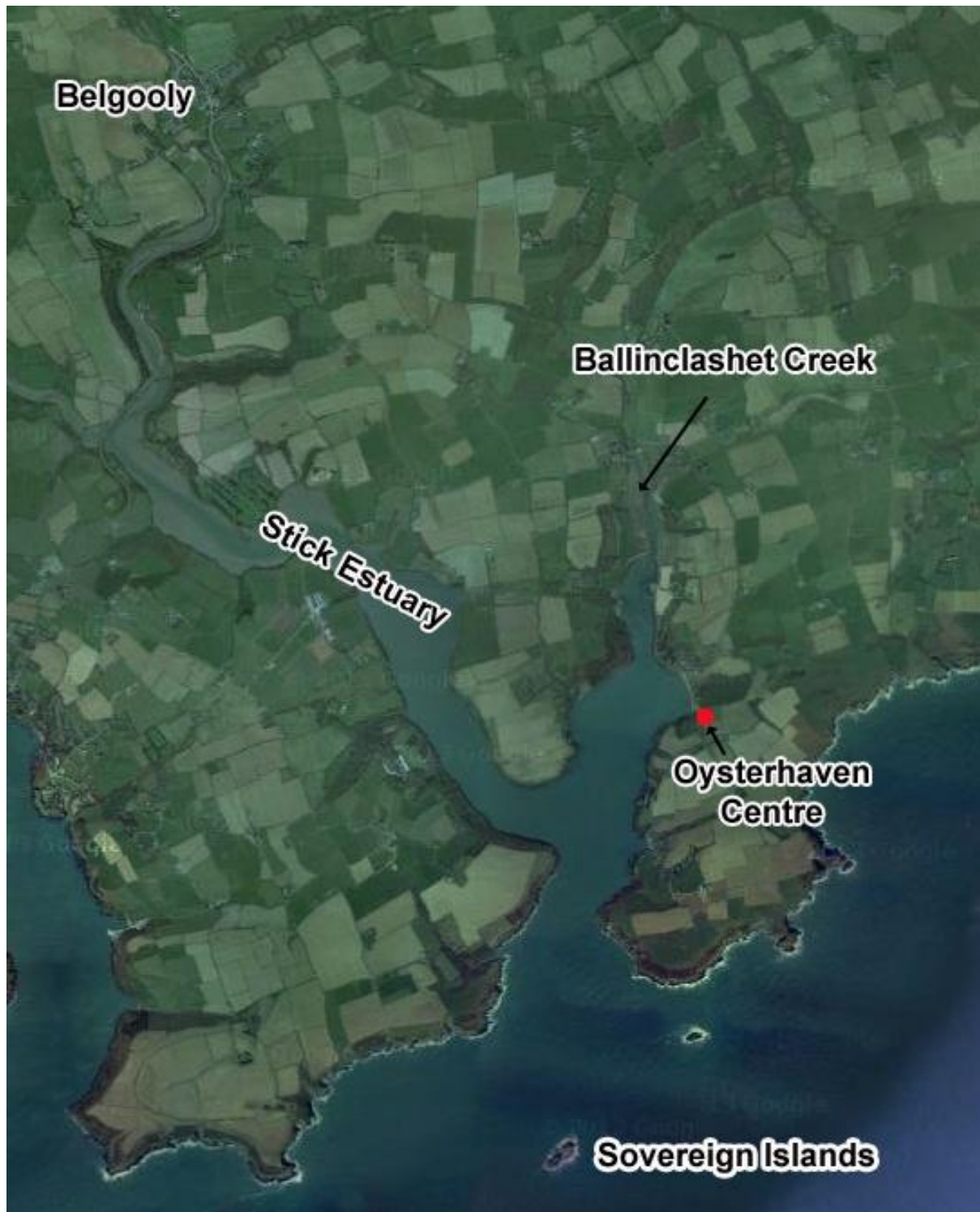


Figure 6.1. Oysterhaven Bay, Co. Cork.





Figure 6.2. Ballinclashet Creek, Oysterhaven Bay, Co. Cork. Highlighted areas illustrate the licensed sites (T5/231 & T5/392) under appeal. The proposed access point to the sites (Access Route 'B') is also illustrated.

## 6.2 Resource Users

### Aquaculture activity

In addition to the current licence renewals under appeal there are a number of other aquaculture licences for the culture of oysters in Oysterhaven Bay. These are located in the intertidal of the western branch of Oysterhaven Bay – namely the River Stick River or Belgooly River.

### Leisure Activity

The Oysterhaven Centre is located in Oysterhaven Bay. This holiday and activity centre has operated in the area for 33 years. Its activities range across family activity holidays, corporate teambuilding, educational tours, summer camps and water sport training. It offers training and equipment for sailing, wind-surfing and kayaking. In 2013, the centre was awarded the title Centre of the Year by the Irish Sailing Association – the governing body for sailing in Ireland. The centre utilises the waters throughout the bay with a particular focus on the waters of Ballinclashet Creek during adverse weather conditions, *i.e.* when the wind is blowing from the westerly quadrant.

### Sailing

In addition to the Oysterhaven Centre sailing activities the bay is used by a large number of sailing vessels, motor launches and boats. These take advantage of several mooring areas within the bay that provide well protected waters from extreme weather except for strong southerlies. It is used as an alternative to the nearby and busy Kinsale Harbour.

Sovereign Sailing operates out of Kinsale Harbour and has yachts and other vessels available for charter. They sail around the waters of the south coast including Oysterhaven Bay.

### Diving

Cork Sub Aqua Club operate out of Oysterhaven from April – September with two RIBs moored in Oysterhaven Bay from where the club can access more than 20 dive sites in the locality including several around the Sovereign Islands at the mouth of the bay.

Oceanaddicts is a dive centre based in Kinsale which offers boat diving, snorkelling, scenic coastal cruises and other ocean activities along the south coast.

### Fishing

Scallop dredging and line fishing is carried out in a large area within and adjacent to the Shellfish Designated Area. In addition to this, otter trawls and the fishing for crustaceans with pots occurs within a large area to the south of the designated area. Deep sea angling is carried out by charter boats in the vicinity of Kinsale.

### Tourism

No statistics were available for this specific area; however, Fáilte Ireland statistics reported approximately 1,123,000 overseas visitors to County Cork during 2011 with associated revenue of *circa* 416million euro (Fáilte Ireland, 2012).

Within Oysterhaven Bay the main attraction for visitors is the Oysterhaven Centre that services a throughput of approximately 15,000 customer activity days each year.

## 6.3 Environmental Data

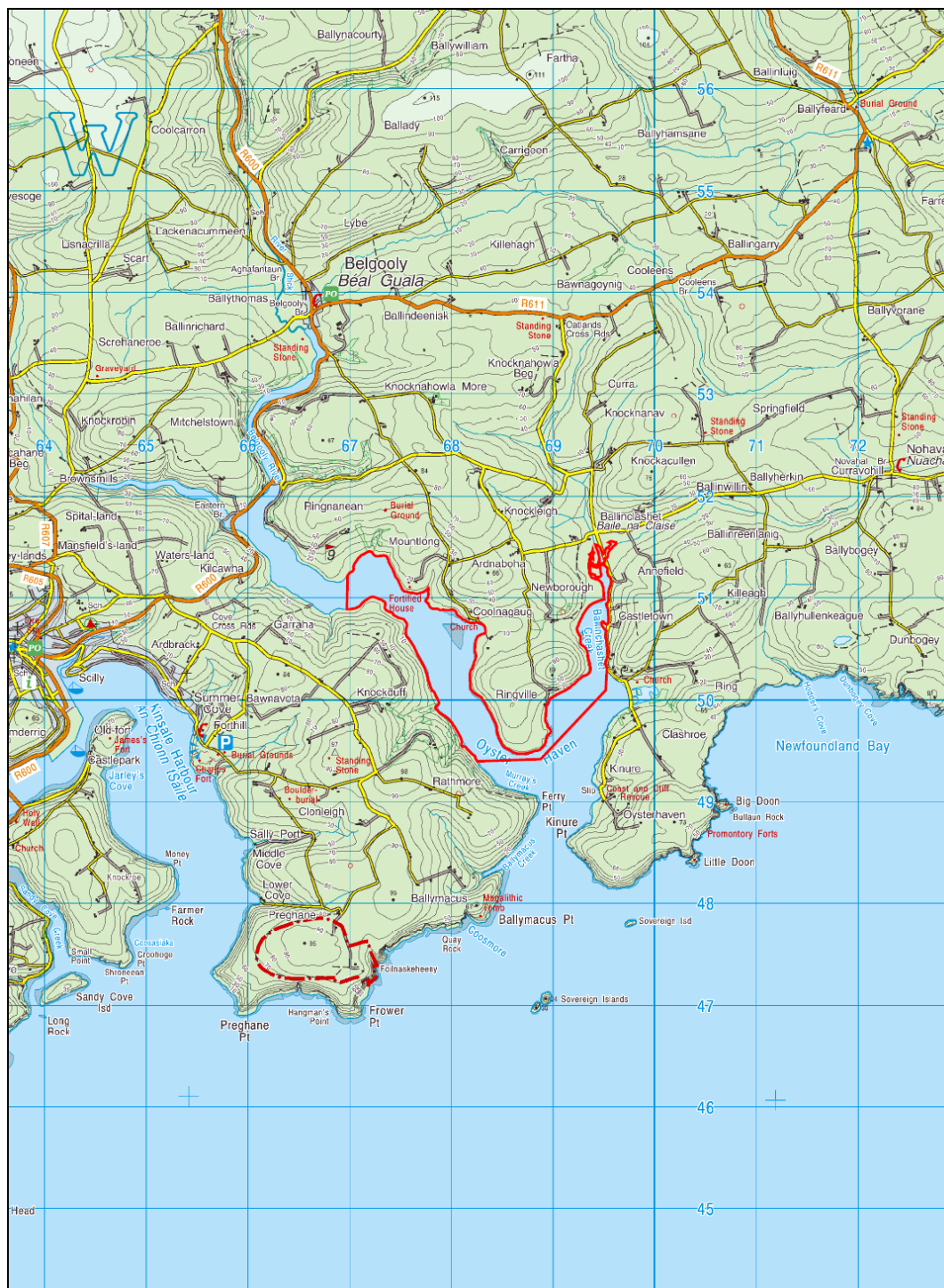
### Water Quality

Oysterhaven is a designated shellfish area and must comply with the Shellfish Directive (2006/113/EC) and the Quality of Shellfish Waters Regulations 2006. Figure 6.3 illustrates the extent of the Shellfish Designated Waters within Oysterhaven Bay.

A 2008 risk assessment identified one urban waste water treatment plant within the catchment of Oysterhaven Bay and designated as 'not at risk'. This is the locality of Belgooly which had a discharge of 495 P.E. (population equivalent) at the time of the Shellfish Pollution Reduction Programme survey for Oysterhaven Bay. Now, following a housing boom in the village the discharge is 1600 P.E. There is no municipal waste water treatment plant in place and wastewater from the village discharges directly into the river. The discharge point is approximately 3.5km from the shellfish designated waters. However, an application for a certificate of authorisation for Belgooly has been made by Cork County Council (on 21/08/12) pursuant to the requirements of the Waste Water Discharge (Authorisation) Regulations, 2007.

According to the Shellfish Pollution Reduction Characterisation report for Oysterhaven (2010) there are 1,383 single sewage systems in the catchment and their density is much higher than the national average.





Map 40: Oyster Haven

Ordnance Survey Ireland.  
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Date: December 2008

1:50,000


 Designated Shellfish Water

Figure 6.3. Oysterhaven Bay, Co. Cork. Designated Shellfish Waters.

## 6.4 Statutory Status

### 6.4.1 Nature Conservation Designations

While Oysterhaven itself does not lie within a Natura 2000 site, there is a Special Protection Area in the vicinity, namely the Sovereign Islands SPA (Site code: 004124). The Sovereign Islands are two very small islands located approximately 1km off the coast at the entrance to Oysterhaven Bay. Sovereign Islands SPA is located approximately 3.2km from the proposed licensed areas.

### 6.4.2 Protected Species

The Sovereign Islands SPA is a site of ornithological importance and a breeding colony of Comorants has been recorded on the islands since the late 1960s. Other birds recorded breeding on the islands include Great black-backed Gulls, Herring Gulls and Black Guillemots.

The Stick Estuary is recorded in the Irish Wetlands Bird Survey (2009/2010) as a nationally important (with greater than 1000 birds) site for Black-tailed Godwit. This species is listed as 'Near Threatened' in 2012 on the IUCN Red List.

The otter (*Lutra lutra*) is protected under the Irish Wildlife Acts (1976 & 2000) and is also listed on Annexes II and IV of the EU Habitats Directive. Otters have been recorded during the Otter Survey (2004/2005) from the Belgooly and Stick River area (Bailey & Rochford, 2006).

Both grey seals (*Halichoerus grypus*) and harbour seals (*Phoca vitulina*) have been recorded close to Oysterhaven on the Sovereign Islands. Both of these species are listed in Annex II of the Habitats Directive. However, there are no important breeding grounds or haul out sites in the immediate vicinity.

Table 6.1 lists the cetacean and shark species recorded within the vicinity of Oysterhaven Bay. All cetaceans are listed under Annex IV (including those of Annex II) of the EU council Directive 92/43/EEC. Accordingly it is an offence to deliberately capture, disturb or kill a cetacean or take action that may result in the deterioration of their breeding site or resting places. In 1991, Ireland declared its waters a whale and dolphin sanctuary.

**Table 6.1. List of cetacean species recorded by the Irish Whale and Dolphin Group for the last 19 years in the vicinity of Oysterhaven Bay, Co. Cork. Results were obtained from the IWDG website [www.iwdg.ie](http://www.iwdg.ie)**

Date	Species	No. of animals	Location
30 May 2010	harbour porpoise	2	Oysterhaven, Cork
6 Aug 2009	bottlenose dolphin	18	Oysterhaven, Cork
29 Jul 2009	harbour porpoise	2	Oysterhaven, Cork
27 Sept 2008	harbour porpoise	2	Oysterhaven, Cork
19 Aug 2007	bottlenose dolphin	30	Oysterhaven, Cork
3 Feb 2007	fin whale	2	Oysterhaven, Cork
28 Oct 2001	minke whale	1	Oysterhaven, Cork
12 Jun 1995	harbour porpoise	1	Oysterhaven, Cork
8 May 1995	common dolphin	6	Oysterhaven, Cork
8 May 1995	harbour porpoise	2	Oysterhaven, Cork
12 Jul 1994	harbour porpoise	5	Oysterhaven, Cork
13 March 2012	killer whale	2	Newfoundland Bay, near Oysterhaven, Cork
24 Oct 2001	“whale” species	1	Newfoundland Bay, near Oysterhaven, Cork
27 May 2007	“dolphin” species	5	Newfoundland Bay, near Oysterhaven, Cork
26 Aug 2005	“whale” species	1	Newfoundland Bay, near Oysterhaven, Cork

#### 6.4.3 Statutory Plans

Cork Biodiversity Plan 2009-2014 lists the Sovereign Islands as a proposed National Heritage Area (NHA).

Oysterhaven does not appear to be included in any Local Area Plan. It is however designated as an area of scenic landscape in the Cork County Development Plan 2009 and the scenic route S60 passes adjacent to Ballinclashet Creek. The landscape type that this route passes through is listed as indented estuarine coast and rolling patchwork farmland. While the overall landscape value is listed as very high-medium, the key characteristics of the land use are listed as agriculture, mariculture, recreation, leisure and tourism.

The licensed site is located within Oysterhaven Shellfish Designated Waters.

#### 6.4.4 Water Quality Status

Article 5 of the Shellfish Directive (2006/113/EC) and section 6 of the Quality of Shellfish Waters Regulations (S.I. No. 268 of 2006) require the development of Pollution Reduction Programmes (PRPs) for designated shellfish areas in order to support shellfish life and growth and to contribute to the high quality of directly edible shellfish products. Shellfish PRPs relate to bivalve and gastropod molluscs, including oysters, mussels, cockles, scallops and clams.

Waterbodies designated as shellfish areas are strictly monitored for pH, temperature, colouration after filtration, suspended solids, salinity, dissolved oxygen, petroleum hydrocarbons, organohalogenated substances, dissolved metals, faecal coliforms, substances affecting the taste of shellfish and saxitoxin (produced by dinoflagellates).

The licensed areas are classified as Class B meaning that shellfish may be placed on the market for human consumption only after treatment in a purification centre or after relaying so as to meet the health standards for live bivalve molluscs laid down in the EC Regulation on food safety (Regulation (EC) No 853/2004). This indicates faecal contamination in this shellfish area (Oysterhaven PRP, 2012).

#### Ecological Water Quality Status

In terms of the ecological status, as defined under the Water Framework Directive, Oysterhaven Bay has been assigned a 'Moderate' status. This status is attached to Oysterhaven Bay based on the monitoring of various biological, physico-chemical, chemical and hydromorphological elements.

This 'moderate' status is unsatisfactory; however, this status was extrapolated from similar water body types. The River Stick which discharges into the designated shellfish area is also 'moderate' and therefore unsatisfactory, reflecting issues with physico-chemical parameters.

The ecological risk status for this waterbody is listed as '2b' – strongly expected to achieve a 'Good' status by 2015.

#### Bathing Water Quality

Oysterhaven Beach at Oysterhaven Centre has been awarded a Green Coast status for 2013 because of the excellent water quality assessed from 2009-2012. The Green Coast award seeks to promote and protect the environment of rural beaches (those beaches that may not have enough amenities to be assessed for Blue Flag Status) aiming to acknowledge clean environment, excellent water quality and natural unspoiled beauty.

### 6.5 Man-made Heritage

The Department of Arts, Heritage and the Gaeltacht have raised no objections to the development from an underwater archaeological perspective.

According to the 'Archaeological Survey of Ireland', there are numerous sites of archaeological interest located around Oysterhaven Bay including country houses, churches and graveyards, ringforts, megalithic tombs and a castle. There are no features of archaeological interest recorded for Oysterhaven Bay itself

## 7 Section 61 Assessment

### 7.1 Site suitability

#### 7.1.1 Hazard to Navigation

According to the licensing authority, the layout of the reduced site would allow sailing craft to navigate over a wide area of the inlet, and in particular, over a wide area of the upper part of the inlet at high tide, which have relatively shallow waters and a good degree of shelter from exposure. There is a clear separation distance of 40 metres between the two aquaculture sites at the narrowest location; and as this width extends over a relatively short distance (100m) this gives ample room for navigation and/or manoeuvre of sailing craft and other small vessels in the area.

The Marine Survey Office had no objections to the renewal of the licences from a navigational viewpoint. Neither had the Commissioner of Irish Lights any objections. The Sea Fisheries Protection authority stated it also had no objections to the development.

In relation to issues surrounding hazards to navigation raised by the appellants with regards to sailing in the Ballinclashet Creek area, the substantial reduction of the footprint of the licensed sites should facilitate the recreational and other users of the creek. However, the appellants (Oysterhaven Centre) have stated that as they traditionally use the sheltered waters of Ballinclashet Creek during periods with strong westerly winds the placement of trestle in licensed site T5/231 will provide a lee shore hazard with sailing vessels, kayaks and windsurfers likely to fetch up on the steel trestles making rescue very hazardous. The appellants propose a compromise licensed area slightly further south which would allow maximum usage of Ballinclashet Creek to all users.

The compromise licensed area proposed by the Oysterhaven Centre appellants has been rejected by the applicants citing the need for flexibility in the husbandry and harvesting of oysters from its reduced licensed sites. If the possibility of moving one of the sites is not feasible, then some safety measures could be implemented to safeguard against potential lee shores hazards. The installation of safety buoys or canoe booms inside the navigational markers surrounding the oyster trestles would provide a safety barrier to prevent small craft being blown onto trestles. These buoys are available in low-profile colours to minimise any visual impact.

#### 7.1.2 Site access and Traffic Hazards

In relation to safety concerns surrounding traffic hazards associated with site access, the Department requested a Site Access Risk Assessment from the applicants. This report was to assess the adequacy of access to the site and to determine any hazards or risks to members of the public, local traffic and site workers. The assessment (carried out by independent consultants) concluded that the proposed point of access was adequate and the health and safety risks and hazards were minimal. The consultants stated that the Local Area Engineer for cork County Council confirmed that he had no issue with the assessment of safety as documented in the Site Access Risk Assessment. Additionally, the Department's Engineering Division also confirmed that it had no issue with the



conclusion of the assessment that site access was adequate. However, the Local Area Engineer has subsequently raised concerns about the level of actual level of traffic at the access point in comparison with that reported by the Site Access Risk Assessment. He highlighted the need for proper safety controls to be put in place in agreement with the Local Authority.

An appeal by ONRA raised what it considered to be serious concerns over aspects of the Site Access Risk Assessment. ONRA commissioned independent consultants to prepare a Traffic and Road Safety Review Report to evaluate the road safety impact of the oyster cultivation sites (T5/231 and T5/392) in Ballinclashet Creek. Based on their report, the consultants concluded that the use and operation of Access Route 'B' and operation of the site could endanger public and employee safety by reason of a traffic hazard. They state that as access to the site requires parking a vehicle on the live public carriageway, the access proposal would force pedestrians and cyclists into the centre of a live road. They also consider the available road width when a vehicle is parked at the proposed Access Point 'B' to be inadequate for the safe passage of vehicles.

In their response to the appeal, the applicants considered and countered the concerns raised by the appellants (see section 2.6.4.6 above). However, Cork County Council and An Garda Síochána are ultimately responsible for road safety. In order for operations to continue at the proposed licensed sites then the operators must be in full compliance with traffic and safety regulations.

#### 7.1.3 Existing Infrastructure

The applicants have acknowledged concerns about the suitability of existing infrastructure for the operation of the oyster farm particularly storage and work areas. They have supplied details of a shed they have leased in Ballyvorane in Nohoval. This premises will ensure that no equipment need be stored either on the roadside or the foreshore.

#### 7.1.4 Visual Impact

The proposed licence renewals occur within a designated scenic landscape area, of very high to medium value. However, the categorisation of the landscape use does include mariculture and agriculture (Cork Co. Development Plan, 2009). As the sites are intertidal, the view of the trestles will be submerged and not visible for much of the tidal cycle.

### 7.2 Other Uses

As highlighted in section 6.2, there are numerous other users operating within Oysterhaven Bay, particularly those involved in the sailing and leisure sector but also including diving fishing and other oyster farmers.

While the renewal of the licences in Ballinclashet Creek will have the consequence of excluding small sailing craft from the licensed area, the overall footprint of the licensed sites has been reduced from 15.23 hectares to 3.02 hectares to try to accommodate other users. In addition, the actual area occupied by the trestles is less again than 3.02 hectares and will be clearly marked with navigational markers. The area where the oyster trestles will be situated offers relatively sheltered sailing waters

for the water activities of the Oysterhaven Centre. However, much of the overall Oysterhaven Bay area provides similar sheltered conditions. The area where the oyster trestles will be located are positioned in the intertidal and as such will be exposed for up to 12 hours a day and will therefore not be available for sailing for much of the time.

Oyster cultivation has been carried out in Ballinclashet Creek since 1997. Because of a backlog of several years for aquaculture licence applications and renewals there was a period when oyster culture was not practiced in this area. During the 15 years of oyster cultivation at the licensed sites, it has been claimed by the applicants that there were never any complaints lodged against the operators with regard to navigational hazards for sailing craft on Ballinclashet Creek, during which time the licensed areas covered the whole of the creek rather than the 3 hectares proposed for renewal.

### 7.3 Statutory Status

#### Conservation Sites

The site is not located in any Natura area (*i.e.* candidate Special Area of Conservation or Special Protection Area). There is however an SPA at the entrance to Oysterhaven Bay – The Sovereign Islands SPA. Birds recorded breeding in the SPA include Cormorants, Great Black-backed Gulls, Herring Gulls and Black Guillemots. It is not expected that the renewal of the licence will have a significant negative impact on the birds of this SPA.

The Stick Estuary is recorded in the Irish Wetlands Bird Survey (2009/2010) as a nationally important (with greater than 1000 birds) site for Black-tailed Godwit. It is likely that there will be a local temporary disturbance during the husbandry and harvesting activities of oyster cultivation in the licensed areas but the birds will likely habituate to this and the disturbance will not affect the population. The footprint of the proposed licensed areas has been significantly reduced and the new footprint of the trestles will be less than the 3.02 hectares of the new licensed sites. This is a relatively small area compared to the overall feeding area within the Oysterhaven Bay complex. It is not expected to have a significant impact on bird populations in the area.

#### Shellfish Waters

The licensed sites are located within the Oysterhaven Shellfish Designated Waters. Monitoring in this area does not indicate any water quality issues which are likely to be associated with these systems and therefore they are unlikely to be affecting shellfish water quality in this shellfish area.

## 7.4 Economic Effects

The renewal of the Aquaculture licence has the potential to provide a range of benefits to the local community such as the attraction of investment capital, development of support services *etc.* It is expected by the applicants that the development will employ 4 part time workers directly in the farming and harvesting of oysters in the licensed area.

Whilst tourism and the recreational market have the greatest economic market within the area, especially due to the presence of the Oysterhaven Centre in the Bay, the presence of oyster cultivation within Ballinclashet Creek will not reduce the number of visitors to the centre.

## 7.5 Ecological Effects

An Taisce raised some concerns regarding the cultivation of non-native pacific oysters in Irish waters and also the potential impacts on bird populations due to the direct loss of intertidal feeding areas. As part of the EIA pre-screening process the Screening panel considered these issues and determined them not to have a potential significant impact.

## 7.6 General Environmental Effects

According to studies carried out for the Shellfish Waters Directive, dedicated shellfish samples available for this shellfish area were found to be compliant with shellfish guideline values outlined in Annex I of the Shellfish Waters Directive (2006/113/EC) and Schedule 4 of the Quality of Shellfish Waters Regulations (S.I. No. 268 of 2006).

The results of the WFD monitoring programme indicate that there are water quality issues in some of the waters discharging in the vicinity of this shellfish area. The shellfish flesh classification indicates low levels of faecal contamination in the shellfish area. However, the monitoring data available at this shellfish area are compliant with the shellfish guideline value for faecal coliforms in an area classified as having a 'B' classification.

The production of faeces and pseudofaeces by cultivation of oysters in trestles will not impact the benthic environment as the sites are intertidal and the ebb and flow of tidal waters will spread depositions over a large area.

The amount of shells discarded during the operation of the licensed area is likely to be low and build up of excess shells on site is not permitted.

There are likely to be no significant emissions from machinery used in husbandry and harvesting.

There will be noise associated with the husbandry and harvesting of the oysters but this will not be significant.

## 7.7 Effects on Man-made Heritage

As previously stated in Section 6.5, there are no features of archaeological interest recorded for Oysterhaven Bay itself. The Department of Arts, Heritage and the Gaeltacht have raised no objections to the development from an underwater archaeological perspective.

## 8 Section 61 Conclusions

### Site Suitability

The sites under appeal are not ideally suitable for purpose as they exist at present due to the following reasons:

- (1) Traffic hazard issues have been raised with regard to the suitability of access at Access Point 'B'. All traffic and safety regulations must be adhered to in the operation of the licensed sites.
- (2) Potential navigational hazards may exist due to the danger of vessels fetching up on trestles in adverse weather conditions. This could be mitigated against by the installation of safety buoys.

Issues surrounding the visual impact of the proposed development are not considered significant considering the history of the site and the categorisation of the landscape with reference to mariculture.

Concerns regarding existing infrastructure at the sites have been addressed by the applicants in their response.

### Other uses

The proposed development will have a non-significant adverse impact on the staff and visitors of the Oysterhaven Centre because of the following reasons:

- (1) While the renewal of the licences in Ballinclashet Creek will have the consequence of excluding small sailing craft from the area, the overall footprint of the licensed sites has been reduced from 15.23 hectares to 3.02 hectares. In addition, the actual area occupied by the trestles is less again 3.02 hectares.
- (2) The area where the oyster trestles will be situated offers relatively sheltered sailing waters. However, much of the overall Oysterhaven Bay area provides similar sheltered conditions.
- (3) The area where the oyster trestles will be located are positioned in the intertidal and as such will be exposed for up to 12 hours a day and will therefore not be available for sailing for much of the time.
- (4) Recommendations for the installation of further safety measure (safety buoys or canoe booms) should address concerns about navigational hazards.

### Statutory Status

The proposed development will not have a significant impact on the statutory status of the area for the following reasons:

- (1) Oysterhaven is not located in any Natura 2000 designated area (SPA, c SAC). The Sovereign Islands SPA (Site Code 004124) is located approximately 1km off the coast at the entrance to Oysterhaven Bay. The islands are important for breeding seabirds especially the Cormorant. Other birds recorded breeding on the islands include Great black-backed Gulls, Herring Gulls and Black Guillemots.

### Economic Effects

There is a significant positive effect on the economy of the area for the following reasons:

- (1) The potential for up to 4 part time jobs after year 4. These workers will be employed directly in the production and harvest of oysters in Oysterhaven Bay.
- (2) While the number of jobs will be low, they will be of significance to the local community.
- (3) A specific objective set out in the Cork County Development Plan 2009-2013 is to support and promote the sustainable development of the aquaculture industry in order to maximise its contribution to growth in coastal communities and the economic well being of the county.
- (4) Whilst tourism and the recreational market have the greatest economic market within the area, especially due to the presence of the Oysterhaven Centre in the Bay, the presence of oyster cultivation within Ballinclashet Creek should not reduce the number of visitors to the centre.

### Ecological Effects

Any adverse effects on the natural habitats, wild fisheries and flora and fauna of the area as a result of the proposed operation are considered non-significant for the following reasons:

- (1) The placement of the oyster trestles on foreshore may have an impact on the Black-tailed Godwit. There is a nationally important population of this species of bird (>1000) located within the Stick Estuary. The birds may exhibit avoidance of the area during harvesting and husbandry but they will habituate to them.
- (2) The overall footprint of the trestles is relatively small and is not expected to impact on bird populations in the area.

### General Environmental Effects

There are no significant adverse environmental effects as a result of the proposed operation for the following reasons:

- (1) There are no significant effects on the general environment of the foreshore as a result of the proposed development provided proper waste management procedure are followed
- (2) The production of faeces and pseudofaeces by cultivation of oysters in trestles will not impact the benthic environment as the sites are intertidal and the ebb and flow of tidal waters will spread depositions over a large area.
- (3) Amounts of discarded shells is likely to be low and build up of excess shells on site will not be permitted.
- (4) There are likely to be no significant emissions from machinery used in husbandry and harvesting.
- (5) There will be noise associated with the husbandry and harvesting of the oysters but this will not be significant.

### Man-made Heritage

There is no effect on the man-made heritage of value in the area as a result of the proposed renewal of licences for the following reasons:

- (1) While there are numerous sites of man-made heritage in the environs of Oysterhaven Bay, the Archaeological Survey of Ireland identifies no sites of importance within the bay itself.
- (2) The Department of Arts, Heritage and the Gaeltacht raised no objections to the development from an underwater archaeological perspective.

## 9 Recommendations

It is opinion of the Technical Advisor that the appellants are correct in their assertions that there are potential safety hazards with respect to the operation of the licensed areas as they are outlined in the application and supporting documents.

It is the recommendation of the Technical Advisor that the following conditions be attached to the licences in order to address these hazards

- (1) Provision of safety buoys to delimit the edge of the licensed area where navigation hazards could occur. This would be in addition to the standard navigation markers stipulated under the current licence conditions.
- (2) Adherence to all Traffic and Safety Regulations with regard to site access.

Other issues that should be considered with regard to improving safety and reducing hazards associated with the licensed sites include the installation of safety or canoe booms around the licensed areas. This would further increase the safety of the site with respect to sailing and navigation hazards.

In accordance with Section 59 of the Fisheries (Amendment) Act 1997 and amendments the Technical Advisor recommends granting the licences for site reference numbers T5/231 and T5/392 subject to the two conditions listed above.

## 10 Conclusions

- The sites under appeal are not ideally suitable for licence renewal, with respect to traffic and navigational hazards, as they exist. They may be considered suitable once the safety measures recommended are implemented.
- The renewal of licences will have a non-significant adverse impact on the other users in the bay (sailing and recreational vessels)
- The proposed licence renewals will have a non-significant effect on the statutory status of the area.
- The proposed licences have a positive effect on the economy of the area
- The proposed licences may have a non-significant adverse impact on the Black-tailed Godwit within the area.
- There are no significant general environmental effects expected as a result of the renewal of the licences.
- There are no effects anticipated on the man-made heritage of value in the area as a result of the renewal of the licences.

In conclusion, we would advise to grant the licence renewals under appeal provided that the aforementioned recommendations are implemented

## 11 References

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