



Department of Agriculture, Food & the Marine,
Aquaculture and Foreshore Management Division,
National Seafood Centre,
Clonakilty,
Co. Cork

[13/12/2021]

Re: Submission on oyster aquaculture licence T03-038A and T03-095A in Ballyteige Burrow SAC and SPA

To Whom It May Concern,

The Irish Wildlife Trust would like to make the following submission in relation to oyster aquaculture applications T03-038A and T03-095A located in Ballyteige Burrow, Co. Wexford.

Ballyteige Burrow Special Area of Conservation and Special Protection Area

The proposed aquaculture site is situated within Ballyteige Burrow Special Area of Conservation (SAC) and Special Protection Area (SPA). The SAC is designated for its marine qualifying interests Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], and Coastal lagoons [1150] (a priority habitat under the Habitats Directive). The SPA is designated for Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Shelduck (*Tadorna tadorna*) [A048], Golden Plover (*Pluvialis apricaria*) [A140], Grey Plover (*Pluvialis squatarola*) [A141], Lapwing (*Vanellus vanellus*) [A142], Black-tailed Godwit (*Limosa limosa*) [A156], Bar-tailed Godwit (*Limosa lapponica*) [A157], Wetland and Waterbirds [A999].

Environmental issues at Ballyteige Burrow

The protected habitats rely on good water quality in order to reach Good Environmental Status under the Marine Strategy Framework Directive (MSFD), Favourable Conservation Status under the Habitats Directive and Good Ecological Status under the Water Framework Directive (WFD). Currently, the Habitats Directive Annex I marine habitat features 'estuaries' and 'tidal mudflats and sandflats' have been classed as 'inadequate', while coastal lagoons are classed as 'bad' in a recent national analysis under the Habitats Directive¹. At Ballyteige Burrows, the water quality of the channels leading into the estuary are in a 'bad' status according to the EPA's Water Framework Directive 2013 – 2018 water quality status (see catchments.ie).

Figure 1: Locations of existing aquaculture sites and approximate location of new aquaculture site T05-614A with proximities to vulnerable maerl and seagrass beds.

¹ Citation: NPWS (2019). The Status of EU Protected Habitats and Species in Ireland. Volume 1: Summary Overview. Unpublished NPWS report. Edited by: Deirdre Lynn and Fionnuala O'Neill
Irish Wildlife Trust, 8 Cabra Road, Dublin 7, D07T1W2
Registered Charity (CRA) Number: 20010966

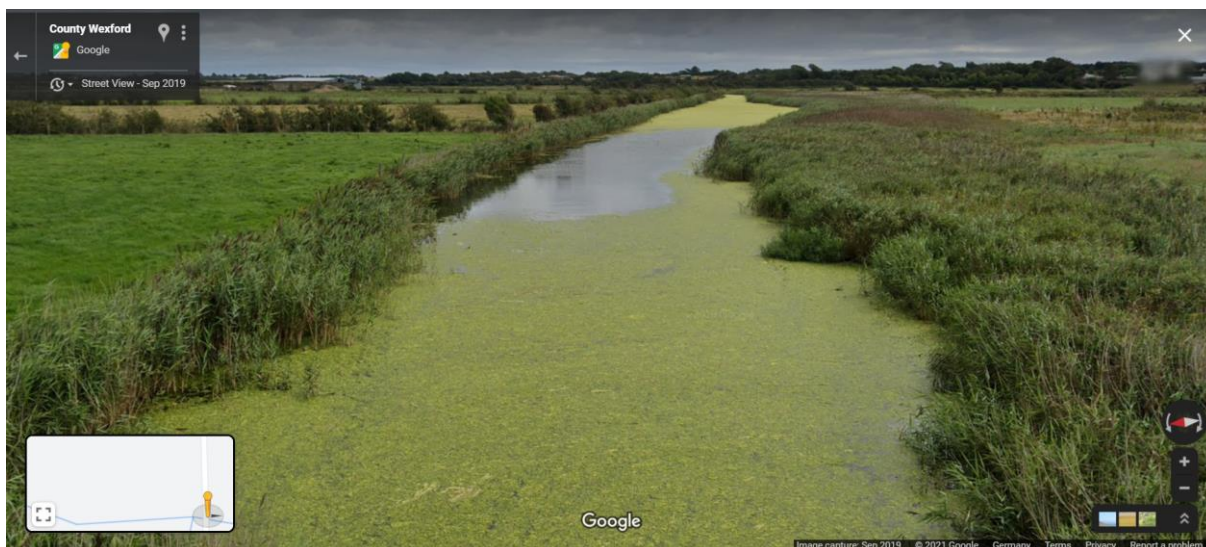


Figure 1: Streetview image from September 2019 of Ballyteige Channel at 52°11'50.6"N 6°35'08.6"W facing east. High algal growth can be a sign of nutrient enrichment. This channel empties into the Ballyteige estuary.

The Appropriate Assessment

Habitats Directive Article 6 (3) states that “Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.”

It is our view that the appropriate assessment (AA) for the SAC does not adequately assess the risk posed by the aquaculture activity, neither individually nor in combination with the existing activities (e.g. land-based agriculture).

Poor water quality: The matrix on page 41 of the AA shows sedimentary communities are highly sensitive to organic enrichment and decreases in oxygen. Both of these pressures are stated in the AA (page 28) to be likely outcomes of aquaculture activity. The poor water quality entering the estuary from the channels would exacerbate organic enrichment and decreases in oxygen, which would therefore have impacts on the sedimentary communities – however this was not assessed in the AA. The AA report states that “effects will be deemed to be significant when **cumulatively** they lead to long term change (persistent disturbance) in broad habitat/features (or constituent communities) resulting in an impact greater than 15% of the area” (page 37, own emphasis). It is our view that the nutrient enrichment and other sediment effects caused by aquaculture may cumulatively, along with the poor water quality arriving from the channels, cause persistent disturbance over the entire area of the estuary.

Invasive species: Despite recommending adherence to the invasive alien species code of practice, the AA does not mention the need for triploid oysters to be used in order to avoid naturalisation. While the risk of settlement is considered ‘low’ it is not impossible and has happened elsewhere in Ireland. The dismissal of this risk in the AA is not justified.

Lacunae

The AA states that “no specific details have been received about the existing or proposed aquaculture activities at Ballyteige Burrow.” It is questionable how the authors could come to conclusions about the likely effects of the activity if they did not have any details on the activity. Furthermore, The AA report for the SPA states that there is a high level of uncertainty about displacement impacts to Light-bellied Brent Goose and Wigeon due to the variable nature of their responses to oyster trestle cultivation. In the event of uncertainty, the precautionary principle should apply and the aquaculture licences should not be granted.

Habitats Directive case law is clear that the AA “may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned”².

15% disturbance threshold

The AA report states that “for the practical purpose of management of sedimentary habitats, a 15% threshold of overlap between a disturbing activity and a habitat is given in the NPWS guidance. Below this threshold disturbance is deemed to be non-significant. The policy from the NPWS was reportedly based on an EU guidelines document (which is not legally binding) on applying thresholds to describe the conservation status of habitats. The 15% threshold used by the NPWS is not mentioned in the EU guidelines and it is our view that the NPWS has misinterpreted the guidance. Indeed the approach of applying numerical thresholds fails to recognise CJEU judgements on significant effect and certainty beyond reasonable scientific doubt. For example, in the *Waddenzee* case the CJEU held that the test for ‘likely significant effect’ is a very low threshold such that an impact on small proportions of protected sites can constitute a likely significant effect.³ Similarly, in the *Sweetman* case the CJEU found that an impact on only 1% of limestone pavement would constitute an adverse effect on site integrity⁴.

Moreover, the licencing of activities based on the 15% threshold is in breach of Ireland’s legal obligations under the Habitats Directive to:

- “take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated” (Habitats Directive Article 6 (2))

The requirement to avoid deterioration applies to the whole site, not just 85% of a habitat type as interpreted by the Irish authorities.

- Carry out “Appropriate Assessments” on plans or projects “likely to have a significant effect” on a protected site and to only authorise such a plan or project where it has been ascertained that it will not adversely affect the integrity of the site concerned (Habitats Directive Article 6(3)).

As it has not been ascertained that aquaculture will not adversely affect the integrity of the site, the activity should not be authorised.

² Grace and Sweetman, C-164/17, EU:C:2018:593, paragraph 39

³ Case C-127/02 Waddenzee, ECLI:EU:C:2004:482, paragraph 43 and 44

⁴ Case C-258/11 Sweetman v An Bord Pleanála ECLI:EU:C:2013:220



- To generally take measures under the Habitats Directive that are “*designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest*” (Article 2 (2)).

These measures have not been taken to-date.

- “*Establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures **which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites***” (Article 6 (1), own emphasis. Case C-90/10 shows that Article 6(1) applies to SACs and candidate SACs after the 6 year deadline to designate has passed. It therefore applies to Ballyteige Burrow SAC even though it has not been formally designated⁵).

Conclusion

The site integrity of Ballyteige Burrows SAC is likely to deteriorate further if issues around water quality are not taken seriously. Each government Department and agency and every developer has the responsibility under various nature Directives to ensure biodiversity loss is not exacerbated further but indeed halted and reversed. The prevailing tunnel vision applied by authorities and AA authors, whereby possible impacts are simply dismissed as irrelevant due to absence of spatial overlap, must stop. There is a greater need than ever to look at the bigger picture of all combined pressures before coming to conclusions on allowing further activities to take place. The AA does not mention the nationally inadequate status of estuaries and tidal mudflats and sandflats, the poor water quality of nearby water courses, and applies the controversial 15% disturbance rule. Furthermore, the AA was written as a desk study without conducting any site surveys.

Therefore it is our view that the AA does not ascertain beyond reasonable scientific doubt that the proposed aquaculture activity in conjunction with existing land-based activities will not cause further deterioration of the site. We submit that in light of the AA’s lack of scientific certainty and the reliance on the unlawful 15% disturbance threshold, to grant this licence would be in contravention of the Habitats Directive, particularly in light of the poor conservation status of the habitats that will be impacted by this development. The proposed activities would also run counter to the requirements under the MSFD and WFD to achieve Good Environmental Status and Good Ecological Status. The Irish Wildlife Trust is therefore of the opinion that the aquaculture licences should not be granted.

Yours sincerely,

Regina Classen
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⁵ Commission v Spain, case C-90/10, para. 24-28