An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage

[redacted]
Foreshore Unit,
Department of the Housing, Local Government and Heritage,
Newtown Road,
Co. Wexford
29th October 2021

Prescribed Bodies Consultation Stage - Environmental Report

Re: Statkraft North Irish Sea Array Cable Route – FS007358

Applicant: North Irish Sea Array Windfarm Ltd

Supporting information submitted:

- FS007358 NISA-ORE Application Form for Site Investigation Licence 01/04/2021
- FS007358 Foreshore Licence Application-NISA Cable Assessment Area, Natura Impact Statement 31/03/2021
- FS007358 Foreshore Licence Application - NISA Cable Assessment Area, Schedule of Works 31/03/2021
- FS007358 - Foreshore Licence Map with coordinates 16/08/2021

Dear [redacted],

Your email of the 16th of August 2021 refers to this licence application for site investigations to determine the seabed and sub-sea conditions to establish the optimum location for, and design of, the export cable(s) to shore, and to establish the most appropriate landfall location for the export cable(s) for the North Irish Sea Array (NISA) offshore windfarm, located off the coasts of Dublin, Meath and Louth.

The Foreshore Licence Site Investigation Area is within 12 nautical miles of the coast. The site extends out from the HWM to approximately 16km offshore, with depths ranging between 0m and 41m. The total site investigation areas is 106.2km^2.

Sixteen Natura 2000 sites lay within the Zone of Influence of the site investigation area. These include nine Special Protection Areas many of which are of national and international important to a number of bird species. There are seven Irish Special Area of Conservation lie within the Zone of Influence of the site investigation area which are designated for Annex I marine and coastal habitats. Three of which are also designated for Annex II species. Three SACs from Northern Ireland and one from Wales which are designated for mobile Annex II species are also considered to be within the Zone of Influence of these works.

Assessment Process

The Minister for Housing, Local Government and Heritage is responsible for carrying out environmental screening and any environmental assessments determined as being required

following screening, in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**), Directive 2009/147/EC (**Birds Directive**) and Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**), in respect of applications under the The Foreshore Act 1933, as amended. Outside of the Directives, the Minister is also required to consider environmental issues in respect of applications under the The Foreshore Act 1933, as amended.

Habitats Directive

The Appropriate Assessment process (AA) is an assessment of the potential for adverse or negative effects of a plan or project, in combination with other plans or projects, on the conservation objectives of a European Site (Natura 2000 site). The focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives.

Article 6(3) and 6(4) of the **Habitats Directive** place strict legal obligations on Member States to regulate the conditions under which development that has the potential to impact on European Sites can be proceed. It requires that an Appropriate Assessment be carried out of plans or projects, not directly connected with or necessary to the management of a site as a European Site, but which are likely to have a significant effect thereon, either individually or in combination with other plans or projects. An AA Screening assessment is carried out to determine whether a plan or project is likely to have a significant effect on a European Site.

- 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. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."*
- Article 6.4 states: *"if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest."

In giving effect to the above as a matter of Irish law, the European Communities (Birds and Natural Habitats) Regulations 2011-15 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows:-

Regulation 42(1) of the Birds and Natural Habitats Regulations states that: "*A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site".*

Regulation 42(2) provides that: "*A public authority shall carry out screening for Appropriate Assessment under paragraph (1) before consenting for a plan or project is given, or a decision to undertake or adopt a plan or project is taken"*.
The Birds and Natural Habitats Regulations further provide as follows at Regulation 42 (6) and 42 (7):-

> *6. The public authority shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.*
> *7. The public authority shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.*

Furthermore under 42A.11 of S.I. No. 293 of 2021 an Appropriate Assessment, including the specified public consultation, must be carried out before the Minister makes a decision to undertake or adopt the proposed plan or project.

Risk Assessment for Annex IV Species
Article 12 of the Habitats Directive (92/43/EEC) affords strict protection to those species listed in Annex IV of the Directive wherever they occur. The waters around Ireland's coast, outside of designated Natura 2000 sites, are suitable habitat for a number of species listed in Annex IV of the Directive. Therefore, where necessary, a Risk Assessment of adverse effects of the proposed works on Annex IV species must be undertaken. This Risk Assessment is not part of the Article 6.3 Appropriate Assessment process, however the Risk Assessment report should be submitted in parallel with the Appropriate Assessment documents.
The purpose of the Risk Assessment is to examine the possibility that the proposed project, either individually or in combination with other plans and projects, may result in the deliberate disturbance or destruction to the species listed in Annex IV which may be present in the works area. The Risk Assessment should take into account the status (e.g. as indicated in the latest Article 17 reporting for Ireland, NPWS 2019) and sensitivities of relevant Annex IV species to potential impacts associated with the proposed project.

The **Risk Assessment for Annex IV Species** should be precise, with definite findings, mitigation and conclusions removing all reasonable scientific doubt as to the effects of the proposed project on any Annex IV species.

EIA Directive

In Ireland, in accordance with Directive 2011/92/EU, as amended by Directive 2014/52/EU (hereafter, the EIA Directive), projects that are likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location must be subject to an EIA.

Article 4 of the EIA Directive requires that projects listed under Annex I must always have an EIA while projects listed under Annex II shall be subject to an EIA if (i) determined on a case-by-case basis or (ii) they exceed certain thresholds set by each Member State. Thresholds have been set for Annex II projects in Irish legislation. Projects which do not meet the threshold may still require an EIA if the project is likely to have significant effects on the environment. Annex I and Annex II projects have been transposed into Section 5 (Parts 1 and 2) of the Planning and Development Regulations 2001, as amended.

Section 13A (1)(b)(i) of The Foreshore Act 1933, as amended, requires that an EIA be carried out for all developments of a class specified in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations where the development exceeds the relevant quantity, area or other limit specified in that Part, or where no quantity, area or other limit is specified. Section 13A(1)(b)(ii) of the Foreshore Act states that an EIA shall be carried out when a development is of a class specified in Part 2 of Schedule 5, but does not exceed the relevant threshold (i.e. sub-threshold) and the Minister determines that the proposed development would be likely to have significant effects on the environment. Therefore, it is necessary to examine such projects on a case-by case basis.

In the case of Annex II projects that are determined on a case-by-case basis, or sub-threshold, an EIA screening is required to determine if the project will have significant effects on the environment. Under Article 4(4) the developer (applicant) is required to submit information on the characteristics of the project and its likely significant effects on the environment. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. Subsequently, in accordance with Article 4(5), the Minister is required to make a determination, which shall be made public, that:

1. Where it is decided that an EIA is required, states the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III of the EIA Directive; or

2. Where it is decided that an EIA is not required, states the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III of the EIA Directive, and, where proposed by the developer, states any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

The proposed project is not of a type/class that is included in Annex I and II of the EIA Directive (Schedule 5 to the Planning & Development Regulations). However an EIA Pre-

Screening process is a requirement to demonstrate this analysis. Accordingly, **please find attached an EIA Pre-Screening** for the proposed project.

Non-statutory Environmental Report

Where projects do not fall under a class that require an EIA, in-keeping with good governance, a Non-Statutory Environmental Report assessing the environmental effects of the proposed works on the receiving environment is required. This report will document the current state of the environment in the vicinity of the proposed activity in order to quantify the effects, if any, on the environment and if applicable to highlight how mitigation will be implemented to minimise impacts on the environment. The EPA *Guidelines on the Information to be contained in Environmental Impact Assessment Reports (2017)* indicates the relevant topics to be covered in this report.

Independent Environmental Consultants (IEC)

Owing to the scale and complexity of the environmental assessment required, and taking account of the available resources within the Department, I recommend that Foreshore Section of DHLGH engage a suitable qualified IEC. The IEC must conduct an independent assessment of the information provided by the Applicant, having regard to the Habitats Directive, the Birds Directive, the Birds and Natural Habitats Regulations, the EIA Directive, Non-statutory Environmental Reports and relevant jurisprudence of the EU and Irish courts.
The IEC shall ensure that The Minister has all the environmental assessments required to allow them to make decisions on applications under The Foreshore Act 1933, as amended, in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**), Directive 2009/147/EC (**Birds Directive**) and Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**).

Conclusion/Recommendation

In principle I have no objections to this application. As outlined above, I recommend that Foreshore Section of DHLGH engage a suitable qualified IEC. On completion of the Public and Prescribed Bodies Consultation and the work of the IEC, I will furnish my Final Environmental Report with Determinations which may include any case specific conditions identified through the environmental assessments.

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Marine Advisor, Environment.