Submission HLG 00367-22: FS007358 Foreshore Licence Application by North Irish Sea Array Windfarm Ltd., Site Investigations for Export Cable Route

TO:	Minister of State Burke	AUTHOR:	[redacted] (Housing)
STATUS:	Completed	OWNER:	[redacted] (Housing)
PURPOSE:	For Decision and Signature	REVIEWERS:	[redacted] (Housing)
			[redacted] (Housing)
			[redacted] (Housing)
DIVISION:	Foreshore		
DECISION BY:			

Final comment

Approved by Minister Burke 05/08/2022

Action required

Ministerial approval is sought to grant a Foreshore Licence to North Irish Sea Array Windfarm Ltd., under Section 3 of the Foreshore Act 1933, as amended.

Executive summary

The approval of the Minister is sought to grant to North Irish Sea Array Windfarm Limited a 3 year Foreshore Licence under Section 3 of the Foreshore Act 1933, as amended, to carry out geotechnical Site Investigations off Meath and Dublin, in order to establish the design, route corridor, and shore landfall location of the export cable(s) from the proposed North Irish Sea Array offshore wind farm located off Counties Dublin, Meath and Louth.

Detailed information

1.0 Overview

North Irish Sea Array Windfarm Limited (NISA), a wholly owned subsidiary of Statkraft Ireland Ltd, has applied for a Foreshore Licence and Consent under the Foreshore Act 1933 to carry out Site Investigation (SI) surveys in the application area. These SI's will inform the route corridor, landfall location, and design of, export cable(s) from the proposed NISA offshore wind farm (Ref: FS007031) off Dublin, Meath and Louth.

The potential output of the NISA offshore wind farm is 530MW.

Subject to the award of a Foreshore Licence, NISA propose a schedule of activities to complete the SI works on a phased basis over 3 years to allow for seasonal variation and survey windows. This application is for survey activities only. No permanent structures shall be erected as part of these works.

The survey activities include:

- Geophysical surveys (multi-beam echo sounder, sub bottom profiling, side-scan sonar and magnetometer).

- Geotechnical surveys (cone penetration tests and VibroCores along the potential routes and boreholes at the landfalls).

- Ecological surveys (fisheries surveys, benthic grab samples, intertidal benthic sampling).

- Archaeological Survey.

These Site Investigations, related to the Export Cable, will take place off the coastlines of counties Meath and Dublin.

Under the 2020 Transitional Protocol this application qualified as a "Relevant Project".

Further details of the proposed activity are outlined in the application form and associated documents at the Department's web link:

https://www.gov.ie/en/foreshore-notice/c7c0a-fs007358-statkraft-north-irish-sea-array-nisa-site-investigations-for-export-cable-

route/

A foreshore licence, if granted, will permit those site investigation activities that will result in physical interaction with or disturbance of the Foreshore. The proposed SI activities which are the subject of this application are being fully assessed under the relevant environmental legislation.

2.0 Background

Element Power acquired the North Irish Sea Array (NISA) project from previous developer Gaelectric in early 2018. In late 2018, Statkraft Ireland Ltd. (Statkraft) purchased the Element Power Group's Irish and UK operations that also included the NISA project. Gaelectric had agreed a memorandum of understanding (MoU) to develop NISA with Oriel — the developer behind the proposed 330MW Oriel site in the Irish Sea — as well as a 15MW demonstration project.

3.0 Application

A number of application documents were submitted by NISA:

- Investigative Foreshore Licence Application form (ORE) **(Tab 01)**

- Foreshore Licence Map **(Tab 02)**

- Schedule of Works **(Tab 03)**

- Natura Impact Statement **(Tab 04)**

- Non-Statutory Environmental Report **(Tab 05)**

- Annex IV and Seals Species Risk Assessment **(Tab 06)**

4.0 Description of Proposed Works

This application is for site investigation and survey activities only. No permanent structure shall be erected as part of these works. A jack-up barge (JUB) may be temporarily located within the nearshore area to undertake geotechnical nearshore boreholes. Exact details of the vessel to be used will not be confirmed until after contract award. The number of legs used for the operations is dependent on seabed conditions, current strength and wave action. For the application area, four legs are the most likely scenario.

Subject to the award of a Foreshore licence as well as favourable weather conditions, Statkraft propose a site investigation activities schedule of works that will be commenced and completed as soon as possible following execution of the licence.

The activities include:

- Geophysical surveys (multi-beam echo sounder, sub bottom profiling, side-scan sonar and magnetometer).

- Geotechnical surveys (cone penetration tests and VibroCores along the potential routes and boreholes at the landfalls).

- Ecological surveys (fisheries surveys, benthic grab samples, intertidal benthic sampling).

- Archaeological Survey.

The technical explanation of the proposed programme of marine surveys to be undertaken within the cable assessment area is summarised in the Schedule of Works **(Tab 03)**, page 3, table 2.1.

5.0 Other Relevant Consents and Government Policies

These site investigations will inform the route corridor, landfall location, and design of, export cable(s) from the proposed NISA offshore wind farm (Ref: FS007031 Statkraft North Irish Sea Array (NISA) Site Investigations) off Dublin, Meath and Louth.

The published Programme for Government has committed to achieving 5GW capacity in offshore wind by 2030 off Ireland's Eastern and Southern coasts. Furthermore, the National Marine Planning Frameworks states that "Proposals that assist the State in meeting

the Government's offshore renewable energy targets, including the target of achieving 5GW of capacity in offshore wind by 2030 and proposals that maximise the long-term shift from use of fossil fuels to renewable electricity energy, in line with decarbonisation targets, should be supported. All proposals will be rigorously assessed to ensure compliance with environmental standards and seek to minimise impacts on the marine environment, marine ecology and other maritime users."

The Climate Action Plan 2021 recommits Ireland to the ambition to install 5GW of offshore wind capacity in our maritime area by 2030, and introduces a new objective, that by the same year, up to 80% of our electricity will be sourced from renewable.

In addition to increasing our renewable energy share, these targets will support carbon emission reduction commitments, meet anticipated increases in domestic electricity demand and increase our security of electricity supply.

6.0 Public Participation

6.1 Public Consultation under Section 19 of the Foreshore Act 1933

The Foreshore Section of the DHLGH conducted the public consultation. All consultation was undertaken to conform to the requirements of the Section 19 of the Foreshore Act 1933 as amended, Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011 and the European Directive 2003/35/EC (known as the Public Participation Directive or "PPD").

An initial consultation period was held between 17 August 2021 and 16 September 2021. Notices announcing the consultation were published in the Irish Examiner, Drogheda Independent and Fingal Independent newspapers on 17 August.

Application documents were made available throughout the consultation period in:

-Fingal County Council, County Hall, Main Street, Swords, Co. Dublin K67 X8Y2

-Louth County Council, County Hall, Millennium Centre, Dundalk, Co. Louth A91 KFW6

-Balbriggan Garda Station, Drogheda Road, Balbriggan, Co. Dublin, K32 EW01

-Drogheda Garda Station, Father Connolly Way, Downtown Drogheda, Drogheda, Co. Louth, A92 P704

Application documents and notice of the consultation were published in the appropriate locations on the Department's website:

https://www.gov.ie/en/foreshore-notice/c7c0a-fs007358-statkraft-north-irish-sea-array-nisa-site-investigations-for-export-cable-route/

Six public submissions were received **(Tab 07)**, to which the applicant responded **(Tab 08)**.

(Concurrent to the Public Consultation, a Prescribed Body Consultation took place; this is further outlined in Section 7.0 below.)

Following this consultation process, RPS Consultants Group were engaged as Independent Environmental Consultants (IEC) to assess the application. On the basis of the information submitted as part of the application for an Investigative Foreshore Licence, including a review of the submissions received from the prescribed body and public consultation process and having regard to:

• The potential for localised noise induced disturbance to marine mammals

• The potential for pollution arising from accidental spillage of hydrocarbons

• The zone of influence of the proposed project

• The conservation objectives of Natura 2000 sites which have the potential to be impacted by the identified impacts

• The potential for in-combination effects

The IEC concluded that the proposed development, individually or in-combination with other plans or projects, is likely to have a significant effect on the following European sites, in view of the sites' conservation objectives:

Rockabill SPA, Rockabill to Dalkey Island SAC, Skerries Islands SPA, Lambay Island SAC, River Boyne and River Blackwater SAC, North Anglesey Marine / Gogledd Môn Forol SAC, Murlough SAC, North Channel SAC, Strangford Lough SAC.

An appropriate assessment was therefore required to determine if adverse effects on site integrity can be excluded in view of the conservation objectives of the above-listed sites.

The Minister, on advice from this Department's Marine Advisor (Environment) concurred with the findings of the IEC and made an

Appropriate Assessment (Stage 1) Screening Determination and concluded that a Stage 2 Appropriate Assessment was required. **(Tab 09)**

6.2 Public Consultation under Section 42 of EC Birds and Natural Habitats Regulations 2011, as amended

As part of the assessment of the foreshore licence application, the Minister has determined, in accordance with Regulation 42(6) of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, that an Appropriate Assessment was required in respect of the proposed plan or project.

Therefore an additional period of public consultation (second public consultation) ran from 16 March 2022 to 15 April 2022. This period was subsequently extended for another 30 days to 19 May 2022.

The public notice for the extended period of 30 days appeared in the "Drogheda Independent" and "Irish Examiner" newspapers on the 20 April 2022.

In addition to the application documents submitted by NISA, the following documents were also on public display:

- Screening for Appropriate Assessment Technical Review (prepared by IEC)

- Marine Advisor Environment Screening Stage Report (prepared by MA)

- EIA Screening Examination (prepared by MA)

- Submission on Screening for Appropriate Assessment Determination

- Screening Determination for Appropriate Assessment, signed by the Minister and the Marine Advisor.

The six public locations hosting the consultation documents:

- Fingal County Council, County Hall, Main Street, Swords, County Dublin K67 X8Y2

- Louth County Council, County Hall, Millennium Centre, Dundalk, A91 KFW6

- Balbriggan Garda Station, Drogheda Road, Balbriggan, Co. Dublin, K32 EW01

- Drogheda Garda Station, Father Connolly Way, Downtown Drogheda, Drogheda, Co. Louth, A92 P704

- Louth County Library, Roden Place, Townparks, Dundalk, Co. Louth A91 RC44

- Fingal County Library, St George's Square, Balbriggan, Co. Dublin K32 TW27

The documents were also available on the Departments website for the full public consultation period.

During this second Public Consultation, under Section 42 of EC Birds and Natural Habitats Regulations 2011, there was four submissions made by members of the public **(Tab 10)**, to which the applicant responded **(Tab 11)**.

Any member of the public that made a submission in the first period of public consultation was contacted individually to inform them of the second consultation.

The submissions essentially raised similar concerns which can be grouped into the following points:

- Biodiversity Conservation.

- Cumulative effects of several planned arrays on marine and bird life.

- Cable landfall close to SPAs.

- Concerns from Fishers about a negative impact on their livelihood.

The submissions raised concerns that relate to the installation of a wind farm on the site, rather than to the application for site investigations. This proposal which is under consideration solely relates to site investigation works. While the results of any investigations will inform the layout, location of, and other engineering considerations of a future proposed wind array, this will be the subject of a separate assessment including appropriate environmental and amenity considerations. It will be the subject of a separate public consultation procedure.

7.0 Prescribed Bodies Consultation

Foreshore Regulations 2011 (S.I. No. 353 of 2011) provides under regulation 3 that when considering a foreshore application, as set out under section 18A (1) of the Act of 1933, the Minister may seek observations from a number of prescribed bodies. For this application, observations were sought from the following:

-Department of Housing, Local Government and Heritage Marine Advisors (Engineering and Environmental)
-Department of Housing, Local Government and Heritage (NPWS)
-Department of Housing, Local Government and Heritage (Underwater Archaeology)
-Department of Agriculture Food and the Marine
-Marine Institute
-Inland Fisheries Ireland
-Marine Survey Office
-Sea Fisheries Protection Agency
-Louth County Council

-Fingal County Council

7.1 Consultation under S. 19 of the Foreshore Act 1933

During the first consultation period, which ran concurrent to the first Public Consultation period of 17 August 2021 to 16 September 2021, the Department received nine Prescribed Body submissions from Marine Advisor (Engineering), Marine Advisor (Environment), Marine Institute, Marine Survey Office, NPWS and Underwater Archaeology Unit, Department of Agriculture, Food and Marine, Sea Fisheries Protection Authority, Inland Fisheries Ireland, and also from Louth County Council and Fingal County Council. **(Tab 12)**

The applicant responded to these nine Prescribed Body submissions. **(Tab 13)**

7.2 Consultation under S. 42 of EC Birds and Natural Habitats Regulations 2011

During the second consultation period, which ran concurrent to the second Public Consultation period of 20 April 2022 to 19 May 2022, the Department received 4 Prescribed Body submissions, **(Tab 14)** from Marine Advisor (Engineering), Marine Advisor (Environment), NPWS and Underwater Archaeology Unit, Louth County Council. These were forwarded to the applicant. There were no objections in principle to the proposed works.

The applicant responded **(Tab 15)** to these Prescribed Body submissions.

8.0 Environmental Assessment

Independent Environmental Consultant (IEC)

In addition to the Departments in-house Marine Advisor (environment), the Department engaged RPS Consultants Group as IEC to provide assistance with regard to the statutory and non-statutory environmental assessments of this Foreshore Licence application. The IEC has conducted independent assessments of the information provided by the Applicant, having regard to the Habitats Directive, the Birds and Natural Habitats Regulations and the public and prescribed bodies' consultations.

Environmental Impact Assessment (EIA) Regulations

The submitted application is for site investigations only. A number of boreholes are proposed as part of this activity, to ascertain the sub seabed soil conditions in the survey area. The IEC determined that the proposed project does not fall within the classes defined under Annex I or Annex II of the EIA Directive.

Having considered the application by NISA, the Department's Marine Environment Advisor agreed with and accepted the IEC's determination that the project does not requires a mandatory EIA. As the Consent Authority, the Department must complete an Examination for EIA as part of their obligations under the EIA Directive. The EIA Screening Examination was provided by the Department's Marine Environment Advisor **(Tab 16).**

Notwithstanding that the proposed application does not fall within the EIA directive, the IEC prepared a Non-Statutory Environmental Appraisal Report in December 2021 **(TAB 05)**. The Minister has adopted the findings of the IEC and the Marine

Licence Vetting Committee in this regard.

Screening for Appropriate Assessment (Environmental Assessment)

As part of the assessment of the foreshore licence application, RPS Environmental Consultants were commissioned as Independent Environmental Consultants (IEC) to conduct a Screening for Appropriate Assessment (stage 1 screening) and, if required, an Appropriate Assessment (stage 2), of the likelihood of significant impact on Natura 2000 sites from the application for a Foreshore Site Investigation Licence.

A number of application documents submitted by NISA informed the Screening for Appropriate Assessment:

- Investigative Foreshore Licence Form (ORE) **(Tab 01)**

- Foreshore Licence Map **(Tab 02)**

- Schedule of Works **(Tab 03)**

- Natura Impact Statement **(Tab 04)**

RPS reviewed submissions received during the first Public Consultation (Public Consultation under S. 19 of Foreshore Act 1933), held from 17 August 2021 to 16 September 2021, and the applicant's responses to same:

- Consolidated Public Submissions **(Tab 07)**

- Applicant's responses to Public Submissions **(Tab 08)**

RPS also reviewed submissions received during the concurrent Prescribed Bodies Consultation, and the applicant's response to same:

- Consolidated Prescribed Bodies Observations **(Tab 12)**

- Applicant's Response to Prescribed Bodies Observations **(Tab 13)**

RPS Consultants completed their 'Screening for Appropriate Assessment' **(Tab 17)** report in January 2022, which concluded:

On the basis of the information supplied by the applicant, and information publicly available on the NPWS website, and having regard to:

- The nature and scale of the proposed project, and

- The direct connections with regard to the Source-Pathway-receptor model, and

- The potential for, and absence of detail allowing an assessment of in-combination effects,

It was concluded that the proposed development, individually or in-combination with other plans or projects, is likely to have a significant effect on the following European sites, in view of the sites' conservation objectives:

Rockabill SPA, Rockabill to Dalkey Island SAC, Skerries Islands SPA, Lambay Island SAC, River Boyne and River Blackwater SAC, North Anglesey Marine / Gogledd Môn Forol SAC, Murlough SAC, North Channel SAC, Strangford Lough SAC

An appropriate assessment was, therefore, required to determine if adverse effects on site integrity can be excluded in view of the conservation objectives of the above-listed sites. An NIS was been provided by the applicant and has been reviewed in the NIS Technical Review and AA Report.

The Department's Marine Advisor (Environment) agreed with and adopted the IEC conclusions and drafted the Screening Determination for Appropriate Assessment which was approved and signed by the Minister **(Tab 09)**

Appropriate Assessment

The Appropriate Assessment Screening process determined that the risk of likely significant effects on European sites as a result of the proposed project, either individually or in combination with other plans or projects, cannot be excluded. Therefore a stage 2 Appropriate Assessment was required.

The IEC (RPS) completed an Appropriate Assessment Report, **(Tab 18)** and identified the mitigation measures required to ensure that the proposed site investigation works, individually or in combination with other plans or projects will not adversely affect the integrity of any Europeans Site.

The Department's Marine Advisor's Environmental Assessment and Determination Report of 24 June 2022, considered all the information submitted in support of this application and agrees with and accepts the IEC's conclusion and recommendations. **(Tab 19)**

On 3 August 2022, the Minister approved the Appropriate Assessment and Conclusion and signed the Conclusion and Determination Statement. **(Tab 20)**

The MLVC stated that the Consent Authority (DHLGH) must publish this Appropriate Assessment Conclusion Statement and Determination as part of their obligations under the Directive.

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, wherever they occur. A risk assessment for Annex IV species likely to occur in Irish waters was carried out by the IEC, RPS **(Tab 21)**. The Assessment determined underwater noise as the primary risk to cetaceans, all species of which are considered Annex IV species. Mitigation for this is strict adherence to NPWS (2014) Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters. Disturbance to Otter is to be mitigated by including this species in the MMO's monitoring activities. This assessment is separate to that undertaken under Article 6.3. The Minister adopted the findings if the IEC and the Marine Licence Vetting Committee in this regard on 3 August 2022.

9.0 Estate Management

All foreshore is presumed state owned unless proven otherwise. In this case there are no known established claims of private ownership of the foreshore at this location and no claims of private ownership were raised during the application and public consultation process; therefore, the foreshore the subject of this application is state owned. Accordingly Section 3 of the Foreshore Act applies for the proposed site investigation. The licence area for this proposed site investigation application is shown on the following map submitted by the applicant:

Foreshore Licence Map **(Tab 02)**

This map should be attached to any licence issued. The SI area covered by this application extends to 10,623.33ha. The applicant shall use that part of the foreshore, the subject matter of the application for the purposes as outlined in the application and for no other purposes whatsoever. Where relevant the foreshore and adjacent seashore area shall be restored to its original condition on completion of the works to the satisfaction of the Department of Housing, Local Government and Heritage.

10.0 Public Interest

Section 2 and 3 of the 1933 Foreshore Act, as amended, states that a lease or licence of state foreshore may be granted "If, in the opinion of the Minister, it is in the public interest". As foreshore is a finite and valuable national resource and public amenity, it is important that each plan and project is fully assessed to ensure, that if consented to, it is a sustainable and proper use of that finite and valuable resource. In assisting the Minister to establish if a particular plan or project is in the public interest, the MLVC considered and assessed the following:

It is considered that while taking note that the state owned foreshore is finite resource which must be utilised sustainably, the proposed project is in the Public Interest, as it supports Government policy to support the development of off shore wind power which will allow for increased sustainable energy supply not only environmentally but also from a security point of view.

11.0 MLVC Assessment and Conclusions

The MLVC, a non-statutory multi-disciplinary committee which is convened, as required, for the purposes of undertaking a technical assessment and an environmental assessment of an application under the Foreshore Act 1933, as amended, were requested by Foreshore Unit to undertake a technical assessment of this case.

The MLVC examined the application and supporting documents, the submissions and applicant responses received during the 1st and 2nd Public Consultations, the submissions and responses received during the Prescribed Body Consultations, the IECs assessment reports and conclusions regarding Appropriate Assessment Screening, Appropriate Assessment and Annex IV species, along with the Marine Advisor (Environment) Screening for Appropriate Assessment and Determination and Marine Advisor

(Environment) Environmental Assessment Report with Appropriate Assessment Determination.

The MLVC concluded in its report **(Tab 22)** taking account of the totality of the documentation on file and subject to compliance with the specific conditions set out, the proposed works would will not adversely affect Fishing, Navigation or the Environment and is in the Public Interest. Therefore, the MLVC recommend that the Minster issues a Foreshore Licence for the proposed geotechnical site investigation activities as set out in the application.

The MLVC also recommended that the Minister:

-makes a finding that that the proposed site investigation activities, individually or in-combination with other plans or projects, will not adversely affect the integrity of European sites outlined in the report in view of the said sites' conservation objectives, and

-adopts the findings of the risk assessment to Annex IV species that has been carried out.

12.0 Agreement of the Applicant

NISA Windfarm Ltd., has agreed to the recommended Site Specific Conditions to be attached to the Licence, if granted **(Tab 23)**

13.0 Financial Considerations

NISA Windfarm Ltd., has agreed to pay the one-off fee of €950.00 for the Licence.

14.0 Basis for Recommendation

Having regard to:

-The application, together with accompanying documentation;

-The submissions received from prescribed bodies (statutory consultees);

-The public consultations undertaken;

-The applicant's responses to the prescribed bodies observations and public submissions;

-The Screening for Appropriate Assessment Report;

-EU Habitats Directive: Risk Assessment for Annex IV Species Report;

-The Department's Marine Advisor (Environment) Environmental Report and Conclusions

-The assessment of the proposed development by the MLVC, its conclusions and recommendations in this regard; and

-The consent conditions to be attached to the foreshore licence, if granted,

It is considered that the proposed works would will not adversely affect Fishing, Navigation or the Environment is in the Public Interest, and is aligned with the objectives set out in the National Marine Planning Framework.

It is recommended that a foreshore licence be granted to North Irish Sea Array Windfarm Limited,(NISA) subject to the conditions recommended by the MLVC, and the financial considerations set out above.

15.0 Notification of Ministerial Determination

If approval is granted by the Minister, NISA Windfarm Limited will be informed accordingly, an appropriate licence will issue for execution, and a Notice of Determination regarding the decision (including the reasons) will be published on the Department's website, in a local and national newspaper and in the Iris Oifigúil.

The Notice of Determination will address:

-The outcome of the Minister's determination of the application.

-The main reasons and considerations for the Minister's determination.

-A statement that all relevant documentation on which the determination is based is available for inspection on the website of this Department.

-Confirmation that a review procedure is available before the High Court whereby the substantive or procedural legality of the Minister's determination may be challenged, together with practical information on the review procedure.

Submitted for approval

Related submissions

HLG 00345-21: FS007031 Application by North Irish Sea Array Limited (NISA) for a Foreshore Licence to carry out site investigations relating to a possible windfarm off the Dublin, Meath and Louth coasts.