Submission HLG 00363-22: Appropriate Assessment Determination on Foreshore Application FS007358 by North Irish Sea Array 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)
DIVISION:	Foreshore		
DECISION BY:			

Final comment

Signed by Minister Burke 03/08/2022

Action required

Ministerial Determination and signature on Appropriate Assessment

Executive summary

North Irish Sea Array Windfarm Ltd. (NISA) has applied for a Foreshore Licence to carry out Site Investigations off the Meath Louth and Dublin coastlines, in order to establish the optimum route for an electricity export cable from the proposed NISA ORE wind farm.

As part of the assessment of this application, the Minister was required to make a Screening for AA Determination in accordance with Article 6(3) of the EU Habitats Directive (Directive 92/43/EEC) and Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended ('The Regulations')

The Screening for Appropriate Assessment determined that an Appropriate Assessment was required as the project, individually or in combination with other plans or projects, is likely to have a significant effect on European sites and that the risk of likely significant effects on European sites cannot be excluded on the basis of objective evidence. HLG 00087-22 Screening for Appropriate Assessment Determination on Foreshore Application FS007358 NISA Cable Route, Site Investigation.

Having considered all relevant material a recommendation has been made that the Minister accepts and adopts the Appropriate Assessment Report and determines that the proposed project, either alone or in-combination with other projects, will not adversely affect the integrity of European sites, in view of the said sites' conservation objectives.

Further proposed findings under relevant environmental legislation are below.

Detailed information

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 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.

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).

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

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

-Archaeological Survey.

The Site Investigation 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 link below:

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 site investigation activities which are the subject of this application are fully assessed under the relevant environmental legislation.

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. The reports prepared by RPS are to inform the Minister's decision in relation to AA screening and Appropriate Assessment.

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

Investigative Foreshore Licence Form (ORE) **(Tab 02)**

Foreshore Licence Map **(Tab 03)**

Schedule of Works **(Tab 04)**

Natura Impact Statement **(Tab 05)**

RPS also reviewed submissions received during the initial Public Consultation held from 17 August 2021 to 16 September 2021 and the applicant's responses to same.

Consolidated Public Submissions **(Tab 06)**

Applicant's responses to Public Submissions **(Tab 07)**

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

Consolidated Prescribed Bodies Observations **(Tab 08)**

Foreshore Marine Advisor (Engineering) Observations **(Tab 09)**

Foreshore Marine Advisor (Ecology) Observations **(Tab 10)**

Applicant's Response to Prescribed Bodies Observations **(Tab 11)**

RPS Consultants completed their 'Screening for Appropriate Assessment' **(Tab 12)** 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 is, 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 has been provided by the applicant and is 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 13)**

Public Consultation for Appropriate Assessment (Consultation under Section 42 of EC Birds and Natural Habitats Regulations (as amended))

A further Public Consultation was held and a Public Notice invited public submissions, between 20 April 2022 and 19 May 2022, for the purpose of conducting the Appropriate Assessment in accordance with Section 42 (1) of S.I. No. 477 of 2011, the European Communities (Birds and Natural Habitats) Regulations 2011, as amended.

Notices were published in The Irish Examiner and The Drogheda Independent newspapers. Documents were made available for inspection throughout the consultation period in Fingal County Council, Louth County Council, Balbriggan Garda Station, Drogheda Garda Station, Louth County Library, and Fingal County Library.

The documents were also available on the Department's website at:

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

In addition to the application documents submitted by NISA, the following documents were also on public display at the above locations and published on the Department's website:

- 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 Department received 4 public submissions during the second public consultation **(Tab 14).** The applicant's response to these public submissions is at **(Tab 15)**

Prescribed Bodies Consultation for Appropriate Assessment

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

The Department received 4 submissions from the Prescribed Bodies, **(Tab 16)** from Marine Advisor (Engineering), Marine Advisor (Environment), NPWS and Underwater Archaeology Unit,and finally Louth County Council. These were forwarded to the applicant. There were no objections in principle to the proposed works.

The applicant's response to these are at **(Tab 17)**

The submitted observations and the applicant's response are considered under this Appropriate Assessment. Recommended conditions will also be considered as part of this submission.

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)**

Environmental Impact Assessment (EIA) Regulations

The proposed project is for site surveying including boreholes to test the suitability of the sub sea bed conditions. 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 20)**

It is recommended that the Minister adopts the finding that the proposed site investigation activities which are the subject of this application are not of a class that require Environmental Impact Assessment and that the activities come outside the scope of the EIA 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 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 below, 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.

Conclusion and proposed findings:

For the purposes of this submission it is recommended that the Minister:

1. 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

2. adopts the findings of the risk assessment to Annex IV species that has been carried out
3. adopts the finding that the proposed site investigation activities which are the subject of this application are not of a class that require Environmental Impact Assessment and that the activities come outside the scope of the EIA Directive.

Submitted for decision and Signature.

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.

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