

July 4th 2024

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**Minded to Determine Notice
Applicant Response**

Re: Application for a Maritime Usage Licence to carry out marine environmental surveys for the purposes of site investigation. Ref LIC230001

Dear [REDACTED],

I refer to NISA Ltd.'s application to the Maritime Area Regulatory Authority (MARA) for the above licence and MARA's 'Minded to Determine' notice provided on 21 June 2024.

NISA Ltd. wishes to provide the supplementary material below (i.e. 'Response to Specific Conditions') in view of the reasons set out in the notice, for MARA to consider before making a final determination on the licence application.

Yours faithfully,

[REDACTED]
[REDACTED]

NISA Consents Manager.

NISA Ltd. has set out below requested amendments to select General Provisions and Specific Conditions included in 'LIC230001 Proposed Licence'. The format of the response states the Condition as currently drafted by MARA, the reason for the condition as stated by MARA, NISA Ltd.'s requested amendment to the Condition (with proposed text updates provided), and NISA Ltd.'s reason(s) for requesting the amendment.

For the avoidance of doubt, all other Conditions not discussed below can be deemed to be accepted by NISA Ltd.

NISA RESPONSE TO GENERAL PROVISIONS

Provision 2 – Interpretation

Condition should commence at "2.1" and not "2.2" as currently drafted.

Provision 9 – Insurance

NISA Ltd. requests that General Provision 9 be amended as detailed below, with text suggested for removal crossed out and suggested added text underlined:

9.1 *Without prejudice to the Holder's liability to indemnify the Grantor, the Holder shall:*

- (i) *effect and keep in force a public liability insurance policy of indemnity in the joint names of the Grantor and the Holder in an insurance office licensed to operate in the State Territory with a limit of € 6,500,000.00 (six million five hundred thousand euro) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Grantor or the Holder) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as the Holder;*

- (ii) *effect and keep in force an employer's liability insurance policy of indemnity in the name of the Holder in an insurance office licensed to operate in the State Territory with a limit of €13,000,000.00 (thirteen million euro) for any one claim or a series of claims arising out of a single occurrence and to extend such policy so that the Grantor is indemnified by the insurers in the same manner as*

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the Holder in respect of all actions, costs, proceedings, losses, damages, or claims for personal injuries by employees of the Holder. This policy should include an indemnity to principles clause with a specific indemnity to the Grantor;

- (iii) whenever required to do so by the Grantor, produce to the Grantor for inspection copies of certificates of insurance including the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Grantor by the Holder's insurers, and to comply with all conditions pertaining to any such policy or policies;*
- (iv) not do or omit to do anything which might cause any policy of insurance (if required) relating to the Licensed Area or any other part of the maritime area affected by the Permitted Maritime Usage to become void or voidable, wholly or in part, nor (unless the Holder has previously notified the Grantor and the Holder has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable;*
- (v) immediately notify the Grantor in writing of the making of any claim under any policy of insurance and to provide the Grantor with all information in relation to any such claim;*
- (vi) ensure that any contractors, servants, agents, invitees or visitors of the Holder engaged in connection with activities in the Licenced Area or otherwise in connection with this Licence have appropriate insurance and that copies of certificates of such insurance ~~all copies of such insurance policies~~ shall be provided to the Grantor as soon as is reasonably practicable;*

Reason for requested amendment: NISA Ltd. requests that sub-clause iii. and vi. are amended as certificates of insurance will provide the Grantor with the documentation needed to document that the licence obligations are fulfilled.

NISA RESPONSE TO APPENDIX 2 SPECIFIC CONDITIONS

Condition 9 – Marine Mammals

Condition 9 (i) as currently drafted:

9. Marine Mammals

- i. The Holder shall appoint a marine mammal observer for the purposes of overseeing the activity. The marine mammal observer shall satisfy the requirements of the National Parks and Wildlife Service.*

Reason for Condition as stated by MARA: To ensure the protection of the marine environment.

Requested amendment from NISA: NISA Ltd. requests that Condition 9. (i) above be replaced with the amended text below, with text suggested for removal crossed out and suggested added text underlined:

9. Marine Mammals

- i. The Holder shall appoint a marine mammal observer for the purposes of overseeing ~~the activity~~ geophysical and geotechnical survey activities. The marine mammal observer shall satisfy the requirements of the National Parks and Wildlife Service.*

Reason for requested amendment: NISA Ltd. commits to implementing risk control and mitigation measures for marine mammals in accordance with The National Parks and Wildlife Services' 'Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters', and in line with the mitigation measures outlined in its application documents.

These measures include the appointment of a marine mammal observer that meets the requirements of the guidance to oversee relevant activities. NISA Ltd. notes that this guidance is relevant to dredging, drilling, pile driving, geophysical acoustic surveys, and blasting activities. As such, NISA Ltd. requests that Condition 9 is amended as above to clarify that this Condition relates to geophysical and geotechnical survey activities, the only activities included in NISA's MUL application which are relevant to the guidance.

Condition 10 – Birds

Condition 10 (iii) as currently drafted:

10. Birds
- iii. *Where the Holder observes significant clusters of birds, actively fishing and/or diving, within 500m of the vessel carrying out the Permitted Maritime Usage, the survey route shall be altered to maintain a 500m buffer from the birds. Records of same must be kept by the Licence holder.*

Reason for Condition as stated by MARA: To ensure protection of the marine environment.

Requested amendment from NISA: NISA Ltd. requests that Condition 10. (iii) above be replaced with the amended text below, with suggested text for removal crossed out and suggested added text underlined:

10. Birds
- iii. *"Where the Holder observes significant clusters of birds, actively fishing and/or diving, within 500m of the vessel carrying out geophysical activities ~~the Permitted Maritime Usage~~ prior to the commencement of survey activity, the survey route shall be altered to maintain a 500m buffer from the birds' location on the commencement of the survey. Records of same must be kept by the Holder".*

Reason for requested amendment: NISA Ltd. requests the Condition be updated as above as the original condition as worded is difficult to monitor, disproportionate, and impractical to implement for field works.

NISA Ltd. requests that this condition be updated to be relevant to geophysical survey activities, as the primary survey activity which operates on a defined route as stated in the Condition.

NISA Ltd. commits to carrying out a watch for significant clusters of birds within 500m of the survey vessel prior to the commencement of survey activity, where visibility allows. Based on this watch, NISA will commence a survey route which, if completed as planned, would maintain a 500m buffer from the location of the birds when the route was commenced. Once started however, geophysical survey data acquisition must be acquired in near straight lines to enable control of the equipment and the acquisition of data which is of sufficient quality.

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Survey vessels may also be towing multiple items and will be restricted in their ability to manoeuvre. There is also the possibility that clusters of birds would be drawn to the survey vessel as it is completing data acquisition. It is therefore not practical for the route to be adjusted once commenced, nor feasible for the project to commit to maintaining a 500m buffer from the identified cluster of birds at all times.

The project would also like to note that most of the birds that the foraging Special Protection Area (SPA) is designated for, and especially the ones which are likely to be found offshore (e.g. terns, gulls etc.) are not sensitive to disturbance from a slow-moving vessel and are even likely to use it to rest on between dives etc.

NISA Ltd. highlights its suggested approach for birds mirrors the approach set out in the National Parks and Wildlife Service's 'Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters' (section 4.3.4) which states:

'Once the Ramp-Up Procedure commences, there is no requirement to halt or discontinue the procedure at night-time, nor if weather or visibility conditions deteriorate nor if marine mammals occur within a 500m radial distance of the sound source, i.e., within the Monitored Zone.'

Condition 13 – Coordination with other licence holders

Condition as currently drafted:

13. *The Holder shall coordinate with other licence holders within a 24km radius of the site boundary to ensure that no temporal overlap occurs between projects in respect of geophysical, seismic and geotechnical activities. Where necessary, the Grantor will determine the timing of activities to ensure that there is no temporal overlap.*

Reason for Condition as stated by MARA: To ensure the protection of the marine environment.

Requested amendment from NISA: NISA Ltd. requests that Condition 13. above be replaced with the amended text below, with suggested text for removal crossed out and suggested added text underlined:

13. *The Holder shall coordinate with other licence holders within a 2412km radius of the site boundary to ensure that no temporal overlap occurs between projects in respect of geophysical, seismic and geotechnical activities that are likely to cause in-combination effects on the receiving environment. ~~Where necessary, the Grantor will determine the timing of activities to ensure that there is no temporal overlap.~~*

Reason for requested amendment: NISA Ltd. has requested three changes to Condition 13.

The first relates to the radius within which other licence holders shall be considered. NISA Ltd. requests that this be updated from 24km to 12km.

As set out in the 'NISA Maritime Usage Licence Application for Site Investigation Works Supporting Information for Screening for Appropriate Assessment' (SISAA) report submitted with this Maritime Usage Licence (MUL) application, the potential impacts of noise associated with the planned survey activities are considered to have the widest spatial reach, with harbour porpoise the designated Natura 2000 site feature which is most sensitive to noise disturbance. The JNCC 'Guidance for Assessing the Significance of Noise Disturbance Against Conservation Objectives of Harbour Porpoise SACs' uses published ranges for effects of noise from different noise producing activities on harbour porpoise, to determine Effective Deterrence Ranges (EDRs) for survey activities and noise sources. Of those relevant to NISA Ltd.'s MUL Application, seismic Cone Penetration Tests (CPTs) have the largest EDR of 12km. This was conservatively chosen as the EDR for the Appropriate Assessment (AA) screening undertaken in NISA's SISAA (i.e. the Cumulative Effects Spatial Scope (CESS)). This is the same CESS that the Maritime Area Regulatory Authority (MARA) used in its Screening for Appropriate Assessment report. NISA Ltd. believes that this is the basis on which the radius of projects to be considered should be based, and therefore that the 24km figure should be updated to 12km.

NISA Ltd.'s second requested update to this Condition is that the Condition should be written to ensure that there is no temporal overlap between projects in respect of geophysical, seismic and geotechnical activities only when the activities are likely to cause in-combination effects on the receiving environment. There may be cases where activities could occur simultaneously that would not cause in-combination effects on the receiving environment, and therefore the project believes it is disproportionate to prohibit any temporal overlap of relevant activities within a specified radius.

Thirdly, NISA Ltd. requests that the final sentence of this Condition be removed. While the project will be required to engage with MARA in advance of survey activities and notify MARA of its intention to undertake survey activities, and will operate in compliance with licence conditions at all times, the wording of the condition as currently presented is very challenging.

Project survey and site investigation schedules are carefully planned to account for site-specific conditions, seasonal weather patterns, the availability of specialised survey contractors, equipment and vessels, and project data and design requirements. Planning for this is a complex lengthy process undertaken over numerous months. Surveys must be planned with operational flexibility so works can adapt to changing conditions, technical issues, contractor availability, the requirements of other stakeholders etc. Survey activities and offshore wind developments in general also involve significant financial cost. Any uncertainty on timelines or potential for externally imposed timings can impact financial planning and wider certainty in the project. Survey contractors will be reluctant to enter into contracts to complete surveys if there is potential for the survey schedule to be changed by the Grantor at short notice. Survey contractors generally have limited availability, and move from one project to another, so they cannot risk being delayed significantly on one project as this may have implications to other contracts they may have in place.

As stated in the Assessment of Impacts on the Maritime Usage (AIMU) Report submitted with this application, should NISA Ltd identify that a temporal overlap is likely between the proposed site investigation activities and those projects identified in the SISAA as having the potential to cause in-combination effects to marine mammals, NISA Ltd will engage with those projects to ensure that activities are sufficiently distanced to ensure that adverse effects on marine mammals are mitigated for.

Condition 15 – Documents for inspection

Condition as currently drafted:

15. *The Holder shall keep the following documents together and available for inspection by the Grantor:*
- i. a copy of the licence related to this maritime usage;*
 - ii. all correspondence with the MARA;*
 - iii. up to date drawings, plans and maps relating to the maritime usage;*
 - iv. documents and photographs as may reasonably requested by the Grantor from time to time.*
 - v. marine positional log; and,*
 - vi. any elements of the licence application and associated documentation referenced in this licence.*

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Reason for Condition as stated by MARA: to allow MARA to enforce the above conditions, to ensure the protection of the marine environment.

Requested amendment from NISA: NISA Ltd. requests that Condition 15. above be replaced with the amended text below, with suggested text for removal crossed out and suggested added text underlined:

15. *The Holder shall keep the following documents together and available for inspection by the Grantor:*

- i. a copy of the licence related to this maritime usage;*
- ii. all correspondence with the MARA;*
- iii. up to date drawings, plans and maps relating to the maritime usage;*
- ~~iv. documents and photographs as may reasonably requested by the Grantor from time to time.~~*
- v. iv. marine positional log; and,*
- ~~vi-v.~~ any elements of the licence application and associated documentation referenced in this licence.*

Reason for requested amendment from NISA: NISA Ltd. requests that sub-clause iv. be removed as it is vague and broad, and it is not clear exactly which documents or photographs this might refer to. NISA Ltd. also feels that sufficient detail is included in the other provisions of this Condition to ensure that NISA Ltd. (The Holder) keeps sufficient documentation together and available which will enable MARA to enforce the Conditions of this licence and to ensure the protection of the marine environment.

Finally, NISA requests clarity from MARA regarding details to be provided in a “marine positional log” per clause iv.