

| <b>Proposal to issue a maritime usage licence to the North Irish Sea Array Windfarm Limited</b> |  |
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| <b>To</b>   | Dr. Karen Creed, Director of Consenting  |
| <b>From</b>   | Dr. Alison McCarthy, Head of Maritime Usage Licensing  |
| <b>Date</b>   | 02/08/2024   |
| <b>Applicant name and address</b>   | North Irish Sea Array Windfarm Limited.<br>Building 3400, Cork Airport Business Park, Co. Cork, T12 AE76 |
| <b>Licence reference number</b>   | LIC230001  |
| <b>Application Date</b>   | 09/10/2023   |
| <b>Date Minded to Determine Notice issued</b>   | 21/06/2024   |
| <b>Date supplementary material received from applicant</b>                                      | 04/07/2024   |

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### Section 1: Decision Sought

Approval is sought for the issuance of a maritime usage licence to the North Irish Sea Array Windfarm Limited ('the applicant'), following the consideration of supplementary material submitted by the applicant in accordance with Section 119(6)(b)(ii) of the Maritime Area Planning Act 2021 ('the Act').

### Section 2: Background

The applicant submitted a maritime usage licence application to MARA on 09/10/2023 in accordance with Section 117 of the Act, for marine environmental surveys for the purposes of site investigation. MARA issued a Minded to Determine Notice (Tab 1) and a Proposed Licence (Tab 2), with conditions, to the applicant on 21/06/2024. The applicant was advised that MARA was minded to grant the licence, subject to conditions. The Minded to Determine Notice provided reasons for the conditions contained in the proposed licence. In accordance with Section 119(6)(b)(ii) of the Act, the applicant was given a specified period (of 21 days to 12/07/2024) within which supplementary material could be provided in view of the reasons for the conditions, for further consideration by MARA.

The applicant submitted a response (Tab 3) on 04/07/2024 with supplementary information setting out their reasons for a number of requested amendments to the general and specific conditions in the proposed licence. The licensing unit forwarded the applicant's response to MARA's Marine Advisors for comment. On 11/07/2024 the licensing unit received a report from the Senior Marine Advisor (Tab 4) responding to the applicant's amendment requests on the specific conditions.

### Section 3: Supplementary material and requested amendments

The applicant requested two changes to the general conditions of the proposed licence and four changes to the specific conditions. I have dealt with these in the order of which they were raised in the applicant's response. The licensing response to each amendment request takes into account the recommendations of MARA's Senior Marine Advisor. The applicant's response and the advice from the Senior Marine Advisor are briefly detailed in this section, however please refer to the full responses for further expansion on the issues.

#### 3.1 General Condition 2 – Interpretation:

The applicant identified a typographical error in the numbering of Condition 2 - Interpretation.

##### **Condition in proposed licence:**

2 INTERPRETATION

2.2 *Any requirement in this Licence for the Holder not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and to use best endeavours to prevent such act or thing being done by another person.*

2.3 *Etc.*

**Applicant's requested amendment:**

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

**Licensing response:**

I recommend amending the numbering in general condition 2 of the final Licence.

**3.2 General Condition 9 Insurance**

General condition 9 of the proposed licence relates to insurance. The applicant requested an amendment to sub-condition 9.1 (iii) and sub-condition 9.1 (vi).

**Condition in proposed licence:**

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

- (iii) whenever required to do so by the Grantor, produce to the Grantor for inspection 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;*
- (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 all copies of such insurance policies shall be provided to the Grantor as soon as is reasonably practicable;*

**Applicant's requested amendment:**

- (iii) whenever required to do so by the Grantor, produce to the Grantor for inspection copies of certificates of insurance including 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;*
- (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 shall be provided to the Grantor as soon as is reasonably practicable;*

**Licensing Response:**

I do not recommend adopting the requested changes to sub-condition 9.1 (iii) and sub-condition 9.1 (vi) as the insurance condition as set out in the proposed licence has been approved by the State Claims Agency. There is no change to the insurance conditions.

### 3.3 Specific Condition 9 – Marine Mammals

Specific condition 9 relates to Marine Mammals. The applicant has sought an amendment to part (i) of this condition. The applicant notes that the National Parks and Wildlife Service Guidance is not applicable to all of the activities and thus the condition should be amended to just refer to geophysical and geotechnical survey activities.

#### **Condition in proposed licence:**

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.*

#### **Applicant's requested amendment:**

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

#### **Licensing Response:**

The Senior Marine Advisor has not recommended adopting the requested change from the applicant. Instead it is advised that specific condition 9(i) should be amended in the final licence to refer specifically to 'permitted maritime usage' in place of the 'activity' for consistency with the Particulars Schedule of the licence. I recommend adopting this recommendation, as follows:

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

### 3.4 Specific Condition 10 - Birds

Specific condition 10 relates to Birds. The applicant has requested an amendment to condition 10(iii) in relation to responding to the presence of significant clusters of birds as it would be impractical to implement.

#### **Condition in proposed licence:**

*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 Holder.*

#### **Applicant's requested amendment:**

*iii. Where the Holder observes significant clusters of birds, actively fishing and/or diving, within 500m of the vessel carrying out geophysical activities, prior to the commencement of the 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.*

#### **Licensing Response:**

The Senior Marine Advisor has not recommended adopting the requested change from the applicant. The condition was identified as part of the appropriate assessment carried out by MARA as suitable mitigation for the potential for likely significant effects on diving birds from underwater noise disturbance. I recommend adopting this recommendation to not amend the condition.

### 3.5 Specific Condition 13

Specific condition 13 relates to coordination with other licence holders. The applicant has requested an amendment to reduce the 24km radius to a 12km radius given their assessment of impact on marine mammals. They request additional wording in the condition to refer to activities '*that are likely to cause in-combination effects*' as they contend that some simultaneous activities would not cause in-combination effects. They request removal of the last line in the condition as it would be very challenging in terms of their survey scheduling.

#### **Condition in proposed licence:**

*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.*

**Applicant's requested amendment:**

13. *The Holder shall coordinate with other licence holders within a 12km 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.*

**Licensing Response:**

The Senior Marine Advisor report recommended amending the condition to specify that the condition relates to in-combination effects. It was recommended to retain the 24km radius which relates to a specific mitigation measure which forms part of the appropriate assessment, and to refer to activities that are '*likely to cause in-combination effects*'. It was advised that the last sentence could be amended to instances where temporal overlap cannot be resolved at operator level. 'Licence holders' was amended to 'authorisation holders' in the revised condition. The Senior Marine Advisor report recommended condition is as follows:

13. *In-combination effects*

- (i) *The Holder shall coordinate with other authorisation holders within 24km 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.*
- (ii) *Where the Holder becomes aware of temporal overlap that cannot be resolved, the Holder shall notify the Grantor who shall determine the timing of activities.*

I sought clarity on 02/08/2024 from an ARD Senior Marine Advisor on the use of the term 'authorisation holder' and received confirmation that it refers to '*to anyone who holds a licence in the maritime area for the carrying out of geophysical, geotechnical and seismic activities (e.g. those holding a foreshore licence or MUL)*' and '*all permissions that would result in these types of activities in the marine environment/maritime area*'. The ARD Senior Marine Advisor also advised amending the condition further to ensure that the condition refers to a vessel to vessel distance, as follows:

13. *In-combination effects*

- i. *Prior to the commencement of the Permitted Maritime Usage, the Holder shall coordinate with other authorisation holders carrying out geophysical, seismic and geotechnical activities within a 24km radius of the site boundary.*

- ii. *Where a vessel to vessel distance of greater than 24 km cannot be maintained with respect to geophysical, seismic and geotechnical activities, the Holder shall co-ordinate with other authorisation holders to prevent temporal overlap of the activities. Where the Holder can submit evidence that there is a vessel to vessel distance of greater than 24km, no temporal co-ordination of activities is required.*
- iii. *Where the Holder becomes aware of temporal overlap that cannot be resolved within the prescribed distance, the Holder shall notify the Grantor who shall determine the timing of activities.*
- iv. *Records of all engagements held and agreements reached, if any, shall be maintained by the Holder and made available to the Grantor if requested."*

I recommend adopting the Senior Marine Advisor's amendments of 02/08/2024.

### 3.6 Specific Condition 15

Specific condition 15 relates to documentation that the Holder must keep available for inspection by the Grantor. The applicant requests the removal of part **iv** relating to documents and photographs as it is unclear, vague and too broad. The applicant requested clarity regarding the details to be included in a marine positional log.

#### **Condition in proposed licence:**

- 15 *The Holder shall keep the following documents together and available for inspection by the Grantor.*
- i. *a copy of this licence related to this maritime usage;*
  - ii. *all correspondence with the Grantor;*
  - iii. *up to date drawings, plans and maps relating to the Permitted Maritime Usage;*
  - iv. *documents and photographs as may be 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.*

#### **Applicant's requested amendment:**

- 15 *The Holder shall keep the following documents together and available for inspection by the Grantor.*
- i. *a copy of this licence related to this maritime usage;*
  - ii. *all correspondence with the Grantor;*
  - iii. *up to date drawings, plans and maps relating to the Permitted Maritime Usage;*

*v. marine positional log; and,*

*vi. any elements of the licence application and associated documentation referenced in this licence.*

**Licensing Response:**

The Senior Marine Advisor provided information on the marine positional log and I recommend adding this to the condition for clarity. The Senior Marine Advisor did not recommend any change to the requirement for documents and photographs. However, I recommend that iv should be amended to refer to demonstrating compliance with the Specific Conditions as this would provide clarity in terms of the records and/or photographs required. I recommend the condition is amended as follows:

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

*i. a copy of this licence related to this maritime usage;*

*ii. all correspondence with the Grantor;*

*iii. up to date drawings, plans and maps relating to the Permitted Maritime Usage;*

*iv. Such records and/or photographs required to demonstrate compliance by the Holder with the Specific Conditions.*

*v. marine positional log, to demonstrate compliance with the terms of the licence, including ensuring that the activity occurs within the licensed area; and,*

*vi. any elements of the licence application and associated documentation referenced in this licence.*

**3.8 Numbering of the specific conditions**

I recommend changing the numbering of the specific conditions (to start from No. 20) in the Final Licence to avoid confusion with the numbering of the General Conditions. This has not been requested by the applicant.

**Section 4: Recommendation for Approval**

I am seeking your approval to amend the above conditions in the Licence from the Proposed Licence.

I am seeking your determination on the grant of the Licence (Tab 5) subject to the conditions attached.

*Alison McCarthy* (electronic signature)



Dr. Alison McCarthy  
Head of Maritime Usage Licencing

**Annex 1 – List of Tabs to this Submission**

- **Tab 01** – Minded to Determine Notice
- **Tab 02** – Proposed Licence
- **Tab 03** – Response from Applicant to Minded to Determine Notice
- **Tab 04** – Senior Marine Advisor Report
- **Tab 05** – Licence