

| Assessment, Research and Data Unit | | | |
|--|---|--------------|----------------------------------|
| To: | Maritime Authorisation Unit | From: | [REDACTED] Senior Marine Advisor |
| Permitted Maritime Usage Licence Application: | LIC230001 | | |
| Applicant: | North Irish Sea Array Windfarm Limited | | |
| Title: | Response from the applicant on Minded to Determination and Reasons for the Conditions | | |

The Marine Advisor in the ARD Team, has considered all of the issues raised in the submission to the Minded to Determination letter submitted by the applicant dated 4th July 2024. This report sets out the requested amendments to the Specific Conditions in Appendix 2 of the proposed licence only and the recommendations from the ARD unit following a technical examination of the submission.

Specific Condition #9(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: *To ensure the protection of the marine environment.*

NISA minded to submission:

NISA has requested that the condition be amended as follows: *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.*

NISA stated in their submission that the NPWS “Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters” is relevant to dredging, drilling, pile driving, geophysical acoustic surveys and blasting activities. The applicant requested that the condition be amended to be more specific to the activity concerned in this licence.

MARA Response: The ARD team note the importance of ensuring the conditions of our licences are specific and have clear intent. The proposed Maritime Usage Licence concerned in this case relates to Permitted Marine Usage activity in accordance with Schedule 7 of the Maritime Area Planning Act (2021, as amended) – (3) *Marine environmental surveys for the purposes of site investigations*. This Permitted Maritime Usage is specified in the Particulars Schedule of the proposed licence. It is recommended to amend Condition 9(i) to refer to Permitted Maritime Usage, to ensure consistency and transparency in the interpretation of the permitted activity.

Recommendation: Amend Condition 9(i) as follows:

*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.*

Specific Condition #10 (iii) Birds

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.

Reason: To ensure protection of the marine environment.

NISA minded to submission:

The applicant requested that Condition 10(iii) amended as follows:

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 Licence holder.

The reasoning behind the requested change is based on the practicality associated with implementing the condition. The applicant stated in their submission that geophysical data must be acquired in near straight lines to enable control of the equipment and the acquisition of data which is of sufficient quality. The survey vessels may also be towing multiple items and will be restricted in their ability to manoeuvre. There is also a possibility that clusters of birds would be drawn to the survey vessel as it is completing data acquisition. The applicant further states that it is 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 applicant also noted that the majority of the birds designated protection under Special Protection Area (SPA) are not sensitive to disturbance from slow-moving vessels and are likely to use the vessels to rest on between dives.

NISA also maintained in their submission that their approach for managing birds mirrors that of the marine mammals, in accordance with the National Parks and Wildlife Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters.

MARA response: The reasoning behind the condition is based on the assessment of potentially for likely significant effects on designated habitats and species undertaken as part of the appropriate assessment under the Habitats Directive. The appropriate assessment determined that there is a low likelihood of interaction between the sound source and diving birds due to the relatively short exposure time, the temporary nature of the survey work, their mobile nature and the displacement of most diving species due to flushing disturbance. The appropriate assessment identified Condition 10(iii), as drafted, as suitable mitigation for the potential for likely significant effects on diving birds from underwater noise disturbance. It should be noted that the condition relates to significant clusters of birds noted to be actively fishing and/or diving.

| |
|---|
| Recommendation: No change to Condition 10(iii) |
|---|

Specific Condition #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: To ensure the protection of the marine environment.

NISA minded to submission:

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.~~

The applicant requested that the distance from the site boundary be reduced from 24km to 12km on the basis that the effective deterrence range for seismic cone penetration tests is 12km. The applicant also noted that the distance of 12km was used by MARA as the cumulative effects spatial scope in the screening for appropriate assessment.

The second requested change relates to the addition of text “...*that are likely to cause in-combination effects on the receiving environment*”. The applicant states that there may be cases where activities could occur simultaneously that would not cause in-combination effect on the receiving environment.

The final point raised by the applicant is the challenging aspect associated with the final sentence of the condition. The applicant noted that surveys must be planned with operational flexibility so works can adapt to changing conditions, technical issues, contractor availability, the requirements of stakeholders, etc. The applicant also noted that survey contractors will be reluctant to enter into contracts where there is a potential for the survey schedule to be changed at short notice by the Grantor. The applicant notes their commitment in their application to engage with other operators where there is potential to cause in-combination effects to marine mammals.

MARA response: The condition, as proposed, includes a distance of 24km which is a mitigation measure based on the outcome of the assessment of in-combination effects carried out as part of the Appropriate Assessment. The assessment took account of the Joint Nature Conservation Committee *Guidance for Assessing the significance of noise disturbance against Conservation Objectives of Harbour Porpoise SACs (2020)* which includes a minimum effective deterrence range of 12km for seismic (airgun array) surveys.

In determining this condition, MARA applied the precautionary principal where there is a possibility of temporal overlap giving rise to in-combination effects between two or more acoustic surveys in areas where relevant marine mammals may be present. The requirement to coordinate with other licence holders within 24km of the licence boundary mitigates for the possibility of temporal overlap between two survey vessels (each with an effective deterrence range of 12km) (Figure 1).

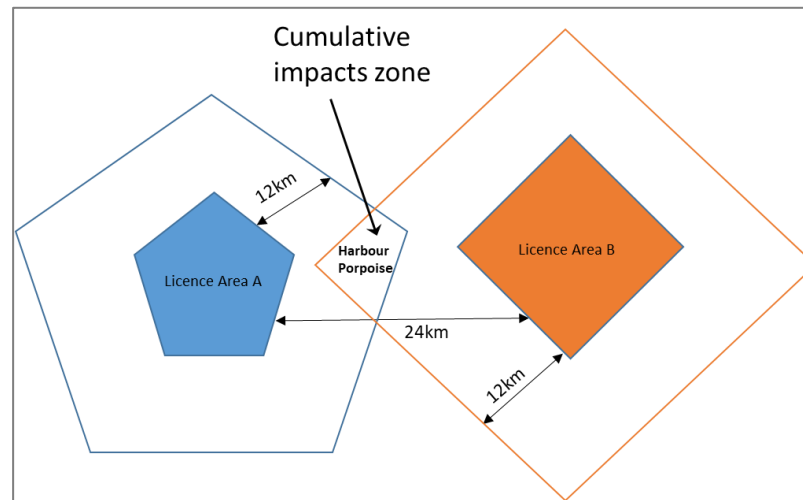


Figure 1: Identification of zone with potential for cumulative impacts.

The applicant requested the addition of text into the condition relating to identifying the purpose of the condition with regard to in-combination effects. The ARD agree with the addition of the proposed text, as this further clarifies the purpose of the condition.

The final point relating to the requirement to notify MARA where there may be a need for MARA to determine the timing of activities. The ARD teams accepts that there may be difficulties associated with engaging contractors where there may be certainty as to the scheduling of activities on foot of the requirements of this condition. However, it is noted that the applicant has committed within their application documents to engage with other operators where there is a potential for in-combination effects on marine mammals. It should be noted that the identification of in-combination effects does not solely relate to marine mammals, nor are marine mammals explicitly referenced in this condition. The requirement to notify MARA with regard to timing of activities should only be in exceptional circumstances where there is an issue that cannot be resolved at the operator level. In the interests of clarity in interpreting the condition, it is recommended to amend the wording of the condition, as per below.

Recommendation: Amend Specific Condition 13 to read as follows:

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.

Specific Condition #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.*

Reason: To allow MARA to enforce the above conditions, to ensure the protection of the marine environment.

NISA Minded to Submission:

The applicant requests that Condition 15(iv) as above, be deleted from the final condition. The applicant feels there is sufficient requirements included in the other sub-conditions to enable MARA to enforce the licence. It is also not clear from the condition what documents or photographs this condition may refer to.

The applicant also requested clarity regarding the details of the marine positional log to be made available for inspection.

MARA response:

The requirement to maintain documents and photographs, as may be reasonably requested by MARA is to ensure that NISA will have the necessary evidence available to demonstrate compliance with conditions as Condition 10(i) where access tracks will be kept to a minimum or Condition 10(ii) where it is necessary to refill trial pits as soon as practicable.

With regard to the detail of the marine positional log, the purpose of having this available for inspection is to demonstrate compliance with the terms of the licence, including ensuring that the activity occurs within the licensed area. The marine positional log will also provide evidence of compliance with conditions like Condition 10 above relating to altering a survey route, where necessary.

Recommendation: No change is recommended to Condition 15.