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23rd June 2025

Licence Unit,
Maritime Area Regulatory Authority,
2nd Floor, Menapia House,
Drinagh Business Park,
Wexford,
Y35 RF29.

Observation Regarding Procedural Fairness, Adequacy of Environmental Assessment, and Compliance with EU Environmental Directives for EirGrid Maritime Usage Licence Application MUL240036 – Proposed Marine Site Investigation Surveys

Dear Sir/Madam,

Blue Horizon is a community group based along Ireland's south-east coast working for the protection of our coastline, marine biodiversity, and seascapes. We support the transition to renewable energy and advocate for its responsible development through sustainable planning and correct siting of large offshore renewable energy infrastructure. This approach is essential for protecting our local environment and supporting the long-term wellbeing of our coastal communities. In response to the public notice published in the *Waterford News & Star* on May 20, 2025, please find our submission regarding EirGrid's application for a Maritime Usage Licence (Ref: MUL240036). Our comments pertain to both the licence application and the Natura Impact Statement. We wish to express our serious concerns in relation to MARA's assessment and handling of this application, which in our view fails to comply with several fundamental principles of environmental law, both substantive and procedural, as established under national and European Union legislation. The application raises pressing issues regarding the necessity of Environmental Impact Assessment (EIA), the legality of project segmentation, deficiencies in public consultation, and failure to adequately protect habitats and species under the Habitats Directive.

The application seeks authorisation for an extensive suite of offshore investigative activities, including geophysical, geotechnical, environmental, archaeological, acoustic, aerial, unmanned aircraft system, and shipping and navigation surveys. The applicant explicitly states that these investigations are required to inform the design and environmental assessments for two proposed offshore substations and potential offshore transmission cable corridors, which are to serve a future windfarm development at the Tonn Nua site. It is made clear that these surveys are integral to the delivery of a major renewable energy project. They are therefore not standalone undertakings but preparatory phases of a large-scale development that will have wide-ranging environmental implications. These investigations cannot be treated in isolation or considered sub-threshold under the EIA framework.

MARA has concluded that an EIA screening is not required because the proposed activities do not fall within Schedule 5 Part 1 or Part 2 of the Planning and Development Regulations 2001. However, this conclusion adopts an unduly narrow interpretation of the relevant law and fails to comply with the obligations set out under the EIA Directive (2011/92/EU as amended by 2014/52/EU). EU jurisprudence is unequivocal: the environmental effects of a project must be assessed in an integrated and holistic manner, and public authorities are prohibited from artificially dividing ('salami-slicing') projects to circumvent environmental scrutiny. The Court of Justice of the European Union (CJEU) has ruled in multiple cases that preparatory works, where they are functionally linked to and enable a future development, must be subject to the same environmental review as the project they serve. This principle is particularly important for infrastructure works which, while not producing emissions or installations in themselves, directly facilitate developments likely to have significant environmental impacts.

The marine surveys described in this application are not speculative or academic. They serve a clear commercial and engineering function, being required by a state-owned company to assess the feasibility and layout of two offshore substations and associated cable corridors. This places them squarely within the planning and implementation phase of the Tonn Nua offshore wind farm, which is expected to have a capacity of approximately 900 MW. Offshore wind farms of such scale are either explicitly listed in Annex I of the EIA Directive or, at the very least, fall within Annex II where national thresholds and criteria must ensure that all potentially significant projects are screened appropriately. The investigative phase proposed here is necessary to the execution of that larger project, and the EIA Directive requires that such works be assessed with due regard to their cumulative environmental effects, their context, and their integration within the broader development proposal.

Even if the individual survey activities were considered independently, which we reject, the combined intensity and duration of the operations, spread across five years, amounts to significant pressure on a marine environment already facing multiple stressors. The area in question overlaps with an Important Marine Mammal Area (IMMA) and likely future Marine Protected Area (MPA). It contains several species and habitats listed under Annex I and Annex IV of the Habitats Directive and under the Birds Directive. In such a sensitive context, cumulative and in-combination effects must be assessed not just in relation to this application but in light of previous, concurrent, and future surveys and developments. Yet MARA's decision fails to demonstrate that any such holistic assessment has taken place.

Crucially, MARA's own Appropriate Assessment (AA) screening, dated 1 May 2025, acknowledges that the project may have significant effects on European Sites and therefore triggers a Stage 2 AA. This is an explicit recognition of likely significant impacts under Article 6(3) of the Habitats Directive. That conclusion sits in direct contradiction to the finding that no EIA screening is necessary. It is well established in both Irish and EU law that where significant effects on Natura 2000 sites are likely, the threshold for triggering an EIA is often exceeded. That these two determinations were made concurrently, and yet reached such divergent conclusions, illustrates the inconsistencies and flaws in MARA's decision-making process.

Furthermore, Ireland's obligations under the Maritime Spatial Planning Directive (2014/89/EU), the Marine Strategy Framework Directive (2008/56/EC), and the Water Framework Directive (2000/60/EC) demand that a sectoral and strategic assessment of all marine activities be undertaken. This includes the requirement for a proper Maritime Spatial Plan and associated Strategic Environmental Assessment. The absence of such a valid, up-to-date plan undermines MARA's capacity to ensure the necessary level of scrutiny over cumulative and in-combination impacts. Without a clear strategic context, site-specific assessments cannot be expected to account for broader ecological pressures. Furthermore, the requirement for strict protection of Annex IV species under Articles 12–16 of the Habitats Directive demands that derogations be subject to robust legal and ecological scrutiny, particularly in the absence of a sectoral plan.

We are also concerned that the mitigation measures proposed in the AA are vague, conditional, and at times left to future discretion by the developer. The effectiveness of these measures has not been substantiated by scientific evidence, and there is no assurance that they are sufficient to eliminate all likely significant effects. Consent conditions must be established at the licensing stage to ensure strict protection. Deferring such matters to the post-consent phase, where parameters may be

modified, violates the requirement under EU law that AAs must contain complete, precise and definitive findings capable of removing all reasonable scientific doubt.

In addition to substantive concerns, we must raise serious issues of procedural fairness. The related derogation licence DER-CETACEAN-2025-04 was issued by the National Parks and Wildlife Service (NPWS) on 10th June 2025, yet it was only published online on 18th June, just five days before MARA's public consultation on MUL240036 was due to close. Moreover, the supporting scientific assessment by NPWS has not been made available to the public. This undermines the right of the public to effective participation as guaranteed under the Aarhus Convention, Directive 2003/4/EC on access to environmental information, and Directive 2003/35/EC on public participation. These directives require that all relevant environmental documentation be made available in a timely, accessible, and comprehensive manner. Releasing a key derogation licence so close to the consultation deadline, especially one that relates directly to protected Annex IV species, deprives the public of the ability to provide informed comment.

This approach also contravenes the standards affirmed in recent case law, notably the CJEU decision in Case C-166/22 (Hellfire Massy Residents Association) and its judgement by the Irish High Court (2021 IEHC 424). In that case, the courts held that where a derogation under Article 16 of the Habitats Directive is necessary for a project, it must be in place and available for public review prior to any development consent being granted. This principle is even more vital where different authorities are responsible for issuing the derogation and the main consent, as is the case here. Failure to ensure synchronisation and public accessibility of these processes renders the licensing regime legally defective and vulnerable to challenge.

Furthermore, the method of publication is itself problematic. By posting the derogation licence solely on the NPWS website, and not integrating it with the MARA consultation portal, the authorities have fragmented access to critical information. This raises the threshold for meaningful public engagement and creates a risk that consultees may miss or misunderstand material information that could inform their submissions.

Considering the above, Blue Horizon respectfully requests that MARA immediately extend the public consultation period on Application MUL240036 by no less than 28 days to allow for proper public scrutiny of the derogation licence and its supporting documents. We also urge MARA to re-evaluate its determination that EIA screening is unnecessary, taking full account of the application's role within a larger offshore wind project, the ecologically sensitive nature of the site, and the cumulative effects of ongoing and historical activity in the area. MARA must provide a revised, reasoned

conclusion that explicitly addresses the issues of project segmentation, cumulative impact assessment, and strict species protection under the Habitats Directive.

Furthermore, we ask that MARA ensure that any Appropriate Assessment undertaken meets the full requirements of Articles 6(2) and 6(3) of the Habitats Directive, including establishing enforceable, pre-emptive consent conditions and not allowing key environmental parameters to be left to the discretion of the developer. Finally, MARA must acknowledge the absence of a valid Maritime Spatial Plan and demonstrate how compliance with the Maritime Spatial Planning Directive, the SEA Directive, and the Marine and Water Framework Directives will be achieved.

Blue Horizon strongly supports the responsible development of renewable energy and the advancement of offshore wind as a vital part of Ireland's climate commitments. However, these objectives must not come at the cost of weakening environmental law, reducing transparency, or compromising the integrity of the marine environment. Proper legal process, scientific rigour, and public engagement are the foundation upon which sustainable development must rest.

Yours sincerely,

Directors