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Submission on the Codling Wind Park Maritime Usage Licence Natura Impact Statement

From:

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To:

Maritime Area Regulatory Authority (MARA)

Introduction

I am writing to provide a professional ecological and legal response to the Codling Wind Park (CWP) Maritime Usage Licence (MULA) Natura Impact Statement (NIS) on behalf of the East Coast Fishers.

Based on a review of the document and associated correspondence between MARA and the applicant, it is clear that the NIS fails to meet the requirements of **Article 6(3)** of the **EU Habitats Directive (92/43/EEC)**.

The project cannot lawfully proceed because:

1. The assessment underestimates the duration, scale, and ecological footprint of proposed activities.
2. It fails to consider cumulative, ecosystem-level, and trophic impacts.
3. The treatment of seabirds and marine mammals is inconsistent, outdated, and legally unsound.
4. The applicant has confirmed that a **derogation licence for marine mammals** will be sought—an explicit admission that deliberate disturbance cannot be ruled out, rendering the NIS conclusion of “no adverse effect” invalid.

On these grounds, I submit that the only lawful conclusion is that **adverse effects on the integrity of Natura 2000 sites cannot be excluded** and that the **application should be refused**.

1. Duration and Recurrence of Activities

The NIS misrepresents the temporal scale of the proposed works.

Devices and PAM moorings are to remain in situ for **up to 36 months**, with multiple campaigns occurring under a **five-year licence**. Each mobilisation may last **two to eight months**, creating a near-continuous disturbance regime.

These are not short-term or isolated events.

This prolonged activity will cause chronic stress and potential desertion of foraging grounds by fish, seabirds, and marine mammals. No cumulative temporal analysis or activity calendar is presented, and seasonal overlap with spawning or migration periods has not been addressed.

2. Ecosystem and Trophic-Level Impacts

The NIS lists sampling and survey methods but fails to link these pressures to the food web. There is no assessment of how repeated disturbance, sediment plumes, or acoustic activity will affect benthic invertebrates, plankton, or forage fish such as sprat and sandeel.

These organisms underpin the diets of seabirds, marine mammals, and commercial fish. By ignoring trophic pathways, the NIS cannot demonstrate that the project will not undermine the ecological integrity of affected SACs or SPAs.

No BACI-style monitoring or power analysis is proposed to detect ecological change or recovery.

3. Spawning and Nursery Grounds

Codling Banks are recognised spawning and nursery areas for multiple species, yet the NIS provides no mapping, sensitivity analysis, or evaluation of impacts on egg and larval stages. Turbidity, smothering, and acoustic energy may all cause direct mortality or reduce recruitment success.

No seasonal exclusion windows or sediment deposition thresholds have been defined, despite the multi-year duration of works.

This omission fails to comply with the requirement to assess and mitigate effects on habitats essential for the life cycles of qualifying features under the Habitats and Birds Directives.

4. Pollution and Hydrocarbon Risk

Pollution and litter are dismissed in a single paragraph, with impacts deemed negligible under “MARPOL compliance.”

However, chronic **oil and fuel leakage**, **bilge discharges**, and **surface sheens** from multi-year vessel operations are not assessed.

Even trace hydrocarbons can smother plankton, reduce oxygen exchange, and destroy the waterproofing of seabird plumage.

No hydrocarbon risk assessment, contingency plan, or spill-response protocol has been provided.

The assumption that “best practice” equals “no impact” does not satisfy Article 6(3) standards.

5. Seabirds – Inconsistent and Incomplete Assessment

The NIS applies inconsistent logic between species groups.

Terns are dismissed from detailed assessment because they dive only briefly, yet the same reasoning is not applied in reverse to deep-diving seabirds such as **razorbills and guillemots**, which forage at depths up to 150 m—directly within the footprint of underwater disturbance. These birds are the most abundant birds on the Codling with peaks of 4203 razorbills and 7534 Guillemot recorded EIAR Volume 4 appendix 10.5 between April 2013 and 2014.

These species are qualifying interests of multiple Irish Sea SPAs (e.g. Lambay, Rockabill to Dalkey, Saltee Islands). Repeated acoustic and physical disturbance during prolonged survey campaigns will displace them from critical foraging areas and increase energetic costs.

No modelling of foraging displacement, energetic stress, or population consequences has been presented, and no mitigation measures (such as seasonal timing restrictions) have been proposed. This constitutes a serious gap in the NIS.

It must be noted that Codling is of considerable interest for thousands of Seabirds supporting close to the 20,000 threshold which requires SPA designation as well as Annex I and red listed species (see . appendix)

6. Marine Mammals

6.1 Derogation confirms disturbance is expected

MARA sought clarification on whether a **derogation licence for marine mammals** was required, and the applicant confirmed that one **would be sought**.

This confirms that **deliberate disturbance or injury cannot be ruled out**.

Under the Habitats Directive, projects that require a derogation licence under **Article 16** cannot simultaneously meet the “no adverse effect” test of **Article 6(3)**.

Derogation is a mechanism of last resort and may only apply if there are no alternatives and if populations are maintained at favourable conservation status—conditions not demonstrated here.

The need for derogation is therefore a clear legal signal that the NIS conclusion of “no adverse effect” is untenable.

6.2 Outdated guidance relied upon

The NIS relies on the **DAHG/NPWS (2014) Guidance** for marine mammal mitigation, a document that NPWS itself has since deemed **obsolete**.

In 2023, NPWS issued a **call for tender** for a new framework, citing the need to incorporate modern risk-assessment principles, cumulative exposure, and population-level analysis. It is thus unreasonable to base conclusions on guidance acknowledged as inadequate by its own authors.

6.3 Deteriorating conservation status

The conservation objectives for the Rockabill to Dalkey Island SAC date from 2013 and are based on pre-2011 data.

More recent research (Berrow et al., 2021) documents a **46% decline in harbour porpoise density between 2016 and 2021**, indicating deterioration in conservation status.

The NIS fails to acknowledge or address this decline.

6.4 Inadequate spatial and temporal scope

The in-combination boundary of 5 km (survey acoustics) and 26 km (piling) is ecologically meaningless.

Harbour porpoise and seals forage over **100–200 km**, and their management units span the entire Irish Sea.

Multiple concurrent offshore projects within this range are ignored, rendering the in-combination assessment incomplete.

6.6 Absence of quantitative acoustic and population modelling

No sound propagation maps, cumulative exposure modelling, or **Population Consequences of Disturbance (PCOD)** analysis is provided.

The assumption that animals will “return within 3–4 hours” lacks scientific support and fails to consider long-term energetic and reproductive effects.

6.6 Pollution, vessel noise, and functional linkages

Hydrocarbon pollution, low-frequency vessel noise, and functional linkages to SACs are ignored.

Disturbance in the project area may directly affect animals belonging to SAC populations, contrary to the **Holohan** judgment (C-461/17).

6.7 Systemic monitoring failures

No evidence of Article 10 monitoring or enforcement of cumulative noise or disturbance exists, despite overlapping derogation licences across the Irish Sea.

This represents a systemic breach of the Directive's monitoring obligations.

6.8 Conclusion – refusal required

Given that:

- The applicant has admitted disturbance requiring a derogation licence,
- The assessment relies on obsolete 2014 guidance,
- Conservation status is declining,
- No quantitative or cumulative analysis is provided, and
- Functional linkages to SACs are ignored,

the NIS cannot lawfully conclude that no adverse effect on site integrity will occur.

The project **should therefore be refused**.

No further derogations or site investigations should proceed until:

1. Updated NPWS guidance is in place,
2. Conservation objectives are revised and current, and
3. A management-unit-scale cumulative assessment and monitoring framework are established.

7. Conclusion

The CWP MULA NIS fails to comply with Article 6(3) of the Habitats Directive and cannot remove reasonable scientific doubt regarding adverse effects on site integrity.

The NIS:

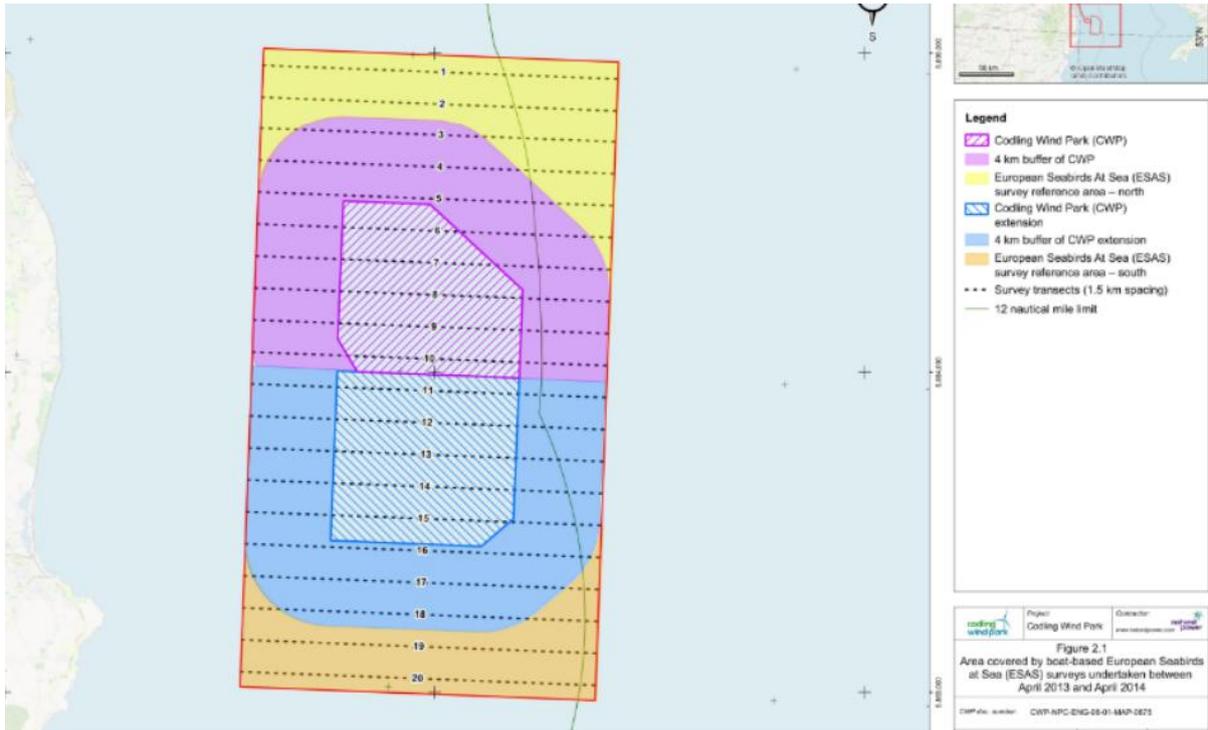
- Underestimates duration and cumulative disturbance,
- Ignores trophic and spawning effects,
- Relies on outdated and non-compliant marine mammal guidance,
- Fails to quantify acoustic or population impacts, and
- Admits the need for derogation, confirming disturbance will occur.

Recommendation:

That the application for the Codling Wind Park MULA be **refused**.

Appendix I Codling Bird Data summarised

DATA from EIAR - Volume 4 - Appendix 10.5 - Offshore Ornithology Baseline Characterisation Report				
Seabirds				
Table 2.2: Summed totals of each species recorded during boat-based ESAS surveys undertaken between April 2013 and April 2014				
Species / Species group	Array site	4 km buffer area	Northern and Southern reference areas	Total
Arctic or common tern	0	28	17	45
Arctic skua	4	2	3	9
Arctic tern	9	22	35	66
Arctic, common or roseate tern	0	20	40	60
Black guillemot	28	37	1	66
Black-headed gull	6	6	7	19
Common gull	12	35	10	57
Common scoter	2	2	1	5
Common tern	33	30	17	80
Cormorant	6	10	0	16
Cormorant or shag	1	0	0	1
Fulmar	15	38	21	74
Gannet	50	95	49	194
Great black-backed gull	24	107	14	145
Great northern diver	2	2	1	5
Great skua	0	0	3	3
Guillemot	1362	3221	2951	7534
Guillemot or razorbill	34	246	308	588
Herring gull	17	100	18	135
Herring or lesser black-backed gull	3	2	0	5
Kittiwake	757	1392	499	2648
Lesser black-backed gull	4	19	6	29
Little gull	21	31	5	57
Manx shearwater	548	1986	1005	3539
Puffin	4	16	13	33
Razorbill	621	2298	1284	4203
Red-throated diver	10	30	1	41
Roseate tern	0	15	1	16
Sabine's gull	0	1	0	1
Sandwich tern	0	2	0	2
Shag	50	115	7	172
Storm petrel	4	22	3	29
Unidentified gull species	1	0	0	1
Unidentified large gull species	0	8	0	8
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