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22<sup>nd</sup> December 2025

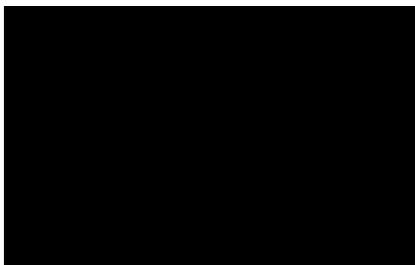
**RE: Submissions on behalf of Blue Ireland Coalition CLG in respect of Codling Wind Park MUL (MARA Reference: MUL230034)**

Dear Maritime Area Regulatory Authority,

Please find attached a submission on behalf of Blue Ireland Coalition CLG (T/A Blue Ireland) in respect of Codling Wind Park Marine Usage License (MARA Reference: MUL230034).

Please confirm receipt of this request (to [info@blueireland.org](mailto:info@blueireland.org)) at your earliest convenience and, please keep me informed of any updates with respect to this development proposal *via* the above email address.

Kind Regards,



Owen Clarkin



**Observation**

**in respect of**

**Codling Wind Park  
Marine Usage  
License**

**MARA Reference: MUL230034**

**Submission on Behalf of  
Blue Ireland Coalition CLG**

22<sup>nd</sup> December 2025

## Contents

Organisation Description .....	4
Members .....	5
Overview .....	6
Legal Overview.....	7
Public Participation and the Transition from Foreshore Licensing to the MUL Regime.....	10
Observations related to the Environmental Impact Assessment .....	11
Observations related to Article 12 to 16 of the Habitats Directive (92/43/EEC) and its Transposition into Irish Law .....	22
Specific Failures of the current MUL Application .....	26
Ornithological misclassification, screening-out of sensitive species, and methodological flaws.....	32
Baseline normalisation via “existing disturbance” .....	38
Screening out migratory and passage birds through lifecycle omission ..	39
Methodological opacity, with reliance on generic guidance .....	40
Failure to integrate habitat degradation and prey effects .....	41
Failure to Adequately Assess the Application Against the National Marine Planning Framework (NMPPF) .....	42
Bibliography.....	46

## Organisation Description

Blue Ireland Coalition Company Limited by Guarantee (t/a Blue Ireland) is a coalition of local and international environmentally focused groups with common objectives. Blue Ireland is a Non-Governmental Organisation. The main objective of Blue Ireland is to benefit the community by ensuring that local developments are executed in accordance with environmental considerations, the Aarhus Convention and the national environmental legislation and regulations, to ensure that proposed developments are in the public interest. Blue Ireland is calling for wind farms to be sited in environmentally appropriate locations in order to protect the marine environment, sites of community importance and biodiversity.

### **Our Vision:**

Vibrant healthy seas with environmentally sited offshore renewable energy (ORE) development.

### **Our Mission:**

- Create awareness regarding the impact of current Irish Offshore Renewable Energy policy and its effects on the marine environment.
- Ensure the correct siting of ORE developments.
- Advocate for alignment with best international practice in marine spatial planning.
- Call to halt all ORE development until best international practice is adhered to.
- Ensure ORE developments maximise benefits for climate action and minimise harm to the marine environment, biodiversity and social wellbeing.

For further details on Blue Ireland please see <https://blueireland.org/>

## Members



## Overview

**Blue Ireland** is a coalition of citizens' groups who have come together to advocate for compliance with EU and Irish environmental law and for the application of best practice with the objective of ensuring that offshore wind farm infrastructure is sited in environmentally appropriate locations, maximising benefit and minimising harm to marine and terrestrial ecosystems. Our position aligns with that of the World Wildlife Fund.

***Offshore renewable infrastructure is still infrastructure. It needs to be subject to best-practice planning and design and requires rigorous evaluation using both environmental impacts assessments (EIA) and strategic environmental assessments (SEA). When developing offshore renewable projects, it is therefore crucial to adopt an ecosystem-based approach, apply well-considered marine zonation, and support ocean resilience by staying within ecosystem boundaries.***

*World Wildlife Fund, 2022.*

**Codling Wind Park** have applied for consent to construct a wind farm on the Codling Bank, in the absence of best practice planning, rigorous evaluation, Strategic Environmental Assessment or application of an ecosystem-based approach. The proposal is based solely on developer-led site selection from 1999, when the offshore wind industry was in its infancy and knowledge about the environmental impacts associated with the introduction of such vast infrastructure into sensitive marine ecosystems was very poorly appreciated.

## Legal Overview

Article 191 of the Treaty on the Functioning of the European Union (TFEU) states that 'Union policy on the environment shall aim at a high level of protection'. This is the fundamental overarching aim in any policy of the European Union (and should be taken in consideration along with Article 130 of the Treaty Establishing the European Economic Community). Article 37 of the EU Charter of Fundamental Rights provides for '*A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development*'. Having reviewed the documentation provided for the proposed planning application it is clear to Blue Ireland and its members that the proposed works, and the development which it is linked to, taken in the context of historical and recent decisions taken in its progression to this point, fails to provide sufficient evidence that granting consent to the works would provide a 'high level of protection' to the environment.

In considering the aim of Directive 92/43/EU (the Habitats Directive) '*to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies*' (Article 2(1)), and considering Article 6 of that Directive, with respect to Article 2(2) of that Directive, which states '*Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest*', it is clear to Blue Ireland and its members that this proposed works, taken in the context of historical and recent decisions taken in its progression to this point, fails to provide sufficient evidence that granting consent to the works would not constitute a Likely Significant Effect (LSE) on protected sites and species of community interest and would not have a negative adverse effect on the '*favourable conservation status, natural habitats and species of wild fauna*

*and flora of Community interest'.*

In considering the objectives and requirements of Directive 2001/42/EC (the SEA Directive) and its transposition into Irish Law, it is clear to Blue Ireland and its members that these proposed works, taken in the context of historical and recent decisions taken in its progression to this point, fails comply with the requirements of this directive and its transposition into Irish Law.

In considering the objectives and requirements of Directive 2014/89/EU (the MAP Directive) and its transposition into Irish Law, it is clear to Blue Ireland and its members that this proposed development, taken in the context of historical and recent decisions taken in its progression to this point, fails comply with the requirements of this directive and its transposition into Irish Law. Furthermore, it is clear to Blue Ireland and its members that the MSP Directive has been inadequately transposed within Ireland prior to its required transposition date, both with respect to law and measures. The development proposed in this application, is being enacted in an environment of inadequate transposition of this Directive and the MARA should have due regard to this context in considering to grant or deny this MUL application.

In considering the objectives and requirements of Directive 2014/52/EU (the EIA Directive) and its transposition into Irish Law, it is clear to Blue Ireland and its members that this proposed development, taken in the context of historical and recent decisions taken in its progression to this point, and the data and information provided, and failed to be provided in this planning application, fails comply with the requirements of this directive and its transposition into Irish Law.

In considering the Aarhus Convention, as well as the objectives and requirements of Directive 2003/35/EC (the Public Participation Directive), as well as public participation elements of other Directives of the EU, and

their transposition into Irish Law, it is clear to Blue Ireland and its members that this proposed development, taken in the context of historical and recent decisions taken in its progression to this point, fails comply with the requirements of these Directives and their transposition into Irish Law.

Taken in the broader context of European Convention of Human Rights (ECHR), the protection of biodiversity and the right to a healthy environment, particularly in the context of food security and maintenance of fish and other species stocks, particularly in light of the increasing pressures of climate change, Article 2 of the ECHR (Right to life) does require consideration of strategic decision making in respect of the making and roll out of plans which can have an effect on both climate change and biodiversity loss to ensure that decisions made are effective at optimising those decisions with respect to climate change mitigation, climate change adaptation, biodiversity loss mitigation and biodiversity loss adaptation. These decisions need to be robust in ensuring optimisation of the maintenance of life for current and future generations. This application, and the rules and rights of individuals and organisations around the application, should also be considered in context of Article 6 of the ECHR (Right to a fair trial).

## **Public Participation and the Transition from Foreshore Licensing to the MUL Regime**

A further procedural concern arises from the transition from the foreshore licensing regime under the Foreshore Act 1933 to the Maritime Usage Licence process under the Maritime Area Planning Act 2021. Historically, foreshore licences tended to authorise more tightly defined activities over clearly specified areas and shorter timeframes, and the associated documentation and notices were, in practice, more legible to the public.

By contrast, Phase 1 offshore wind MUL applications seek authorisation for broad, multi-activity programmes over prolonged periods, typically up to five years. In this context, the public-facing record has become increasingly difficult to navigate, with multiple technical documents, screening statements and cross-referenced assessments dispersed across platforms.

This matters because the Maritime Usage Licence is not a neutral or purely administrative step: it is the operative consent enabling environmentally consequential works to proceed over multiple seasons and years. Where the scope and duration of authorised activity has expanded, a corresponding increase in transparency, clarity and accessibility is required to ensure effective public participation, as mandated by the Aarhus Convention and EU public participation law.

# Observations related to the Environmental Impact Assessment

1. The purpose of the works being proposed as part of this Marine Usage License application are unclear. It is clear to us that they are not, as with previous foreshore license and MUL applications, to 'inform the Environmental Impact Assessment for the construction of a windfarm' as the application for a windfarm has already been submitted to *An Coimisiún Pleanála* (then *An Bord Pleanála*) and so the question arises if the currently proposed works are 'to construct a windfarm' or 'form part of the works ancillary to the construction of a windfarm'. In such a scenario, the works would require EIA or to be included in an EIA for the construction of a windfarm. Given that *An Coimisiún Pleanála* have yet to determine the planning application (An Bord Pleanála Case Reference: OA29N.320768), having sought further information from the applicant, it appears that the current MUL cannot be granted in the absence of an EIA in respect of the proposed works.
2. The Marine Usage Licence Constitutes Development Consent for the Purposes of the EIA Directive.

The works proposed under this Maritime Usage Licence authorise intrusive, environmentally impactful activities including drilling, excavation, seabed penetration, acoustic surveying, and the installation of structures. These activities are not merely preparatory in nature but are capable of giving rise to irreversible environmental effects.

In circumstances where the Maritime Usage Licence constitutes the final regulatory authorisation required to permit such works to proceed, it amounts to "development

consent” for the purposes of Directive 2011/92/EU. The granting of such consent cannot lawfully occur in the absence of compliance with the requirements of the EIA Directive, including the obligation to carry out a lawful screening and, where required, a full Environmental Impact Assessment. It is not legally permissible to defer EIA obligations on the basis that a separate consent process for the wind farm as a whole is ongoing, where the present licence independently authorises works forming an integral and enabling component of that development.

### 3. Pre-emption of the Statutory EIA Process

The investigative works authorised under this MUL are expressly intended to inform foundation design, cable routing and construction methodology for the Codling offshore wind project, which is already subject to EIA and determination by An Coimisiún Pleanála.

In circumstances where the environmental assessment of the overall project remains ongoing and unresolved, a determination by MARA that such integral works do not require EIA screening has the effect of pre-empting the statutory role of the planning authority.

By authorising activities forming an integral component of an EIA project and concluding that those activities fall outside the EIA regime, MARA is, in substance, determining the environmental status of part of a project which the Oireachtas has assigned to a different competent authority. This creates jurisdictional incoherence and undermines the integrity of the EIA process as a whole.

### 4. Absence of Strategic Environmental Assessment as a Relevant Context for EIA Screening

The present Maritime Usage Licence application falls to be considered in a wider regulatory context in which Phase 1 offshore renewable energy developments have proceeded in the absence of a comprehensive Strategic Environmental Assessment (SEA), notwithstanding that these developments arise from policy and planning decisions which set the framework for future development consent and engage Natura 2000 sites.

A central purpose of SEA under Directive 2001/42/EC is the identification and assessment of cumulative and in-combination effects across multiple projects, over time and across space. In the absence of such an assessment at strategic level, downstream consents — including Maritime Usage Licences authorising intrusive investigative works — assume heightened importance as decision-points at which cumulative effects must be identified and addressed.

In this context, the determination that EIA screening is not required for the proposed works cannot be considered in isolation. The absence of SEA removes an essential layer of environmental safeguard and correspondingly increases the obligation on the competent authority to apply the Schedule 7 / Annex III screening criteria with particular rigour.

5. With respect to the '*EIA Consideration Form*' completed by MARA on 12 September 2024 (released as part of the application documentation). Based on that review, I submit that:
  - MARA has not carried out a lawful Environmental Impact Assessment (EIA) screening determination in accordance with Irish and EU law.
  - The screening form uploaded as part of the licence application

lacks the minimum legal reasoning required under:

- Directive 2011/92/EU (as amended by Directive 2014/52/EU)
- The Planning and Development Regulations 2001, including Schedule 7
- Section 117(5)(a) of the Maritime Area Planning Act 2021
- Binding decisions of the Court of Justice of the European Union (CJEU)

The resulting conclusion—that no EIA screening is required—is legally unsound.

## 6. Legal Framework Governing EIA Screening

### 6.1 EIA Directive (2011/92/EU, as amended)

Under Article 4 of the Directive, Member States must perform a case-by-case examination for Annex II-type projects, using the assessment criteria in Annex III:

1. Characteristics of the project
2. Environmental sensitivity of the location
3. Characteristics of potential impacts

These criteria are mandatory and must be explicitly assessed.

### 6.2 Irish Transposition (P&D Act 2000; P&D Regulations 2001)

Ireland transposes Annex III through:

- Schedule 5 – Projects requiring EIA or screening
- Schedule 7 – Criteria for determining whether a project requires EIA

### 6.3 Maritime Area Planning Act 2021

Under s.117(5)(a), MARA must evaluate a proposed maritime

usage by reference to:

- Schedule 5
- Schedule 7 of the P&D Regulations

A legally valid determination must show evidence-based consideration of the Schedule 7 criteria.

#### 6.4 CJEU Requirements

EU case law requires that screening decisions must be:

- Complete and specific (C-255/08)
- Based on explicit reasoning, not assertion (C-463/20)
- Sensitive to the location's ecological vulnerability (C-43/18)
- Inclusive of cumulative impacts (C-24/19; C-404/09)

Failure to comply results in the decision being ultra vires.

#### 7. Review of MARA's EIA Consideration Form for MUL230034

The uploaded EIA consideration form (12 September 2024) contains two key findings:

1. That the project is not listed under Schedule 5 Part 1 or Part 2
2. That the boreholes are "shallow" and "therefore exempt," concluding that no EIA screening is required

The form provides no substantive assessment under Schedule 7.

#### 8. Specific Deficiencies in MARA's Screening Evaluation

8.1 Misinterpretation of Schedule 5 – Non-listed projects still require screening

The form implies that if a project is not listed in Schedule 5, EIA screening is not required.

This contradicts EU law:

- C-66/06 confirms that non-listed projects must be screened where significant effects are possible, particularly in sensitive environments.

## 8.2 Lack of any meaningful assessment under Schedule 7

MARA is legally required to assess:

1. Characteristics of the project
2. Environmental sensitivity of the location
3. Characteristics of potential impacts

The form includes no analysis of:

- Marine mammals
- Seabird foraging zones
- Benthic ecology
- Seasonal sensitivities
- Physical disturbance
- Noise impacts from geophysical survey equipment
- Spatial overlap with other offshore surveys
- Absorption capacity of the marine environment

This is a breach of Schedule 7 and Annex III.

## 8.3 Reliance on an Unsettled and Contested Environmental Baseline

A lawful application of Schedule 7 requires that screening be undertaken against a stable and scientifically robust environmental baseline. In the present case, the status of the Codling Bank and the

adjoining Kish/Bray Banks as Annex I “sandbanks slightly covered by seawater all the time” (Habitat 1110) remains the subject of unresolved scientific and regulatory dispute.

The historical reclassification and removal of these features from the national sandbank resource, in circumstances where designation was expressly avoided due to prospective offshore wind development, raises serious concerns as to the integrity of the baseline relied upon in contemporary consenting processes.

In circumstances where the environmental baseline is contested and the receiving environment may in fact constitute Annex I habitat, it is not legally permissible to proceed on the assumption of low sensitivity for the purposes of EIA screening. This uncertainty triggers, rather than excludes, the obligation to apply Schedule 7 and Annex III criteria in full.

#### 8.4 Failure to consider cumulative impacts

The Irish Sea region is subject to:

- Multiple offshore wind survey programmes
- Ongoing construction and survey noise
- Several large-scale renewable energy projects

CJEU case law (C-24/19) requires cumulative impacts to be explicitly assessed at screening.

#### 8.5 Over-reliance on the “deep drilling” threshold

MARA asserts that because boreholes are “shallow”, the project is exempt.

Depth alone cannot lawfully determine screening.

The MUL application repeatedly describes proposed borehole depths as “indicative” and does not propose any binding upper limit which could be relied upon as a worst-case scenario. No justification is provided to demonstrate that the depths cited represent a conservative maximum.

It is not legally tenable to exclude the likelihood of significant environmental effects on the basis of provisional or unfixed parameters. Where uncertainty exists as to the scale or intensity of an activity, Annex III of the EIA Directive requires screening to proceed on the basis of the upper bound of potential effects.

Reliance on indicative depth figures therefore undermines the validity of the screening determination and is inconsistent with the precautionary and effects-based approach mandated by EU law.

#### 8.6 Insufficient reasoning – fails the “show your workings” test

C-463/20 requires competent authorities to demonstrate how they reached their conclusion.

The MARA form contains a single paragraph on environmental considerations and does not identify receptors or assess impact characteristics.

#### 8.7 Failure to Provide and Consider the Information Required Under Schedule 7A

In addition to failing to apply the criteria in Schedule 7, the application documentation does not contain the

minimum information required under **Schedule 7A of the Planning and Development Regulations 2001** to enable a lawful screening determination.

In particular, the documentation lacks sufficient detail in respect of:

- the precise location and spatial extent of individual intrusive works,
- the methodologies to be employed at each location,
- the nature, scale, duration, and intensity of resulting environmental effects, and
- the interaction of these effects with sensitive receptors.

In the absence of this information, MARA could not lawfully determine whether the proposed works were likely to have significant effects on the environment. Any conclusion reached in the absence of such information is therefore procedurally defective and ultra vires.

## 9. Consequence: The EIA Determination is Invalid

Because MARA did not:

- Apply Schedule 7
- Consider Annex III criteria
- Provide adequate reasoning
- Consider cumulative impacts
- Assess environmental sensitivity

the determination that “EIA screening is not required” is procedurally unlawful and contrary to both Irish and EU law.

## 10. Request to MARA

In light of the deficiencies identified above, I respectfully request that:

- (1) MARA withdraw the current EIA Consideration Form for MUL230034
- (2) That a new, legally compliant EIA screening be undertaken
- (3) That a reasoned, evidence-based screening conclusion be provided

## 11. Manufactured Exemption from the EIA Regime

Taken together, the absence of strategic environmental assessment, reliance on a contested and potentially degraded environmental baseline, improper elevation of borehole depth as a determinative criterion, reliance on indicative parameters, and the pre-emption of the planning authority’s EIA role amount to a manufactured exemption from the EIA regime which has no basis in EU law.

In such circumstances, rigorous case-by-case screening under Schedule 7, applying the Annex III criteria in full,

is unavoidable. The determination that no EIA screening is required is therefore legally unsustainable.

12. Conclusion

The current MARA EIA Consideration Form does not fulfil the legal requirements governing EIA screening. It omits mandatory analyses, applies incorrect legal tests, and lacks the reasoning required by both national and EU law.

I therefore request that a new, lawful screening determination be issued before proceeding further with Licence MUL230034.

MARA must ensure that any screening determination provided is legally compliant and is not *ultra vires* the remit of the authority that issues it.

# **Observations related to Article 12 to 16 of the Habitats Directive (92/43/EEC) and its Transposition into Irish Law**

Where works, such as that which is proposed in this MUL application, will be required to derogate from Article 12 of the Habitats Directive (under Article 16) it will be required that the consenting authority consider such a derogation prior to granting planning consent, and provide an opportunity for public consultation of the considerations of same. The current approach by the state to the transposition of Article 12-16 of the Habitats Directive, which allows the developer to determine if a derogation license is required does not obviate the responsibility on the state to comply with Article 12-16 of the Habitats Directive. In the current situation, where the developer believes that a derogation license is not required, it falls on the consenting authority, as an instrument of the state, to determine if a derogation license is required and, if it believes that such a derogation license is required, must reject the application in its absence. Failure to do so would constitute a failure to comply with Article 12-16 of the Habitats Directive.

While we have no visibility of the derogation license, the application for the same or the assessment of the same, and, in fact, at present, the derogation license list is publicly unavailable on both the gov.ie site and on the EU site, we make the below comments in respect of a potential issuing of a derogation license to the applicant.

- Given the lack of adequate consideration of 'satisfactory alternatives' provided for in the application, or ever considered, with respect to the project proposal in question, a derogation under Article 16 of the HD cannot be legally granted.
- We urge the MARA, when assessing this application with respect to Article 12-16, as well as Article 6(3), to consider the results of the ObSERVE 2 study, recently published, along with the SCANS IV study and the declines observed in European Protected Species (EPS) within their range. Particularly with respect to the Harbour Pospoise, which has 'breeding sites or resting places' (as per Article

12(d)), which overlap with the MUL license area. In particular, but not exclusively, the *Rockabill to Dalkey Island SAC*, which was designated for this QI as it is **essential for the breeding and maintenance of the species**.

- A 2021 study observed a 46% reduction in the harbour porpoise density of the Rockabill to Dalkey Island SAC (Burrows, S, et al. 2021). Harbour porpoises, with a high metabolic rate, forage almost constantly, 24 hours a day, to meet their energy needs. The small size of the harbour porpoise limits the amount of stored energy it can carry, and it can only survive a few days without feeding. Given the already reduced population, this would indicate that the population of the SAC already has limited food supply and disturbance, even if limited in duration, would result in a significant likely effect on the QI of the SAC, as well as a likely impact on the Annex IV species within their range. The reduced population density Harbour Porpoises within the *Rockabill to Dalkey Island SAC*, is likely a result of regular and persistent geophysical and geotechnical surveys by phase 1 and phase 2 foreshore license activities in and around the *Rockabill to Dalkey Island SAC* and in the broader MU. This included unregulated and unlicensed activities by Codling Wind Park and its contractors, which had no associated appropriate assessment, specifically, the use of an airgun on the 12th May 2021 and the failure to comply with statutory 2014 Marine Mammal Guidelines and the conditions of their licence. In the absence of Irish guidelines we would recommend that in determining Effective Deterrent Ranges and the level of disturbance in SACs that constitutes a Likely Significant Effect, that the MARA follow the JNCC '[Guidance on noise management in harbour porpoise SACs \(2020\); and New updated Effective Deterrent Ranges \(2025\)](#)'.  
[Guidance on noise management in harbour porpoise SACs \(2020\); and New updated Effective Deterrent Ranges \(2025\)](#)'.
- The Conservation Objectives of the *Rockabill to Dalkey Island SAC* state that:

The favourable conservation status of a species is achieved when:

  - population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

Favourable conservation status of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable

Given the population dynamics of the SAC and the nature of the disturbance caused by multiple activities over the past 25 years, it is difficult to see how the proposed MUL in question would not have an in-combination likely significant effect on the SAC or on the species in their range, taking into account the local Harbour Porpoise population dynamics, their site fidelity and the locations of their '*breeding sites or resting places*'.

- In addition to disturbance, there remains a real risk of PTS to local populations both as a result of SBP and unintended UXO detonation (as well as UHRS and USBL). These risks have been inadequately addressed in the documents accompanying the MUL application. Inadequate assessment of Sound Exposure Level (SEL), in particular cumulative SEL (SEL<sub>cum</sub>) with respect to non-impulsive sound sources (e.g., SBP) has been carried out, in accordance with the best available evidence and most up-to-date Scientific data, including but not limited to, Southall et al. (2019).
- 'Airgun, if required' is included in p 87 of the NIS but no assessment of airgun activities has been carried out, creating a lacuna in the Habitats Directive Assessment.
- Cumulative impact of ongoing geophysical activities on receiving marine mammals and other species, as well as cumulative impact of geophysical in-combination with other activities within the activities

proposed in this MUL, have not, or not adequately, been carried out. Furthermore, given the proposed 5 year duration of the proposed works, it seems very likely that they will be carried out in parallel with construction activities of phase 1 or other ORE projects (e.g., phase 2, SC-DMAPs) and yet no adequate assessment of these in-combination effects have been undertaken.

### **Absence of Sufficient Precision and Certainty in the Description of Works:**

The application documentation repeatedly relies on indicative locations, flexible methodologies, and undefined parameters for intrusive survey activities. This lack of precision undermines the ability of the competent authority to carry out either a lawful Appropriate Assessment or EIA screening.

Where the location, timing, and nature of works are not defined with sufficient certainty, it is not possible to reach complete, precise, and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed activities, as required by Article 6(3) of the Habitats Directive and settled CJEU jurisprudence.

The absence of such certainty is not a minor procedural defect but goes to the jurisdiction of the authority to grant consent.

## Specific Failures of the current MUL Application

### 1. Failure to Carry Out a Lawful EIA Screening Determination

The applicant and MARA have proceeded on the basis that the proposed marine survey activities authorised under Maritime Usage Licence **MUL230034** do not require Environmental Impact Assessment (EIA) screening, on the grounds that the activities are not listed under Schedule 5 of the Planning and Development Regulations 2001 or are below specified thresholds.

This approach is **not consistent with Irish or EU law**.

Under **Article 4 of Directive 2011/92/EU**, as amended, and its transposition through the Planning and Development Regulations 2001, **EIA screening is mandatory for any Annex II-type project where there is a risk of significant environmental effects**, having regard to the criteria set out in **Annex III of the Directive**, transposed in Ireland as **Schedule 7**.

It is well-established in CJEU jurisprudence (including *C-66/06 Commission v Ireland* and *C-43/18*) that:

- The absence of a project from a schedule or the fact that it falls below a numerical threshold **does not remove the obligation to carry out a reasoned screening**, particularly where the project is located in an environmentally sensitive marine area.
- Competent authorities must examine **project characteristics, environmental sensitivity of the location, and potential impacts**, including cumulative impacts, before concluding that EIA is not required.

The EIA consideration for MUL230034, as published, does not demonstrate a lawful application of these criteria and therefore does not constitute a valid EIA screening determination.

### 2. Inadequate Application of Schedule 7 / Annex III Criteria

Although MUL230034 is accompanied by a substantial documentation pack (including an AIMU and a Natura Impact Statement), the decision that **EIA screening is not required** is not supported by a substantive assessment of the mandatory **Schedule 7** criteria.

In particular, the documentation does not demonstrate a reasoned evaluation of:

- The **characteristics of the proposed survey activities**, including seabed disturbance, underwater noise, duration, intensity, repetition, and spatial extent;
- The **environmental sensitivity of the receiving marine environment**, including the presence of protected species, important ecological functions, and the limited capacity of the marine environment to absorb repeated disturbance;
- The **characteristics of potential impacts**, including magnitude, duration, reversibility, seasonal sensitivity, and spatial overlap with sensitive receptors.

The reliance on the fact that boreholes or other intrusive elements are described as “shallow” or below “deep drilling” thresholds is not a lawful substitute for a full Schedule 7 assessment. EU law requires an effects-based evaluation, not a categorical or threshold-only approach.

### **3. Cumulative and In-Combination Effects Remain a Live Issue at Screening Stage**

While the AIMU and NIS for MUL230034 now refer to other offshore wind projects and activities in the wider Irish Sea, this does not remove the obligation to consider **cumulative effects at the EIA screening stage itself**.

The survey activities proposed under MUL230034 form part of a **long-running and intensive sequence of marine investigations** associated with multiple offshore renewable energy projects in the region. Even where individual survey campaigns are described as temporary or limited, their **cumulative contribution to disturbance, noise exposure, seabed modification, and displacement pressure** must be assessed when determining whether EIA is required.

CJEU case law (including *C-24/19* and *C-404/09*) makes clear that cumulative effects cannot be deferred entirely to later stages where they are relevant to the screening question of whether significant effects are likely.

### **4. Appropriate Assessment Does Not Displace the EIA Obligation**

The presence of a Natura Impact Statement and an Appropriate Assessment process for MUL230034 does **not negate or replace** the obligation to carry out EIA screening.

EIA and Appropriate Assessment are **distinct legal regimes** with different objectives and scopes. A conclusion under Article 6(3) of the

Habitats Directive cannot be relied upon to justify the absence of EIA screening, particularly where:

- Impacts on the wider marine environment (outside designated sites),
- Cumulative pressures,
- Non-habitat-specific effects (e.g. noise, displacement, sediment disturbance),

are at issue.

The two assessments must proceed independently, and compliance with one does not cure deficiencies in the other.

## **5. Insufficient Reasoning and Failure to “Show the Workings”**

Recent CJEU case law (notably *C-463/20*) requires that screening determinations must be **reasoned, transparent, and capable of being understood and reviewed by the public.**

In the case of MUL230034:

- The conclusion that EIA screening is not required is not supported by a documented, criterion-by-criterion assessment under Schedule 7;
- There is no clear explanation of why identified pressures are considered incapable of giving rise to significant effects;
- The decision relies heavily on categorisation and assertion rather than evidence-based evaluation.

As a result, the public is not in a position to understand how MARA reached its conclusion, which undermines the requirements of transparency and public participation underpinning the EIA Directive.

## **6. Ongoing Concerns Regarding Access to Environmental Information**

While more documentation is now publicly available for MUL230034 than was historically the case for earlier survey licences, meaningful public participation remains constrained by the **absence of access to underlying environmental datasets**, including raw or processed survey outputs.

Without access to these data, it is not possible for observers to independently assess:

- Baseline assumptions,
- Trends over time,
- The cumulative footprint of repeated survey activity.

This continues to raise concerns under the principles of the **Aarhus Convention** and EU environmental law regarding effective public participation in environmental decision-making.

### **7. Lack of Demonstrated Scientific and Technical Expertise**

The determination of whether the proposed activities are likely to give rise to significant effects on the environment and on protected species requires a level of scientific and technical expertise in marine ecology, underwater acoustics, and cumulative impact assessment.

The documentation does not demonstrate that MARA had access to, or relied upon, the requisite expertise when concluding that EIA screening was not required, nor does it explain how complex issues such as cumulative sound exposure, displacement, and habitat disturbance were evaluated.

In the absence of such expertise, the authority could not lawfully discharge its obligations under the EIA and Habitats Directives.

## **Screening for Appropriate Assessment: reliance on circular reasoning and unproven assumptions**

The AA screening documents submitted in support of the MUL repeatedly conclude that there is “no potential for adverse effects on site integrity” on the basis that effects are short-term, spatially limited, or occur against a background of existing disturbance. These conclusions are not supported by a precautionary or evidence-based assessment, but instead rely on a series of circular assumptions.

A recurring pattern is the assertion that disturbance effects are negligible because activities are of limited duration at any one location, without any meaningful consideration of repetition, spatial spread across the sandbank, or cumulative exposure over the five-year licence period. This approach fragments the assessment into isolated survey events and ignores the reality that Codling Bank would be subject to repeated acoustic, physical and vessel-related disturbance over multiple seasons, including biologically sensitive periods.

Similarly, the screening repeatedly asserts that seabirds are “accustomed” to baseline vessel traffic and therefore unlikely to respond significantly to additional disturbance. This reasoning has been expressly challenged by the Commission in the Codling planning RFI, which noted that habituation cannot be assumed and that displacement effects vary with species, season, distance from colonies and habitat quality. The MUL screening nevertheless continues to rely on this assumption without supporting evidence specific to Codling Bank.

In multiple instances, the absence of site-specific data is used to justify screening out effects, rather than triggering a precautionary conclusion that significant effects cannot be excluded. This inversion of the precautionary principle is particularly evident in relation to underwater noise, where uncertainty regarding behavioural and energetic impacts on seabirds and

marine mammals is treated as evidence of no effect.

## **Ornithological misclassification, screening-out of sensitive species, and methodological flaws**

The AA screening systematically underplays or screens out effects on seabird species that are known, on the Commission's own findings, to be sensitive to disturbance and displacement in nearshore wind farm contexts. Species such as red-throated diver, black-legged kittiwake, guillemot, razorbill and European shag are repeatedly assessed using assumptions and thresholds derived from offshore or North Sea projects that are materially different in location, bathymetry and proximity to colonies.

In the Codling planning process, the Commission explicitly rejected similar screening-out approaches, requiring revised displacement buffers, revised population baselines and the use of more precautionary displacement and mortality rates. The fact that analogous assumptions reappear at MUL stage — despite the MUL authorising enabling works that precede and facilitate the main development — highlights a systemic attempt to minimise effects at the earliest consent stage.

Particularly problematic is the treatment of disturbance as biologically trivial on the basis that birds can “fly away” or that underwater hearing in birds is limited. These arguments ignore well-established evidence that repeated disturbance leads to loss of foraging time, increased energetic costs, reduced prey capture efficiency and, at population level, reduced survival or breeding success. The Commission's RFI explicitly recognises these pathways, yet the MUL AA screening fails to engage with them in any meaningful way.

The screening approach set out at page 89 of the SISAA relies on a fundamentally flawed premise: that the significance of effects on seabirds can be discounted where the Licence Area represents a “negligible proportion” of an assumed, very large foraging range derived from distant breeding colonies. This framing is methodologically and legally unsound.

The SISAA states that, for species with large mean–maximum foraging ranges, including gannet and Manx shearwater, the screening search distance was capped at 500 km, and that for SPAs beyond this distance “the potential for sites beyond 500 km to occur within the ZoI of the Proposed Activities is considered negligible.” This reasoning is then used to conclude that no route to likely significant effects exists.

This approach misconstrues the ecological reality and misapplies Article 6(3) of the Habitats Directive. Gannet is not a distant or occasional receptor whose relevance depends on hypothetical long-range colony linkage. It is a routinely present species within the Irish Sea, including the Codling Bank area, using these waters year-round for foraging and transit. Gannets breed at multiple colonies along the Irish coast, including colonies within tens of kilometres of the Licence Area, and individuals from these colonies are known to forage extensively in nearby offshore waters. Their presence and vulnerability to disturbance in the Licence Area does not depend on whether a particular individual originated 20 km or 400 km away.

Once birds are present within the Licence Area, the effects of disturbance, displacement, loss of foraging opportunity, increased energetic expenditure, and prey-mediated impacts are experienced locally and immediately. These effects do not diminish because the Licence Area represents a small percentage of a species’ theoretical maximum foraging range. The SISAA’s reliance on proportionality of foraging range therefore addresses the wrong question. Article 6(3) does not require that an area constitute a “core” or “significant proportion” of a species’ range; it requires assessment of whether activities may adversely affect the conservation objectives of SPAs through disturbance or habitat degradation affecting SPA feature species, including when those effects occur outside designated boundaries.

The use of a 500 km cap in the SISAA functions as a methodological device to deflect attention away from local ecological use of the Codling Bank area.

By framing gannet primarily as a long-distance breeder and dismissing impacts on the basis of negligible proportional overlap, the screening avoids engaging with the fact that gannets are already present in the area in significant numbers and are therefore directly exposed to repeated disturbance from intrusive survey activities. This is not a precautionary assessment but a dilution of impact through abstraction.

The same flaw is evident in the treatment of breeding kittiwake. Wicklow Head SPA supports a breeding kittiwake population that has experienced a documented decline of approximately 36%, reflecting reduced resilience and heightened sensitivity to additional pressures. Kittiwake is a disturbance-sensitive species whose foraging behaviour, prey capture efficiency and breeding success are known to be affected by repeated disturbance and prey displacement in nearshore and offshore environments. As with gannet, kittiwake is protected under the Birds Directive throughout its natural range, not solely within SPA boundaries or during direct commuting from colonies.

The SISAA nevertheless concludes that displacement of prey species and associated effects on breeding kittiwake are “negligible” because activities are localised and of short duration at any one location. This conclusion is reached without consideration of repetition, cumulative exposure over the multi-year licence period, or the fact that even short-term prey disruption within regularly used foraging areas can have disproportionate effects on breeding success in declining populations. The assertion that “the vast majority of SCI prey species would experience no impacts” is legally irrelevant: Article 6(3) is concerned with whether adverse effects on site integrity can be excluded, not with whether impacts are numerically dominant or widespread.

In both cases, the SISAA substitutes a false ecological premise for proper assessment. By focusing on hypothetical distant colony linkage and proportional range overlap, it obscures the reality that gannet and kittiwake

are locally present, functionally reliant on the Codling Bank system, and exposed to repeated disturbance from the proposed activities. This mischaracterisation allows real and credible impact pathways — including displacement, loss of foraging opportunity, increased energetic cost, and prey-mediated effects — to be screened out without proper analysis.

Accordingly, the conclusions reached at SISAA page 89 do not exclude the possibility of likely significant effects beyond reasonable scientific doubt. They rest on a methodological deflection rather than an assessment of how protected seabirds actually use the Licence Area and how repeated intrusive activities may affect them. This renders the screening conclusions for gannet and breeding kittiwake unsound under Article 6(3) of the Habitats Directive.

Further, the applicant's use of breeding foraging-range metrics as a proxy for impact relevance conflates colony linkage with ecological use and ignores resident, non-breeding and post-breeding assemblages that are present irrespective of distance to breeding sites. MARA should be aware that foraging-range metrics were developed for SPA identification, not for impact screening, and they say nothing about density, residency, frequency of use, or vulnerability to disturbance. Critically, these metrics do not apply to non-breeding life stages or to post-breeding and overwintering assemblages. The methodology applied therefore collapses three distinct ecological realities — resident presence, non-breeding and immature birds, and post-breeding or overwintering assemblages — into a single distance-based proxy, resulting in systematic under-representation of seabird use and impact risk.

Seabirds forage in highly patchy, structured marine systems rather than across homogeneous areas of open sea. Foraging effort is driven by a combination of bathymetry, sediment type, prey aggregation (notably sandeel and other forage fish habitat), and hydrodynamic features such as fronts, banks and tidal shear. As a result, seabirds concentrate activity into

small, predictable, repeatedly used areas — including sandbanks, shelf breaks and frontal zones — exactly the type of habitat represented by Codling Bank.

Expressing impact as a proportion of an arbitrarily large foraging range therefore dilutes risk mathematically rather than assessing functional habitat loss, contrary to established seabird ecology. Statements such as “the proportion of the foraging range occupied by the Licence Area is negligible” appear quantitative but are ecologically meaningless. Foraging ranges are statistical envelopes, not areas of uniform use, and they provide no information about density, residency, frequency of use, or ecological importance of specific locations. Population-level effects do not scale linearly with area: the loss or degradation of a small proportion of high-value functional habitat can have far greater consequences than the loss of large areas of low-use habitat. This spatial dilution approach therefore systematically underestimates risk and cannot support screening-out conclusions.

Where a key foraging area is removed or degraded, impacts cannot be compensated for by the mere existence of unused habitat elsewhere. Instead, birds incur increased travel costs, reduced foraging efficiency, heightened competition, and displacement into suboptimal habitat, with knock-on effects for survival and breeding success. This is why the loss of as little as 1–2% of functional foraging habitat can have disproportionate population effects, while the loss of extensive areas of rarely used habitat may have little measurable impact.

This understanding is now well established in the scientific literature, including displacement and population-level modelling by Peschko et al., Horswill et al., and the OSPAR (2022) synthesis on offshore wind impacts, all of which recognise habitat loss and functional displacement — rather than collision or injury alone — as primary drivers of seabird population effects.

Notably, similar attempts to dilute impact by reference to large foraging envelopes were expressly rejected by An Coimisiún Pleanála during the Codling Wind Park planning process, where the Commission required revised displacement buffers and more precautionary treatment of functional habitat loss, confirming that this methodology is not an acceptable basis for screening or assessment.

A further recurring methodological flaw in the AA and SISAA screening is the implicit treatment of seabird mobility as evidence of resilience, whereby disturbance is dismissed on the basis that “birds can fly away”, ignoring the well-established ecological reality that repeated disturbance leads not to harmless avoidance but to functional habitat loss through displacement, increased energetic expenditure, reduced foraging efficiency, heightened competition in remaining habitat, and cumulative exposure over time; this logic has been consistently rejected in both CJEU case law and An Coimisiún Pleanála practice, which recognise that the capacity to flee does not negate impact where disturbance is repeated, predictable, and associated with loss of high-value foraging areas rather than mortality. Treating mobility as resilience in this way collapses displacement into insignificance and wrongly substitutes behavioural capacity for ecological consequence.

## **Baseline normalisation via “existing disturbance”**

A further methodological distortion running through the AA and SISAA screening is the repeated invocation of existing vessel traffic and background activity to dilute the significance of additional disturbance. The Codling Bank and surrounding waters are repeatedly characterised as a “working seascape” in which seabirds and other receptors are said to be accustomed to disturbance, and on that basis further pressure is treated as marginal. This reasoning is flawed both ecologically and legally. It normalises prior degradation, erases cumulative thresholds, and converts historical or ongoing harm into a justification for authorising new impacts. In effect, the baseline against which effects are assessed is silently shifted from an ecological reference condition to an already-degraded state, a classic shifting-baseline fallacy. EU environmental law does not permit incremental harm to be screened out simply because similar pressures already exist; on the contrary, the presence of existing disturbance heightens, rather than reduces, the need to consider additive and synergistic effects. Screening that treats background pressure as a reason to discount further impact is therefore incapable of excluding likely significant effects, particularly in a context such as the Irish Sea where cumulative anthropogenic pressure is already high.

## **Screening out migratory and passage birds through lifecycle omission**

The screening approach further marginalises migratory and passage seabirds by filtering ecological relevance through breeding SPA criteria, despite the Birds Directive requiring protection of birds throughout their lifecycle and across their full range. Migratory and passage birds are acknowledged in principle within the documentation, but are then effectively excluded from assessment because they are not linked to breeding SPAs within defined foraging distances, or because the Licence Area is said not to constitute a “core” breeding foraging area. This conflation of designation logic with impact assessment is legally incorrect. The Birds Directive explicitly requires protection of migratory routes, staging areas, and regularly used marine areas irrespective of breeding status or colony linkage. Appropriate Assessment must therefore consider functional ecological use — including passage, staging, moulting and overwintering assemblages — rather than relying on administrative SPA criteria as a proxy for impact relevance. Screening that omits these life stages is not precautionary and cannot exclude effects on protected bird populations.

## **Methodological opacity, with reliance on generic guidance**

Finally, the assessment exhibits a recurring tendency to substitute generic guidance and “standard practice” for site-specific ecological analysis. Repeated references are made to following published guidance, industry norms, or commonly applied screening distances, without confronting the particular ecological characteristics of Codling Bank or the most recent evidence on species status and sensitivity. Guidance documents are tools, not determinants; they do not override local density, functional habitat importance, or documented population decline. This is especially problematic for species such as kittiwake, which are experiencing significant regional declines and heightened sensitivity to disturbance and prey limitation. Reliance on generic thresholds in the face of site-specific evidence creates methodological opacity: it obscures the reasoning by which impacts are dismissed and prevents meaningful scrutiny of whether the guidance applied is appropriate to the receiving environment. EU law requires that screening decisions be reasoned, evidence-based, and responsive to local conditions; uncritical adherence to generic guidance cannot satisfy that standard.

## **Failure to integrate habitat degradation and prey effects**

The screening focuses narrowly on direct disturbance to individual birds, while failing to consider indirect effects mediated through habitat degradation and prey availability. Codling Bank supports benthic and pelagic communities that are sensitive to increased turbidity, sediment resuspension, compaction and physical disturbance.

The NPWS Reef Condition Report (2024) explicitly identifies sedimentation, smothering and repeated physical disturbance from marine activities, including offshore wind exploration, as pressures capable of degrading benthic structure and function. These effects are directly relevant to Codling Bank, where intrusive surveys may alter sediment dynamics and reduce prey availability for seabirds and fish. Yet such pathways are either dismissed or not addressed at all in the screening.

By isolating disturbance effects from habitat and food-web effects, the screening fails to assess the full ecological pathway by which survey activities may undermine SPA conservation objectives.

# **Failure to Adequately Assess the Application Against the National Marine Planning Framework (NMPF)**

## **1. Statutory Status of the NMPF**

The National Marine Planning Framework (NMPF) is Ireland's statutory marine spatial plan, adopted under the EU Maritime Spatial Planning Directive (2014/89/EU) and given legal effect in Irish law. Public authorities, including the Maritime Area Regulatory Authority (MARA), are required to apply and give effect to the NMPF when exercising functions in the maritime area, including the determination of Maritime Usage Licence applications.

Accordingly, compliance with the NMPF is not discretionary or aspirational; it is a mandatory consideration forming part of the lawful decision-making framework for this application.

## **2. High-Level Policy Referencing Does Not Constitute a Lawful NMPF Assessment**

While the MUL230034 application documentation refers to the NMPF and identifies certain relevant policies, the assessment provided is high-level, descriptive, and largely declaratory. It does not demonstrate a substantive evaluation of the impacts of the proposed maritime usage against the objectives and policies of the NMPF.

In particular, the documentation largely asserts policy consistency on the basis that the proposed activity supports offshore renewable energy development, without undertaking the multi-objective balancing exercise required by the NMPF.

## **3. Failure to Assess Environmental Protection and Biodiversity Policies in Substance**

The NMPF contains clear and binding policies relating to:

Protection of marine biodiversity and ecosystem functioning

Application of the precautionary approach

Avoidance and minimisation of harm

Maintenance of ecosystem resilience

Management of cumulative pressures in the marine environment

The application does not demonstrate how the proposed survey activities have been assessed against these environmental protection policies in their own right, as distinct from project-level mitigation or Appropriate Assessment considerations.

Reliance on the existence of a Natura Impact Statement or Appropriate Assessment process does not discharge the obligation to assess consistency with NMPF environmental policies, which apply more broadly than designated European sites and address cumulative and spatial pressures at the plan-led level.

#### 4. Absence of Cumulative Spatial-Planning Analysis

A central purpose of the NMPF is to manage cumulative and in-combination pressures arising from multiple activities within the same marine space over time.

While the application refers to other projects and activities in a descriptive manner, it does not provide a clear assessment of:

The cumulative spatial footprint of repeated marine surveys in the area;

The contribution of the proposed activities to long-term disturbance or pressure;

The capacity of the receiving marine environment to absorb such pressures without degradation;

How these cumulative pressures are reconciled with NMPF objectives for ecosystem protection and sustainable use.

As such, the NMPF assessment does not fulfil its spatial-planning function.

## 5. Failure to Identify and Resolve Policy Tensions

The NMPF explicitly recognises that tensions may arise between competing marine objectives, including renewable energy development, biodiversity protection, fisheries, and ecosystem integrity.

A lawful application of the NMPF requires:

- 1) Identification of relevant and potentially competing policies;
- 2) Consideration of how the proposed activity interacts with each; and
- 3) A reasoned explanation of how conflicts are avoided, mitigated, or resolved.

The MUL230034 documentation does not clearly identify such policy tensions or explain how they have been resolved. Instead, it proceeds on the basis that support for renewable energy development is sufficient to establish overall policy compliance.

This approach is inconsistent with the NMPF's integrated and balanced decision-making framework.

## 6. Consequences for Lawful Decision-Making

Because the application does not demonstrate a substantive, balanced, and evidence-based assessment against the full suite of relevant NMPF policies, the decision-maker cannot be satisfied that the proposed maritime usage complies with the NMPF.

In the absence of such an assessment, any conclusion that the application is consistent with the NMPF would be inadequately reasoned and vulnerable to challenge.

## 7. Requested Action

In light of the above, it is respectfully requested that MARA:

Require a revised and substantive assessment of the proposed maritime usage against the NMPF;

Ensure that environmental protection, cumulative pressure, and spatial-planning objectives are assessed independently and explicitly; and

Demonstrate how potentially competing NMPF policies have been identified, balanced, and resolved in reaching any licensing decision.

## 8. Failure to Adequately Assess the Application Against the NMPF

The application and accompanying assessments fail to consider the proposed activities in combination with relevant plans and programmes, including the Offshore Renewable Energy Development Plan (OREDPA) and other strategic instruments governing offshore renewable development.

Article 6(3) of the Habitats Directive requires that plans and projects be assessed in combination with other plans and projects capable of affecting European sites. This obligation is not limited to individual consents but extends to strategic and programmatic frameworks which shape the scale, intensity, and sequencing of activities in the marine environment.

The absence of such plan-level in-combination analysis further undermines the lawfulness of the assessments relied upon in support of this application.

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