



*Killiney Bay Community Council (KBCC) is a long-established coastal community group, active for over 33 years and representing local residents who are deeply committed to the protection, conservation, and sustainable development of our marine and coastal environment. We have consistently engaged with relevant planning and policy processes, including submissions on foreshore licence applications, Marine Protected Area (MPA) legislation, DMAPs, marine planning consultations and the Citizens' Assembly on Biodiversity. Our approach is rooted in advocating for ecosystem-based marine planning and the designation of MPAs to protect and restore biodiversity and coastal integrity in the public interest.*

22 December 2025

By email to: [licence@mara.gov.ie](mailto:licence@mara.gov.ie)

KBCC wishes to make the following submission on MUL230034 as part of the public consultation phase for this project application. We note that closing date and time for submissions from the public is 17.30 on 22.12.2025.

We wish to note at the outset a procedural (and Aarhus related) concern about the transition from the foreshore licensing regime under the Foreshore Act 1933 (as amended) to the Maritime Usage Licence (MUL) process under the Maritime Area Planning Act. In our experience, foreshore licences tended to authorise more tightly defined sets of activities over clearly specified areas and shorter timescales, and the associated documentation, notices and oversight mechanisms were, in practice, more legible to the public than the current MUL process.

By contrast, Phase 1 offshore wind MUL applications seek authorisation for broad, multi-activity programmes over prolonged periods (typically up to five years), in circumstances where, as we have underlined already to MARA, the public-facing record can be difficult to navigate and where the practical ability of the public to understand, scrutinise, and meaningfully participate appears, as we have complained, reduced. This matters because the MUL is not a neutral administrative step: it is the operative consent enabling environmentally consequential works to proceed over multiple seasons and years.

We also note, by way of illustration, that recent MUL consultations (including for North Irish Sea Array) appear to have attracted very limited public participation, which in turn raises questions about accessibility and transparency of the process. Whatever the reason for that low engagement, it underscores the need for MARA's screening and decision record to be particularly clear, complete, and independently reasoned, rather than reliant on applicant characterisations and assumptions.

It is also relevant to note that, during earlier survey activity within the Codling Bank area in 2025, vessels later confirmed by MARA and Codling Wind Park Ltd to be operating on its behalf were observed transiting and operating over the site for a prolonged period (circa two months) without any contemporaneous indication that MARA was aware of, or actively tracking, those activities. MARA's awareness of the operations arose only after members of the public (also KBCC) raised queries and requested that the activity be examined. This episode is not cited to allege any non-compliance, but to illustrate a material due-diligence concern: namely, that public and community monitoring was, in practice, more informed than the regulator as to what was occurring on site. In the context of a five year Maritime Usage Licence authorising intrusive and noise-generating activities, this raises legitimate questions as to MARA's capacity to maintain a real-time, accurate understanding of site activity of several MUL offshore campaigns, operating from Dundalk to Wexford, often contemporaneously. From MARA's own records, there appears to be in the nature of 65 licences issued as determined and therefore potentially operative over and without Ireland's marine commons: <https://www.maritimeregulator.ie/our-work/maritime-usage-licences/applications-determinations/>

## 1) Nature of the proposed activities

The Maritime Usage Licence application submitted by Codling Wind Park Ltd seeks authorisation for an extensive programme of offshore works which the applicant repeatedly characterises as “survey”, “investigation” or “exploratory” in nature. This characterisation underpins the applicant and MARA’s screening conclusions for both Appropriate Assessment (SIAA) and Environmental Impact Assessment. However, when the activities are examined in substance rather than by labelling, the proposed works cannot credibly be regarded as low-impact, transient in effect, passive or preliminary.

The AA Screening document states that the Proposed Activities are “temporary, localised and reversible” and that they “do not constitute construction works” (AA Screening, Conclusions section). Similarly, the NIS (and updated NIS) and SISAA repeatedly frames the works as short-duration interventions with “limited spatial footprint” and “no lasting alteration of seabed structure” (SISAA, screening rationale). These assertions are presented as statements of fact, rather than as conclusions reached following objective scientific analysis.

In reality, the application seeks consent for a five year programme of intrusive seabed investigations, including geotechnical boreholes, cone penetration testing, vibrocores, grab sampling, trial pits, sub-bottom profiling and repeated vessel-based acoustic survey activity, across a wide coastal marine area. The application proposes sub-bottom profiling and other active acoustic survey techniques which engage the same ecological impact pathways as seismic-type sources for marine mammals, fish and prey species, notwithstanding the applicant’s avoidance of that terminology, e.g ‘seismic’. It should be noted that these activities involve physical penetration of the seabed to depth, sediment displacement, compaction, generation of turbidity plumes, and repeated acoustic disturbance. They are not observational or unintrusive in character.

Under EU environmental law, the legal nature of an activity is determined by its effects, not by the terminology used by the applicant. Drilling, excavation and repeated seabed penetration are not rendered environmentally neutral by describing them as surveying. As the ECJ has repeatedly held, activities which materially alter the physical environment must be assessed by reference to their environmental consequences, irrespective of whether they are framed as preparatory or ancillary, or as separate to construction phases.

The applicant’s own documentation implicitly acknowledges the intrusive nature of the works. For example, the updated NIS text states that “geotechnical borehole drilling may occur over several days at a given location” and that surveys may generate “novel forms of underwater noise” (Updated NIS doc, noise assessment sections). Yet these acknowledgements are immediately followed by assertions that such effects are negligible because of their short duration at each location, without any consideration of repetition, or overlap, or cumulation,/in-combination consequences, across the licence area or over the five-year licence period.

KBCC is concerned that this framing could create a false dichotomy between “survey” and “development”. In ecological terms, they function as de facto site preparation, progressively conditioning the Codling Bank and associated sandbank system for future development while degrading habitat structure and function in advance of any project-level consent.

This is particularly problematic in the context of marine environments, where recovery processes are uncertain, monitoring is limited, and baseline conditions are already incompletely independently assessed. The applicant’s assumption that seabed disturbance from boreholes and penetration testing is inherently reversible is asserted rather than demonstrated. No evidence is presented in the screening documentation to show that repeated penetration and compaction of mobile sandbank and coastal sediments does not result in cumulative degradation of benthic communities or sediment structure and surrounding reef habitat, such as Wicklow Reef SAC.

The applicant's approach appears to mask the true nature of the proposed works and sets the foundation for flawed screening conclusions. The screening process avoids confronting the scale, intensity of the intervention being authorised. This is central to the exclusion of Environmental Impact Assessment for this application and materially shapes the process in a manner that could inhibit a comprehensive Appropriate Assessment, as required by Article 6(3) of the Habitats and Birds Directive, namely one that identifies all potential impact pathways, is based on complete and precise information, and excludes adverse effects on site integrity, beyond reasonable scientific doubt.

## **2) MARA's assessment framework, EIA gatekeeping and potential threshold avoidance**

The Maritime Area Regulatory Authority proposes to determine the Codling Wind Park Maritime Usage Licence application on the basis that Environmental Impact Assessment is not required concluding that the proposed activities do not fall within Schedule 5 -7 of the Planning and Development Regulations and therefore do not require EIA screening.

The reasoning underpinning this conclusion is strikingly thin. The EIA Consideration Form, in which underwater noise impacts are not mentioned, asserts that the proposal is not a Schedule 5 project and that the boreholes are "shallow" and therefore exempt, before concluding that "no EIA screening is required". There is no substantive engagement with the mandatory screening criteria under Schedule 7 of the Regulations, which transpose Annex III of the EIA Directive.

MARA's EIA Consideration Form illustrates the problem. After answering "No" to each of the Schedule 5 gateway questions, it proceeds to a single, conclusory paragraph under "Part B Consideration of Schedule 7" stating: **"While boreholes are being undertaken... they are shallow in nature... and are therefore exempt under Part 2 of Schedule 5... I conclude... it is not necessary to carry out a screening for environmental impact assessment"**. This is not a Schedule 7 analysis in any meaningful sense. It does not address the **characteristics** of the proposed programme as a multi-year, repeated intervention; it does not evaluate the **environmental sensitivity of location** (Codling Bank sandbank system and associated receptors); and it does not assess the types and characteristics of potential impacts, including sediment mobilisation, cumulative footprint, or underwater noise.

This approach reflects a form of regulatory tunnel vision. Rather than asking whether the proposed activities are likely to have significant impact on the environment, MARA's assessment focuses narrowly on whether the activities can be characterised in such a way as to avoid classification as a listed project. That is not the test required by EU law. Competent authorities must examine the real-world effects of a proposal in light of its context and based on objective scientific information capable of excluding, on a reasoned and precautionary basis, the likelihood of significant effects.

The institutional structure of the Maritime Area Planning Act heightens this concern. A determination that EIA is required would remove the application from MARA's competence and place it within the planning jurisdiction of An Coimisiún Pleanála, engaging a fundamentally different statutory process. The result is a built-in incentive to construe Maritime Usage Licence applications as falling below EIA thresholds, even where the environmental characteristics of the proposal contradict this. While any incentive to screen out projects from EIA does not of itself render a decision unsound, it underscores the need for transparent reasoning.

The EIA Consideration Form does not demonstrate that MARA has applied the Schedule 7 criteria at all. There is no assessment of cumulative disturbance arising from repeated seabed penetration, no consideration of the sensitivity of Annex I sandbank habitat, no evaluation of acoustic impacts on marine mammals, seabirds or fish, and no reference to the

absorption capacity of the marine environment. The form contains no analysis of duration beyond isolated references to individual boreholes, and does not address prolonged ensonification of breeding and resting grounds for marine mammals and seabirds, there is no consideration of repetition across seasons or years.

The application documentation does not provide sufficient detail on the precise locations, spatial density, sequencing or cumulative footprint of the intrusive works and impacts on eg annex I reef habitat. Without this information, MARA could not, in accordance with the EIA directive, conclude that significant effects on the environment are unlikely. EU law is explicit that where information is insufficient to exclude the risk of significant effects on the environment, and EIA is mandatory.

### **3) potential for project splitting or avoidance of cumulative assessment**

A defining feature of the Codling Wind Park Maritime Usage Licence application is the separating out of what is, in substance, a single, coordinated programme of intrusive marine works. Throughout the AA Screening and SISAA documentation, the applicant disaggregates geotechnical drilling, seabed penetration, acoustic survey activity, vessel movements and repeated mobilisation into nominally discrete activities, each assessed in isolation and marked as limited, temporary and reversible, a process which is, under the habitats and birds directive, and EIA directive, scientifically unsound.

“Any surveys which may result in novel forms of underwater noise stimuli (such as borehole drilling during geotechnical surveys) will occur within only brief windows during the Application period. Furthermore, the duration of these surveys at particular locations within the Licence Area would be short (at most, for geotechnical borehole drilling, several days).”  
*(MUL230034 AA Screening, Section 5, various site-specific assessments)*

This formulation is used across several SACs/SPAs and qualifying interests to justify screening out adverse effects. However, it relies on an impermissible narrowing of the temporal lens. While an individual borehole may take “several days” at a single location, the licence sought authorises repeated boreholes, penetration tests and survey campaigns across a large marine area over a 5 year period.

The same error appears in the treatment of spatial extent. The applicant asserts that impacts are negligible because each activity occupies only a small area at any given time, and without mapped specifics as to the proximate location of the proposed activities:

“The spatial footprints of individual survey activities within the Licence Area sites of boreholes are not confirmed within the maps put forward) at any given time will occupy only a minimal proportion of the overall Licence Area.”  
*(MUL230034 AA Screening, multiple sections)*

The applicant’s consistent characterisation of the works as survey activity, that are distinct and detached from future construction or development does not bear scrutiny. In the SISAA, the applicant states that the proposed activities are:

“temporary, localised and reversible in nature and do not constitute development works.”  
*(MUL230034 SISAA)*

This distinction is artificial. The Habitats Directive and the EIA Directive do not draw a distinction between “survey” and “construction” activities. The legal test turns on effects, not labels. Deep geotechnical drilling, cone penetration testing and seabed excavation are not passive observational exercises; they involve direct physical alteration of sediments and benthic structure. Where such works are undertaken repeatedly and systematically to initiate turbine layout and foundation design, they function as enabling or preparatory stages of development and must be assessed as such.

This viewing of proposed activities in isolation is also used to deflect from due consideration of in-combination effects.

“As there will be negligible effects on the site, the site and associated impacts are therefore screened out of the in-combination assessment.”

*(MUL230034 AA Screening, repeated across several SPA sections)*

This defective reasoning is circular. In-combination effects cannot be dismissed on the basis that individual effects have been screened out using flawed assumptions. The Irish Sea is subject to intensive and overlapping pressures, including over-fishing, multiple offshore wind survey projects, port activity, cable investigations and ongoing construction associated with Phase 1 ORE projects. The applicant’s approach ensures that cumulative effects are not meaningfully examined because each project, and each activity within it, is assessed in isolation.

In general, project splitting or salami slicing cannot be used to avoid assessment obligations. A competent authority must assess the *entirety* of the works authorised by a consent, including their cumulative temporal and spatial effects and their relationship to other plans and projects..

MARA appears to have failed to grapple with the true scale and character of the proposed intervention. The result is a screening outcome that bears little resemblance to the environmental reality of the works authorised.

#### Mechanism for screening-out of application from EIA

Under Article 4 of the EIA Directive, projects falling within Annex II, including energy infrastructure and extractive-type activities, must be subject to a **case-by-case examination**, using the mandatory criteria in Annex III. Those criteria include the characteristics of the project, the environmental sensitivity of the location, and the characteristics of the potential impacts.

Again, MARA’s reliance on borehole depth as a determinative factor is legally unsound. The so-called “deep drilling” exception originates in an extractive, predominantly terrestrial context, where depth may correlate with risk. The CJEU has made clear that **drilling of even limited depth may constitute “deep drilling” for EIA purposes where environmental sensitivity is high**, and where impacts are not trivial or easily reversible. In the marine environment, where impacts are harder to observe, monitor, or remediate, depth alone is an inadequate yardstick for qualifying environmental impacts. This issue was settled in the Austrian deep drilling case, which dealt with the use of an EIA exception for the extractive industry, set out in Annex 2 (d) as:

(d) Deep drillings, in particular:

(iii) drilling for water supplies; *with the exception of drillings for investigating the stability of the soil*;

where deep drilling is carried out for the purposes of soil investigation.”

The ECJ found that,

*Under that provision, the obligation to carry out an assessment relates to projects which, by virtue, inter alia, of their nature, size or location, are likely to have significant effects on the environment. It is not therefore sufficient to consider only the volume produced. Account must also be taken of the other characteristics of a project, in particular its location ... Accordingly, it is not inconceivable that, in the light of the circumstances of a particular case, such as the type of drilling or the sensitivity of the area concerned, **even a single deep drilling operation will be likely to have significant effects on the environment.** It must*

*also be borne in mind, however, that, particularly in the case of Annex II projects, **failure to take account of the cumulative effects of several projects must not have the consequence in practice of removing projects in their entirety from the obligation to carry out an environmental impact assessment when, taken together, they are likely to have significant effects on the environment** within the meaning of Article 2(1) of the EIA Directive.*

#### site preparation, and potential for ecological baseline sterilisation

Throughout the AA Screening and SISAA documentation, the applicant repeatedly asserts that the proposed works are temporary, limited in extent and reversible. For example, the SISAA states that the proposed activities:

“are temporary, localised and reversible in nature and do not constitute development works.”  
(MUL230034 SISAA)

This assertion is not supported by the nature or scale of the activities authorised. The works include repeated geotechnical boreholes, cone penetration testing, trial pits, grab sampling and associated seabed penetration across a large sandbank system over a multi-year licence period. These are not passive observational techniques. They involve physical excavation, sediment compaction, disturbance of benthic communities and alteration of sediment structure at depth.

The AA Screening further downplays the significance of these activities by focusing narrowly on the duration of individual interventions. The applicant repeatedly states that:

“the duration of these surveys at particular locations within the Licence Area would be short (at most, for geotechnical borehole drilling, several days).”  
(MUL230034 AA Screening, multiple sections)

The applicant also relies heavily on the small footprint of individual activities to justify screening out effects. Typical language includes statements such as:

“the spatial footprints of individual survey activities within the Licence Area at any given time will occupy only a minimal proportion of the overall Licence Area.”  
(MUL230034 AA Screening)

This again reflects a legally irrelevant framing. EU environmental law does not permit cumulative spatial effects to be discounted by reference to instantaneous footprint alone. Where intrusive activity is spread across a sandbank system over time, the cumulative area affected, and the frequency of re-disturbance, are the correct metrics. The screening documentation contains no attempt to quantify or assess this cumulative footprint. In substance, the proposed works appear to function as site preparation and pre-conditioning. They risk progressively converting an ecologically functioning seabed into a technically characterised construction site.

This approach can have serious consequences. First, it can undermine the integrity of the environmental baseline. Repeated disturbance, compaction and sediment displacement alter habitat quality and species distribution. By the time a future development consent is sought, the site will no longer reflect its pre-disturbance ecological condition. This phenomenon, sometimes described as baseline degradation or site sterilisation, frustrates the purpose of both the EIA and Habitats and Birds Directives, which require objective assessment against an undisturbed baseline.

Second, the applicant’s approach allows impacts to be dismissed as reversible without evidence. Neither the AA Screening nor the SISAA provides empirical support for the assumption that sandbank and benthic habitats subjected to repeated ensoufflement (sub-bottom profiling which penetrates the seabed), intrusive activities, will recover fully or rapidly.

This is particularly problematic given that the most recent NPWS Article 17 reporting identifies the structure and functions of sandbank habitat as having an *unknown* short-term trend and acknowledges widespread bottom-impacting pressures.

The screening documentation also relies on circular reasoning to reinforce this minimisation. In several instances, the applicant concludes that impacts are negligible because no adverse effect pathway has been identified. Yet the absence of identified pathways is itself a product of limited baseline data and the exclusion of cumulative and repeated disturbance from the assessment. This logic inverts the precautionary principle. Under Article 6(3), uncertainty requires assessment; it cannot be used to justify avoidance of assessment.

The problem is compounded by reliance on generalised mitigation and regulatory compliance as a substitute for assessment. References are made to best practice procedures, vessel management and adherence to other regulatory regimes, yet these are invoked at screening stage to justify the conclusion that no likely significant effects arise. Such reliance is impermissible unless mitigation is specific, certain and integral to the project design.

#### **4) Inadequate Screening**

Codling Bank is a large, shallow, mobile sandbank system within the southern Irish Sea that supports multiple ecosystem services relevant to the conservation objectives of nearby SPAs, including The Murrough SPA, Wicklow Head SPA, Rockabill to Dalkey Island SAC and Dalkey Island SPA and Lambay Island SPA. These services include reef ecosystems, prey aggregation and production (notably sandeel, sprat and zooplankton-mediated food webs), benthic–pelagic coupling, and the provision of foraging and movement habitat for seabirds and other protected species during breeding, non-breeding and migratory periods.

Any attempt to rely on renewable energy policy objectives or the Renewable Energy Directive to justify relaxed screening or procedural shortcuts at this stage would be potentially misconceived. As appears confirmed publicly by the Chief Executive of An Coimisiún Pleanála, Phase I offshore wind projects do not fall within the scope of the Renewable Energy Directive's emergency or overriding public interest provisions. In any event, the RED Directive cannot disapply or dilute the procedural and substantive requirements of the EIA Directive or the Habitats Directive. Reliance on renewable energy policy cannot cure defects in screening, nor can it legitimise the authorisation of intrusive works that are capable of giving rise to significant environmental effects without prior assessment.

#### 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.

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 queried by ACP in the Codling wind park planning RFI, which noted that habituation cannot be assumed and that displacement effects vary with species, season, distance from colonies and habitat quality.

In some instances, an 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, or dismissed as temporary.

### 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 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 assessed using assumptions and thresholds derived from, e.g., offshore or North Sea projects that are materially different in location, bathymetry and proximity to colonies.

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 and/or permanent displacement. ACP’s RFI to the proponent explicitly recognises these pathways, yet the MUL AA screening fails to engage with them in any meaningful way.

The screening approach set out in 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 Zol of the Proposed Activities is considered negligible.” This reasoning is then used to conclude that no route to likely significant effects exists.

This approach 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 10 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 (birds which are also strictly protected in their range), 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 e.g., manx shearwater or 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 sandbank system, and exposed to repeated disturbance from the adjacent and 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 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 local species such as 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 ACP 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 which recognises 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 substitute 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 puffin or kittiwake, which are experiencing significant regional declines and heightened sensitivity to disturbance and prey limitation. EU law requires that screening decisions be reasoned, evidence-based, and account for local conditions; generic adherence to 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 and its ecological linkage to Wicklow Reef SAC, 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 SAC and SPA conservation objectives.

### **5) Failure to address strict protection obligations: Marine Mammals, underwater noise and absence of derogation licence**

All cetaceans and several seal species occurring within the Codling Bank area are afforded strict protection under Article 12 of the Habitats Directive, as transposed in Irish law. This protection applies irrespective of SAC designation and is triggered wherever there is a risk of deliberate disturbance (and non-deliberate in the case of article 12 (1) (d) where liability is strict), deterioration of breeding or resting places, or impairment of key behaviours such as foraging, communication, navigation or migration.

Crucially, these obligations apply at the *survey and site investigation stage*, not only at construction or operation. The authorisation of intrusive geophysical and geotechnical works under a Maritime Usage Licence therefore engages Article 12 directly. Any consent which permits activities likely to cause disturbance must either demonstrate, on a precautionary

basis, that no such disturbance will occur, or be supported by a regulation 54 derogation licence issued in advance, meeting the strict tests under Article 16.

This Codling MUL application fails those requirements on all fronts.

#### Characterisation of disturbance as negligible

The applicant's assessment, adopted by MARA at screening stage, repeatedly downplays the risk of disturbance to marine mammals by characterising survey noise and vessel activity as limited, temporary or indistinguishable from baseline conditions. This approach is inconsistent with the current scientific understanding of marine mammal responses to underwater noise and repeated disturbance.

The Codling Bank area lies within the wider Irish Sea, which has been identified through ObSERVE, SCANS and NPWS analyses as a region of elevated importance for harbour porpoise, with additional use by bottlenose and common dolphin and grey seal. Harbour porpoise in particular is highly sensitive to impulsive and continuous noise, showing behavioural responses, displacement and altered foraging activity at sound exposure levels well below injury thresholds. Harbour Porpoise, given their size (the smallest whale species) and need to move continuously to forage, are notoriously hard to identify in poor light or less than flat sea conditions. Harbour Porpoise, of which some 147 were sighted over the site in past surveys, have already suffered a decline of 46% since 2013 within their Rockabill to Dalkey Island SAC as documented by NPWS at the end of 2021.

Despite this, the MUL documentation treats underwater noise largely as an abstract parameter, asserting that effects will be "localised" and of "short duration" without addressing the cumulative acoustic footprint of repeated surveys over a five-year licence period. There is no meaningful assessment of how behavioural disturbance accumulates when animals are repeatedly exposed across space and time, nor of how this interacts with other ongoing noise sources in the Irish Sea.

#### Absence of a derogation licence

The most serious flaw in the MUL approach to marine mammals is the implicit assumption that strict protection issues can be dealt with later, through operational controls or future derogation applications if required. This is legally impermissible.

Where a competent authority authorises activities that are *liable* to cause disturbance within the meaning of Article 12, it must ensure compliance at the point of consent. It is not sufficient to note that a derogation "may be required" or that mitigation will be implemented if impacts arise. The Court of Justice has been clear that strict protection obligations are preventive, not reactive.

In the Codling case, the MUL authorises drilling, seabed penetration, acoustic surveying and prolonged vessel activity within a known marine mammal usage area. These are precisely the types of activities that, according to both NPWS guidance and the scientific literature, are capable of causing disturbance to harbour porpoise, dolphin, minke whale and seals. Yet no derogation has been sought or granted to cover the full scope of proposed activities.

This creates a regulatory gap in which disturbance is normalised by consent, while legal compliance is deferred or left entirely to self-regulation, which is impermissible under article 12, the duty falling on the State to enforce strict protection measures .

#### Misuse of mitigation to justify screening-out

The AA and EIA screening rely heavily on mitigation measures, such as soft-start procedures, marine mammal observers, and exclusion zones, to conclude that impacts are negligible. This reliance is misplaced.

Mitigation cannot be used at screening stage to rule out the need for meaningful Appropriate Assessment where the effectiveness of such measures is uncertain or unproven, particularly in relation to behavioural disturbance. Nor can mitigation substitute for a derogation licence where disturbance cannot be excluded beyond reasonable scientific doubt.

Marine Mammal Observer (MMO) protocols and soft-starts may reduce the risk of injury, but they do not prevent disturbance, displacement or energetic impacts, especially for species such as harbour porpoise that respond to noise at distances far exceeding typical exclusion zones. The applicant's own materials implicitly acknowledge this uncertainty, yet the screening conclusions proceed as though mitigation guarantees compliance.

#### Cumulative disturbance and chronic exposure

The Codling MUL must also be assessed in the context of cumulative disturbance across the Irish Sea. The area is already subject to multiple offshore wind survey programmes, cable investigations, port-related traffic and other marine activities. Behavioural disturbance that might appear tolerable in isolation may become significant when animals are repeatedly displaced or disrupted from preferred habitats.

The screening documents fail to address this reality. They do not assess whether Codling Bank functions as a refuge or key habitat within an increasingly industrialised seascape, nor whether repeated disturbance could lead to effective habitat loss through avoidance. For minke whale, common and bottlenose dolphin and harbour porpoise, such displacement has local, regional and population-level implications, particularly in light of evidence indicating declining abundance in parts of the Irish Sea.

The assessment of underwater noise within the MUL application is further undermined by its treatment of noise as a short-term, isolated, and reversible effect, rather than as a chronic pressure when activities are repeated over time and across space. In such circumstances, the relevant impact pathway is not a single noise event, but cumulative and recurrent exposure, giving rise to sustained behavioural disruption, habitat displacement, and energetic costs for marine mammals. Scientific literature increasingly recognises that repeated disturbance can have population-level consequences even where individual exposures fall below injury thresholds, particularly for species such as harbour porpoise that rely on continuous acoustic sensing for foraging, navigation, and predator avoidance.

This distinction is critical for compliance with both Article 6 of the Habitats Directive and the Article 12 strict protection regime. Where noise-driven displacement leads to functional loss of habitat, reduced foraging efficiency, or repeated avoidance of biologically important areas, the effects cannot be dismissed as temporary or negligible. For SAC-linked populations, such displacement is capable of undermining site integrity through indirect effects, even where the activity occurs outside designated boundaries. More broadly, for Annex II/IV species, repeated disturbance reaching the level of deliberate or reckless disruption of normal behaviour engages Article 12 irrespective of SAC designation. The MUL application and MARA's screening approach do not grapple with this legal threshold. Instead, they rely on assumptions of rapid recovery, habituation, or effective mitigation, none of which can properly substitute for a prior determination, based on robust scientific evidence and precaution, that the authorised activities will not result in disturbance prohibited under EU law.

#### Habitat degradation and prey-mediated effects

Marine mammal impacts are also treated too narrowly, with little consideration of indirect pathways. Harbour porpoise, dolphin and seals depend on prey species associated with sandbank systems, including small pelagic fish and herring, sprat or sandeel-like assemblages. Disturbance to benthic and pelagic processes through sediment resuspension, turbidity and repeated physical intrusion will likely degrade prey availability, compounding the effects of direct disturbance. The failure to integrate these habitat-

mediated pathways further undermines the conclusion that strict protection obligations are redundant.

### Potential grant of authorisation in the absence of compliance with Article 12

By authorising activities capable of causing disturbance to Annex IV species without a clear and precautionary demonstration that no such disturbance will occur, and without a derogation licence in place, the Codling MUL risks placing MARA in breach of its obligations under Article 12 of the Habitats Directive.

This is not a technical deficiency but a structural one. The MUL functions as enabling consent for intrusive works in a sensitive marine area. If strict protection issues are not resolved at this stage, they cannot be cured later by downstream planning or licensing processes.

The treatment of marine mammals under the Codling MUL reflects a broader pattern of regulatory deflection, in which survey-stage disturbance is minimised, cumulative exposure is ignored, and strict protection obligations are treated as contingent rather than binding. In light of the sensitivity of Codling Bank, the known responses of harbour porpoise to noise and disturbance, and the absence of a comprehensive derogation framework, the MUL cannot be regarded as legally or scientifically robust.

The geophysical, geotechnical and intrusive seabed investigations authorised under the MUL are not free-standing scientific exercises. They are designed to inform foundation design, array layout, cable routing, and construction methodology for the Codling Wind Park. In that sense, they are an integral and enabling component of the overall wind farm development, without which the project cannot proceed. EU law is clear that competent authorities must assess projects on the basis of their **substance and effects**, not the labels applied by an applicant or the sequencing of consents. The CJEU prohibits the splitting of projects into separate stages or authorisations where this would have the effect of avoiding environmental assessment obligations..

This approach directly contradicts the requirements of Article 6(3) of the Habitats Directive and Article 4 of the EIA Directive. Under both regimes, competent authorities are required to consider the **combined effect of duration, frequency, scale and sensitivity of location** when determining whether likely significant effects may arise.

The same tendency towards a project-splitting logic is evident in the treatment of cumulative and in-combination effects. The MUL is assessed as if it exists in a regulatory vacuum, despite clear spatial and temporal overlap with other offshore survey programmes, existing maritime pressures, and the parallel progression of multiple Irish Sea Phase 1 offshore wind and associated subsea cabling projects. MARA's screening approach fails to account for the reality that Codling Bank and its surrounding waters are already subject to sustained anthropogenic pressure, particularly from noise-generating activities, vessel traffic and seabed disturbance. EU case law makes clear that cumulative effects must be assessed **at screening stage**, and that failure to do so renders the screening decision flawed.

The artificial separation between the MUL and the future development consent process before An Coimisiún Pleanála is particularly problematic. The works authorised under the MUL are not contingent upon, nor subordinate to, a later planning decision; once granted, they may proceed independently and for a prolonged period. In these circumstances, the MUL constitutes a form of **development consent** for the purposes of the EIA Directive, insofar as it authorises works capable of giving rise to significant environmental effects. It is not permissible to defer EIA obligations on the basis that a separate consent for the "overall project" may be sought at a later date, where the present licence already enables irreversible or potentially significant impacts.

This defect is compounded by the treatment of Annex II/ IV species and the issue of strict protection. The MUL application and associated assessments proceed on the implicit assumption that potential disturbance to marine mammals can be managed, mitigated or licensed elsewhere, if required. This is a reversal of the correct legal sequence. Under Article 12 of the Habitats Directive and the transposing Irish regulations, strict protection applies **by default**. Where a risk of deliberate or incidental disturbance cannot be excluded on the basis of objective information, a derogation must be sought and assessed **before** authorisation is granted. The history of Codling-related survey activity, including previous applications for cetacean derogations and subsequent withdrawals, underscores that this risk is real rather than hypothetical. Screening out disturbance on the basis of assumptions about behaviour, habituation or regulatory control is not a substitute for compliance with strict protection requirements.

#### scope of Article 12 curtailment

A further and recurring error appears to underpin the MUL application and MARA's screening approach in the sometimes implicit treatment of strict protection obligations for marine mammals as being spatially limited to designated SACs or to sites where a marine mammal species is listed as a qualifying interest. This is a misinterpretation of Articles 12 to 16 of the Habitats Directive. Article 12 imposes a system of strict protection for Annex IV species **throughout their natural range**, irrespective of site designation. The obligation is not contingent on SAC boundaries, nor does it depend on whether a species is listed as a qualifying interest of a Natura 2000 site. At sea, where SAC coverage is necessarily partial and ecological use is fluid, this principle is of particular importance.

Where there is a credible risk of disturbance, injury or behavioural disruption to Annex IV marine mammals arising from authorised activities, including underwater noise, repeated vessel presence, or intrusive seabed works, the competent authority must address Article 12 compliance **before authorisation is granted**, and cannot rely on mitigation promises, future licensing, or assumptions of habituation. This is especially critical in the marine environment, where independent oversight and enforcement capacity are inherently constrained, a reality highlighted in national reviews of NPWS capacity and governance, including the O'Kenneide–Stout 2021 review of NPWS.

The MAP Act may have reconfigured maritime consenting pathways, but it does not disapply EU environmental law, nor does it confer on MARA a power to authorise extensive seabed intervention in the absence of robust, precautionary assessment.

It should also be noted that Codling Wind Park Ltd has already undertaken deep geotechnical drilling (to depths of approximately 80 m) and associated acoustic survey activity within the same area under previous foreshore licences. The present Maritime Usage Licence would authorise further intrusive geotechnical and geophysical investigations, including repeated seabed penetration and active acoustic surveying, thereby extending physical and acoustic disturbance across the same sandbank system over successive regulatory phases. In these circumstances, there is a serious concern that MARA's screening approach is not capable of meaningfully assessing cumulative in-project effects arising from the serial authorisation of drilling, seabed disturbance and underwater noise over an extended period. CPWL's last, and apparently only, application for a derogation licence for investigative surveys, was in 2013. It is disconcerting for KBCC to note that, in relation to this MUL application, CPWL belatedly applied for a derogation licence for marine mammals (but not otters seemingly), on 21 October 2025 as the NPWS derogation applications log shows. However, as the application file shows, the applicant recently wrote to MARA to state, "as a side-note" that after "recent advice" the applicant was no longer applying for a derogation licence to NPWS in regard of the MUL. No explanation of what the recent advice to CPWL entailed, or how that advice (to no longer apply for a derogation licence), could impact MARA's ability to adequately assess the MUL application seems available, at least at this critical public consultation phase.

## 6) Seabed Integrity

The Codling Sandbank and its surrounding seabed form a structurally and functionally coherent marine system, characterised by mobile sands, gravelly substrates, and areas of mixed and hard ground that support benthic communities of high ecological value. These seabed features underpin a range of ecosystem services, including primary and secondary production, nursery and foraging habitat for fish and invertebrates, and trophic support for higher predators such as seabirds and marine mammals. They also play a role in sediment transport and coastal processes relevant to adjacent SPAs, including The Murrough and Wicklow Head.

Intrusive seabed investigations of the type proposed result in direct physical alteration of the seabed through penetration, compaction, sediment displacement, and resuspension. In mobile sandbank systems such as Codling, these disturbances do not remain spatially confined to the immediate footprint of each borehole or pit. Instead, they interact with prevailing hydrodynamic conditions to generate sediment plumes, alter grain size distribution, and disrupt benthic assemblages beyond the point of intervention. Where activities are repeated across multiple locations and over multiple seasons, the cumulative effect is not transient disturbance but progressive degradation of seabed functionality. An Coimisiún Pleanála is the planning application for the Codling Wind Park project itself, and has raised the issue of the absence of integrated spatial and temporal assessment, which was found to weaken conclusions on seabed integrity and habitat loss.

Of particular concern is the treatment of potential impacts on benthic habitats of conservation importance. While the applicant asserts that no Annex I reef habitats have been recorded within the MUL area, this conclusion is drawn in the absence of comprehensive seabed imagery and relies heavily on grab sampling and geophysical interpretation alone. As highlighted in regulatory correspondence and prior assessments, this methodology is insufficient to confidently exclude the presence of annex I biogenic or mixed reef features, especially in areas of hard or coarse substrate where grab sampling is ineffective. The absence of evidence is repeatedly treated as evidence of absence.

This matters not only for habitat protection in its own right, but because benthic habitats underpin the productivity of the wider ecosystem. Disturbance to benthic invertebrate communities affects prey availability for demersal fish, which in turn affects foraging success for seabirds and marine mammals. The applicant's documentation does not trace these pathways, instead confining assessment to narrowly defined receptor groups and dismissing broader ecosystem effects as speculative.

The relevance of this omission is underscored by recent scientific and policy developments. EU-level thresholds under the Marine Strategy Framework Directive recognise habitat loss and adverse habitat effects as pressures requiring spatially explicit assessment, with defined percentage thresholds triggering concern at the regional scale. The failure to model or map the spatial extent of habitat loss and degradation arising from intrusive survey activities represents a substantive gap in the assessment. It also undermines the applicant's claims of compliance with the National Marine Planning Framework, which places explicit emphasis on seafloor integrity, cumulative effects, and the protection of "important" habitats and species.

The Codling Sandbank must also be understood in terms of its functional connectivity to designated sites. The Murrough SPA supports both waders and wintering red-throated diver, a species highly sensitive to disturbance and displacement and dependent on shallow coastal and offshore foraging areas. Wicklow Head SPA supports breeding seabirds whose foraging ranges overlap the Codling area. The degradation of benthic prey resources or the alteration of sedimentary habitats within the MUL area therefore has the potential to affect the conservation objectives of these SPAs indirectly, even if the physical works occur outside SPA boundaries. Screening that focuses solely on direct overlap with designated sites fails to meet the requirements of Article 6 of the Habitats Directive..

## **7) Codling MUL cannot be granted on the present basis**

The Maritime Usage Licence sought is not a neutral administrative step. It constitutes the operative consent that authorises repeated, physically intrusive and acoustically disruptive works over a multi-year period within a sensitive and functionally important marine system. Once granted, those works may proceed independently of any later development consent decision. In that context, the MUL stage carries substantive environmental consequence and cannot be treated as a holding exercise pending future planning processes.

This approach mirrors a broader tendency identified in the scientific literature on offshore wind governance. It was observed, in the 10 year longitudinal study, 'Memoirs on the Marine Environment', that, in practice, environmental assessment of offshore wind projects increasingly treats mitigation as a policy, or political choice rather than a response to demonstrated impact, with ecological protection becoming subordinate to mitigation and delivery imperatives. In that context, mitigation functions less as a safeguard against harm and more as a mechanism for rendering harm administratively acceptable. The longitudinal study found that, "Taking account of all actually planned OWFs, wind farm capacity in the North Sea will soon increase from 26 to 61 GW ... Clearly, the need to achieve a rapid transition from fossil to renewable energies is high, but unfortunately the precautionary principle regarding marine biodiversity impact seems to be abandoned. Politics now aim to achieve biodiversity goals by mitigating (rather than avoiding) the effects of large-scale wind exploitation." The present application reflects that dynamic: mitigation and monitoring are invoked repeatedly to justify screening conclusions, even where baseline uncertainty and exposure pathways remain unresolved.

Reliance on future controls is particularly problematic in the offshore environment. As evidenced by earlier Phase I 'relevant project' survey activity, effective oversight at sea is limited, reactive, and heavily dependent on self-reporting. MMO presence, where it exists at all, does not prevent disturbance or displacement; it merely records observable events within a narrow temporal and spatial window.

In these circumstances, MARA cannot reasonably conclude that the proposed activities are unlikely to give rise to significant environmental effects, nor that adverse effects on the integrity of European sites can be excluded beyond reasonable scientific doubt. The screening undertaken does not demonstrate that the legal tests under the EIA Directive or Article 6(3) of the Habitats Directive have been properly applied. It instead reflects an attempt to manage risk procedurally by postponing assessment to later stages, notwithstanding that the present licence independently enables environmentally consequential works. Such an outcome would be inconsistent with the precautionary principle and with the purpose of EU environmental law, which is to ensure that environmental effects are assessed before irreversible steps are allowed

For these reasons, the Codling Wind Park Ltd Maritime Usage Licence application cannot be responsibly or adequately determined on the basis of the current application and screening materials. Further assessment, and meaningful EIA screening, is required before authorisation, rather than reliance on mitigation, monitoring, or subsequent regulatory stages to manage effects that have not yet been properly evaluated.

Thank you for taking our submission into consideration. KBCC reserves the right to reply in regard of the concerns detailed above, and asks to be kept informed in writing (email) of any changes or developments regarding MUL230034.

Please acknowledge receipt in writing,

Seana Kevany for

Killiney Bay Community Council