



Observation

on

MUL 250019

Helvick Head Offshore Wind DAC

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INTRODUCTION

Blue Ireland CLG is a coalition of voluntary citizens' groups whose objective is to ensure that offshore wind farms are located in environmentally appropriate locations and that they are planned and developed in compliance with EU environmental law.

We welcome the opportunity to contribute to the public consultation on the application lodged by Helvick Head Offshore Wind Designated Activity Company for a Maritime Usage Licence (250019) to carry out site investigations in the area known as Tonn Nua (Site A) within the South Coast Designated Maritime Area Plan (SC-DMAP).

The SC-DMAP was determined without applying an ecosystem-based system of Maritime Spatial Planning (MSP) to the process, in breach of Directive 2014/89/EU. MSP is an approach to decision-making designed to manage human activities, such as energy projects, in a way that protects and sustains entire ecosystems, rather than focuses on individual species or single issues in isolation. The failure to ground the identification (site selection) and designation of the SC- DMAP in an ecosystem-based process is a serious impediment to the current application for what are extensive, invasive, multi-annual, noise and disturbance-creating surveys in an area known to be important for marine mammals and seabirds.

An observation submitted by An Taisce during the consultation on the SC-DMAP drew attention to a number of examples of '*Non-Compliance with EU Marine Directives*'. Their observation stated '*The SC-DMAP is made within a legislative and policy framework that remains non-compliant with these crucial EU Marine Directives.*'

The Celtic Sea Important Marine Mammal Area (IMMA), that surrounds the Tonn Nua site, is a globally recognised, regionally critical, marine mammal hotspot, supporting internationally important populations of cetaceans and requiring high-level protection in environmental assessment.

The failure to comply with an ecosystem-based marine planning process and, consequently, to conclude that an ideal site for the development of offshore wind existed off Ireland's near-shore south east coast, is now under scrutiny in the MUL 250019 application.

1. Overview

Blue Ireland opposes the grant of Maritime Usage Licence (MUL 250019) on the basis that the decision-making process is methodologically flawed, inconsistent, and not demonstrably compliant with the EIA Directive and Article 6 and Article 12 of the Habitats Directive.

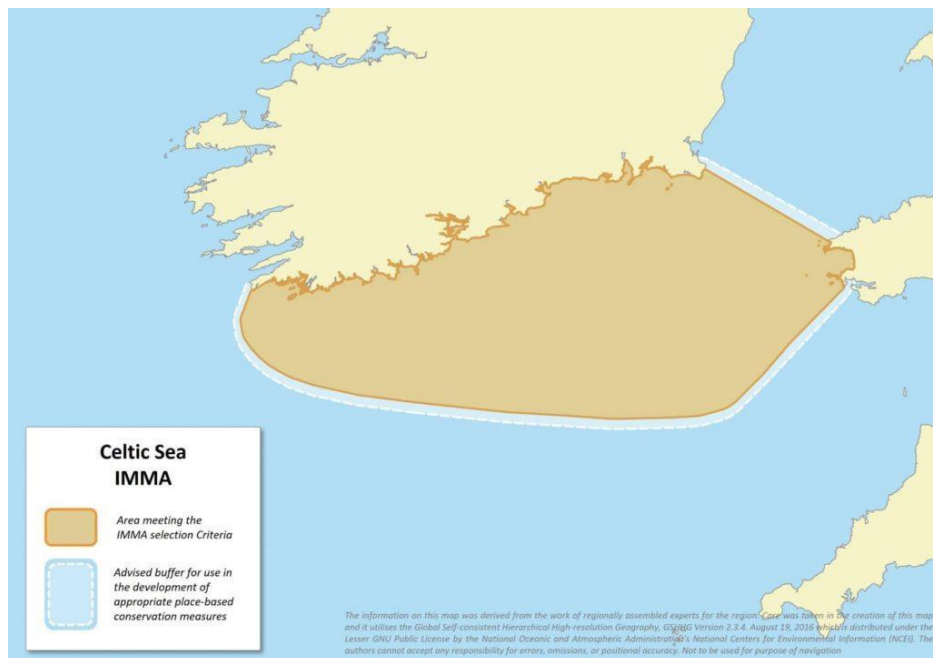
The central concern is not simply the presence of impacts, but the failure to apply a transparent, effects-based assessment methodology, particularly in relation to

Environmental Impact Assessment (EIA) screening and the evaluation of impacts on marine mammals and birds.

2. Location of the proposed maritime usage licence application

The MUL 250019 site lies in the middle of the Celtic Sea Important Marine Mammal Area (IMMA), notable for the presence of threatened Fin Whale, and Minke and Humpback Whale, as well as for its general marine mammal diversity. No reference to this scientifically identified, important habitat, that includes important marine mammal feeding grounds and is along a migration corridor, is evident in the documentation provided.

While the IMMA is not an officially designated site, under the EIA Directive (Annex III) the environmental sensitivity of the location and its ecological function must be assessed, with both clearly affirmed as important by the presence of the IMMA.



The Tonn Nua site is surrounded by a number of Special Areas of Conservation (SAC) and Special Protection Areas (SPA). While the proposed offshore array site does not directly overlap, for example, with Hook Head SAC, the SAC is clearly within the zone of influence (Zoi) of the project, including direct overlap at landfall and cable corridor locations. Furthermore, the qualifying marine mammal species associated with the SAC range widely into offshore waters, meaning that disturbance arising within the project area is directly relevant to the conservation objectives of the SAC.

Similarly, the Blackwater Bank SAC, in which harbour porpoise is included as a qualifying interest, is encompassed in the Zoi of the proposed development.

The spatial extent of the Zone of Influence is, itself, inconsistent with the characterisation of effects of the proposed usage as 'negligible', as is repeated throughout the application documents.

3. Failure to Adequately Assess Underwater Noise

The assessment of underwater noise arising from the proposed site investigations relies on proxy and non-site-specific data, and does not include any site-specific modelling or measurement of sound exposure at the project location. While the Schedule of Works identifies a range of acoustic sources, including multibeam echosounders, sub-bottom profilers and ultra-high resolution seismic equipment, with source levels of up to 247 dB re 1µPa @1m, no corresponding assessment is provided of how this sound propagates in the receiving environment or what levels are likely to be experienced by marine mammals.

No site-specific, quantitative or evidence-based assessment is provided of received sound levels, propagation, exposure or behavioural consequences. Instead, the assessment relies on generalised assumptions and literature-based evidence derived from other locations. Impact pathways sufficient to trigger Likely Significant Effects are identified, but are not subsequently assessed; instead, they are minimised through reliance on generalised and non-site-specific assumptions

As such, the assessment fails to establish, on the basis of complete, precise, definitive and up-to-date scientific evidence, that the proposed activities will not result in disturbance or injury to marine mammals. This is of particular relevance to the strict protection requirements of Article 12 of the Habitats Directive, which prohibit deliberate disturbance and injury of protected species.

It is well established in the case law of the Court of Justice that assessments under the Habitats Directive must exclude reasonable scientific doubt on the basis of best available scientific knowledge (see, *inter alia*, Waddenzee case). Where reasonable scientific doubt remains, consent cannot be granted.

While Member States may adopt different methodological approaches, the level of scientific certainty required under the Habitats Directive is fixed by EU law. In this context, established approaches such as those applied in Germany, which require site-specific modelling and verification of received sound levels against defined thresholds, demonstrate the type of evidence necessary to exclude reasonable scientific doubt. No equivalent level of analysis is provided in this case.

Where the assessment relies on generalised assumptions rather than demonstrable, site-specific evidence of acoustic exposure, that standard is not met. Consequently, it cannot be concluded with the requisite level of scientific certainty that the proposed activities will avoid disturbance or injury to marine mammals. It is, therefore, not demonstrated, on the

basis of complete, precise and definitive findings, that effects can be excluded, and the assessment does not meet the evidential standard required under Article 12

3a. Misinterpretation of ‘disturbance’ under Article 12 (E.C. Guidance, 2021)

The Annex IV assessment concludes that impacts on marine mammals will be negligible on the basis that individuals will avoid the area in response to survey activity with application of the proposed mitigation measures.

However, this approach is inconsistent with the European Commission’s 2021 Guidance on the strict protection of animal species under the Habitats Directive.

The Guidance makes clear that disturbance under Article 12 includes any activity that leads to:

- displacement or relocation of individuals;
- reduction in the occupied area;
- interference with normal behavioural patterns, including feeding.

Accordingly, the displacement of marine mammals from the survey area, whether temporary or repeated, constitutes disturbance within the meaning of Article 12, rather than mitigation of impact. Furthermore, no assessment is provided of repeated or cumulative disturbance arising from multiple survey campaigns over a period of up to five years.

The EC Guidance further emphasises that both direct and indirect effects must be considered, and that protection must be preventative and effective in practice. In this context, acoustic disturbance leading to habitat exclusion, disruption of foraging behaviour, and potential impacts on prey availability are all relevant considerations. Strict protection must be preventative in nature and cannot rely on subsequent enforcement or future possible or envisaged derogation.

Importantly, the obligation of strict protection applies irrespective of the scale of impact, and may arise even in relation to individual animals where behavioural effects are significant.

In addition, the Guidance recognises that functionally important areas, including feeding grounds, may form part of the ecological context necessary to maintain species’ favourable conservation status. The omission of any consideration of such areas, including recognised marine mammal habitats, further undermines the assessment.

In light of this, the conclusion that disturbance arising from the proposed activities is ‘negligible’ is not consistent with the interpretation of Article 12 set out in the Commission Guidance and is the wrong test. **Rather, the assessment appears to rely on a definition of**

disturbance that excludes the very behavioural effects that the Habitats Directive is intended to prohibit.

4. Absence of a Proper EIA Screening Methodology

The application concludes that EIA is not required. However:

- no structured EIA screening assessment is provided;
- no application of Annex III criteria (scale, location, cumulative effects) is demonstrated;
- no equivalent scrutiny was applied by MARA during the RFI process.

This contrasts with other MARA determinations (e.g. EirGrid MUL240036), where a reasoning process is articulated, albeit limited, and with others.

The absence of any visible screening methodology in this case constitutes a fundamental procedural defect and fails to acknowledge the broad interpretation of the EIA Directive. Furthermore, there is no assessment of whether the works proposed constitute an integral part of the main infrastructure works (i.e., a wind farm), including at what point an environmental assessment is required.

The omission of any consideration of the IMMA is also significant in the context of EIA screening, which should include an assessment of the environmental sensitivity of the geographical area concerned, and is not limited to designated sites. The failure to consider this aspect further reinforces the absence of a structured, effects-based assessment methodology.

5. Reliance on Classification Rather than Effects

Available evidence indicates that EIA has been excluded on the basis that:

- the activities are not listed under Schedule 5; and/or
- geotechnical works fall within a 'soil investigation' exclusion.

However, EU law is clear that projects cannot be excluded from EIA solely by classification or thresholds where they may have significant environmental effects, Member States cannot interpret project categories restrictively to avoid EIA obligations and cumulative impacts must be assessed. (see Case C-72/95 *Kraaijeveld*; Case C-392/96 *Commission v Ireland*).

The proposed works include:

- 10–40 CPTs;

- 5–15 boreholes to depths of up to 70 m;
- 30–60 vibrocores;
- associated acoustic and geophysical surveys.

This constitutes a large-scale, multi-location offshore investigation programme, not a minor or localised activity. No evidence is provided that these characteristics have been assessed in accordance with Annex III, as required by Case C-531/13 *Marktgemeinde Straßwalchen*.

In addition, cumulative impacts, for example with EirGrid MUL240036, have not been assessed cumulatively with the Tonn Nua development, despite the clear functional interrelationship between the two.

6. Misapplication of the ‘Soil Investigation’ Exclusion

The exclusion of drilling for soil investigation does not remove the obligation to assess environmental effects.

In this case:

- the scale, repetition and duration of the works (up to 5 years),
- their location in a sensitive marine environment (including IMMA and SAC proximity),
- and their intrusive and acoustic nature

all indicate that the works cannot be treated as minor site investigations.

The apparent reliance on this exclusion represents an overly broad interpretation, contrary to Case C-255/08 *Commission v Netherlands*, which confirms that categories of projects cannot be automatically excluded without case-by-case assessment. Furthermore, the proposed bore hole drilling is seriously unlikely to provide only ‘soil stability’ data.

7. Failure to Consider Project Context (Project Splitting)

The site investigation works are functionally linked to, and an integral part of, a ~900 MW offshore wind development.

However, the assessment treats them as standalone activities, without considering:

- cumulative disturbance over time,
- interaction with future construction impacts,
- the role of the works in enabling and defining the larger project.

This raises a clear issue of artificial project separation, contrary to Case C-2/07 *Abraham*, which confirms that projects cannot be split in order to avoid environmental assessment requirements.

8. Internal Inconsistency with Appropriate Assessment

The documentation indicates that a Stage 2 Appropriate Assessment was required because likely significant effects on European sites could not be excluded. However, it is simultaneously concluded that no EIA is required and that no detailed assessment of environmental effects is necessary, creating a clear inconsistency.

Under the Habitats Directive, assessment of impacts on Natura 2000 sites must be considered in light of Articles 6(2) and 6(3).

Article 6(3) requires that any plan or project likely to have a significant effect on a European site be subject to Appropriate Assessment, and that consent may only be given where it is established, on the basis of complete, precise and definitive findings, that no adverse effect on the integrity of the site will occur.

Article 6(2) imposes a continuing obligation to avoid deterioration of habitats and disturbance of species for which sites are designated, including indirect and cumulative effects.

The Natura Impact Statement for MUL 250019 confirms that likely significant effects on multiple SACs and SPAs could not be excluded at screening stage, necessitating Stage 2 Appropriate Assessment. This reflects the fact that the project gives rise to a defined Zone of Influence extending beyond the immediate footprint of the works, including through underwater noise propagation and associated behavioural disturbance, for example, of marine mammals. (Distances cited in Section 3).

In particular:

- acoustic modelling and supporting literature indicate that behavioural disturbance may extend over distances of several kilometres, with comparator studies identifying potential effects at significantly greater ranges than those ultimately applied in the assessment;
- the qualifying marine mammal species associated with nearby SACs range widely beyond site boundaries and utilise offshore areas, including the project location, as part of their functional habitat;
- displacement from these areas, even on a temporary or repeated basis, represents disturbance within the ecological range of the protected populations.

Notwithstanding this, the assessment characterises impacts as ‘negligible’, ‘temporary’ and ‘reversible’, without demonstrating how this conclusion is reconciled with the spatial extent of the Zone of Influence or the ecological importance of the affected areas.

In circumstances where:

- effects are sufficient to trigger Stage 2 Appropriate Assessment,
- the Zone of Influence extends well beyond the immediate project footprint, and
- the affected areas form part of the functional habitat of SAC populations,

it is not evident how impacts can simultaneously be characterised as negligible without a detailed, site-specific evaluation of exposure, displacement and recovery.

This raises a fundamental question as to whether the requirements of Articles 6(2) and 6(3) have been properly applied, in particular whether:

- all relevant impact pathways within the Zone of Influence have been fully assessed; and
- the conclusion of no adverse effect on site integrity is supported by complete, precise and definitive findings, rather than generalised assumptions.

It is not sufficient to assert that impacts are negligible; the competent authority must demonstrate, by reference to the evidence and assessment, how that conclusion has been reached.

In the absence of such demonstration, the precautionary standard required under the Habitats Directive cannot be considered to have been met.

8a. In consideration of compliance with the Water Framework Directive (WFD), it is stated (Marine Planning and Environmental Considerations, p.11) that “For the proposed Tonn Nua SI works, WFD considerations are most relevant to coastal and transitional water bodies that may be intersected by nearshore activities, such as along the indicative export cable corridor”. So, the MUL application refers to an indicative export cable corridor, but does not identify any specific route or landfall location.

The Proposed MUL Map does not depict any export cable corridor, and the assessment of effects on Hook Head SAC in the SISAA is based solely on the offshore MUL application area, concluding that there is no direct overlap with any SAC. However, within its in-combination assessment, the SISAA also includes the Greenlink Interconnector which is known to land at Baginbun/Hook Head.

In these circumstances, the failure to define the Tonn Nua export cable corridor or landfall location prevents any meaningful assessment of potential spatial overlap or cumulative

effects with existing infrastructure, including that related to Greenlink, in the Hook Head area. This lack of spatial clarity undermines the adequacy of the in-combination assessment, particularly in relation to potential interactions with Hook Head SAC and associated coastal habitats.

Accordingly, it cannot be concluded, on the basis of complete, precise and definitive findings, that the project, either alone or in combination with other plans or projects, will not adversely affect the integrity of European sites, as required under Article 6(3) of the Habitats Directive.

9. Article 12 – Reliance on Unproven Mitigation

The Annex IV assessment concludes that impacts on cetaceans will be negligible, primarily on the basis that mitigation measures will effectively detect and avoid impacts. The conclusion of negligible impact is derived not from assessment, but from assumed mitigation effectiveness.

However:

- these measures are derived from guidance acknowledged to be outdated;
- their effectiveness in detecting and preventing disturbance is not demonstrated;
- no assessment of repeated disturbance over a multi-year period is provided;
- mitigation measures cannot substitute for the absence of a proper assessment.

Impact pathways are not assessed but are instead assumed to be controlled through mitigation, the effectiveness of which is not demonstrated. No empirical or site-specific evidence is provided to support the conclusions that impacts will be negligible, temporary or reversible. These conclusions are instead derived from generalised assumptions and mitigation expectations.

It is therefore not demonstrated, on the basis of complete, precise and definitive findings, that disturbance can be excluded, and the assessment does not meet the evidential standard required under Article 12. Where disturbance cannot be excluded, and, consequently, must be assumed to occur, the appropriate legal mechanism is the consideration of a derogation under Article 16, rather than reliance on unverified, scientifically unreliable mitigation assumptions.

10. Fundamental Uncertainty in Passive Acoustic Monitoring (PAM)

The mitigation strategy relies significantly on Passive Acoustic Monitoring (PAM) to detect the presence of marine mammals in conditions where visual monitoring is not possible.

However, such confidence in this proposed mitigation process is not supported by current scientific evidence, nor by the Irish 2014 noise management guidelines.

Marine mammals depend critically on vocalisation for navigation, foraging, and communication. A growing body of research demonstrates that anthropogenic noise can alter or reduce vocal behaviour, as well as mask acoustic signals. This means that animals may be present but undetectable to PAM systems. The absence of detected effects on animals cannot be taken as evidence that such effects do not occur. **The absence of detected animals is treated as evidence of absence, without accounting for detection limitations arising from the impact pathway itself.**

In summary, the effectiveness of PAM is inherently conditional on animals continuing to vocalise in a detectable manner. Where noise causes animals to reduce or modify vocal output, or where signals are masked, detection probability is significantly reduced. In such circumstances, PAM cannot be relied upon to confirm absence.

This issue is compounded by the limitations of visual monitoring. Marine Mammal Observers are ineffective during periods of darkness, poor visibility, or adverse sea conditions. As a result, there are substantial periods during which detection relies entirely on PAM, notably, in conditions when its effectiveness is most uncertain. Accordingly, impact pathways are not excluded but rendered unobservable, and therefore remain unassessed.

The combined effect is that the mitigation system may systematically fail to detect animals that are present within the zone of influence. This introduces a material risk that activities will proceed in the presence of marine mammals, contrary to the assumptions underpinning the assessment.

In such circumstances, the absence of detected animals cannot be relied upon as evidence of absence.

The conclusion that impacts will be 'negligible' following mitigation is therefore not supported by robust evidence, but instead depends on a detection system whose reliability is itself compromised by the very impacts it is intended to manage.

It is therefore not demonstrated, on the basis of complete, precise and site-specific evidence, that disturbance, displacement or prey-mediated effects on SPA bird species can be excluded, and the assessment does not meet the evidential standard required under Article 6(3), nor the obligations of the Birds Directive

11. Ornithology Methodology and Assessment Flaws

The assessment of impacts on seabirds and SPA qualifying interests follows the same methodological pattern identified in relation to marine mammals: impact pathways are acknowledged but subsequently minimised through assumption rather than assessed on the

basis of site-specific evidence. As with marine mammals, impact pathways are identified but not assessed, and are instead reduced through assumption.

At screening stage, disturbance and displacement effects cannot be excluded for a wide range of SPA species, including auks, kittiwake, terns, divers and cormorant. However, in the Natura Impact Statement these same effects are re-characterised as 'localised', 'temporary' or 'reversible, without any quantitative assessment of exposure, displacement, or ecological consequence. No modelling is undertaken of seabird displacement, foraging exclusion, energetic cost, or population-level implications. Impact pathways sufficient to trigger Likely Significant Effects are therefore identified but not subsequently assessed, and are instead downgraded through assumption. This is internally inconsistent and does not meet the requirement under Article 6(3) to reach conclusions based on complete, precise and definitive findings.

A central flaw is the reliance on assumed habituation to anthropogenic disturbance, particularly vessel presence and noise. The assessment treats existing vessel activity as part of the baseline and uses this to justify the conclusion that additional disturbance will not be significant. However, the normalisation of existing pressure does not remove the obligation to assess additional effects. Existing disturbance cannot be used to justify further disturbance, particularly where conservation objectives require the avoidance of deterioration. Additional impacts generated as a consequence of the survey activity must be assessed in-combination with impacts existing at baseline.

Similarly, displacement is consistently treated as a benign outcome, on the basis that birds will 'move away' from survey activity. In ecological terms, this represents displacement from functional foraging habitat. No assessment is provided of the extent, duration, or energetic consequences of such displacement, nor of repeated disturbance over the five-year licence period. As with marine mammals, displacement is implicitly treated as avoidance rather than as an impact pathway requiring assessment.

The assessment also fails to evaluate impacts on prey availability, despite identifying this as a relevant pathway at screening stage. Disturbance to fish and benthic prey species from geophysical survey activity is dismissed as 'localised' or 'temporary' without any attempt to quantify prey-field disruption or assess consequences for seabird foraging success. This omission is particularly significant given the reliance of many SPA species on predictable prey aggregations. It is especially relevant in a context where reduced availability of key prey such as sandeel is already associated with increased foraging effort, reduced provisioning rates and lower breeding success in seabirds and where many seabird species are in serious decline.

In addition, key assumptions materially reduce the spatial extent of assessment. In particular, the use of unrealistically constrained foraging ranges (e.g. 1 km for puffin) has the effect of excluding offshore foraging habitat from consideration, despite well-

established evidence that seabirds routinely forage tens of kilometres from breeding colonies in response to prey availability. This results in a systematic underestimation of the zone of impact.

No assessment is provided of cumulative or repeated disturbance of birds over the five-year licence period, nor of interaction with other pressures in the Celtic Sea and southern Irish Sea, for example in the Seas off Wexford SPA, which lists 20 species as Qualifying Interests. Temporary effects are assessed in isolation, rather than as part of a sustained disturbance regime. As for marine mammals, cumulative temporal effects are not meaningfully addressed.

Overall, the approach taken does not constitute a robust assessment of effects, but rather a series of assumptions which minimise identified impacts. It is not demonstrated, on the basis of complete, precise and site-specific evidence, that disturbance, displacement, or prey-mediated effects on SPA bird species can be excluded. Accordingly, the assessment does not meet the evidential standard required under Habitats Directive Article 6(3), nor the obligations of the Birds Directive to avoid disturbance and deterioration of habitats within the species' ecological range.

Across all receptors, including marine mammals and seabirds, the assessment follows a consistent methodological pattern: impact pathways are identified, not excluded at screening, and then reduced through assumption rather than evaluated on the basis of site-specific evidence. This is not a sector-specific deficiency, but a systemic failure of assessment methodology.

CONCLUSION

The decision to grant MUL 250019 is undermined by the fact that the deficiencies identified are not isolated or receptor-specific. Instead, they reflect a consistent methodological approach whereby impact pathways are identified, not assessed, and then minimised through assumption rather than evaluated on the basis of evidence:

- the absence of a transparent EIA screening methodology;
- failure to consider if the proposed works are an integral part of the main infrastructure works;
- failure to carry out an appropriate Article 12 test;
- reliance on classification rather than effects-based assessment;
- misapplication of the soil investigation exclusion;
- failure to consider project context and cumulative effects;

- internal inconsistency between Appropriate Assessment and EIA conclusions;
- failure to adequately assess underwater noise impacts;
- reliance on mitigation measures whose effectiveness is not demonstrated.

These deficiencies are not merely procedural, but go to the substance of the assessment, which fails to demonstrate, on the basis of complete, precise and reliable evidence, that environmental effects, in particular on marine mammals and seabirds, have been adequately assessed or avoided.

Blue Ireland request that:

- the decision to grant MUL 250019 be deferred until a formal EIA screening determination, applying Annex III criteria, be undertaken prior to any consent being considered or relied upon,
- a reassessment of the effectiveness of proposed mitigation measures, particularly in relation to marine mammals, be carried out on the basis of current scientific evidence.

The sensitivity of the site, particularly for marine mammals, but also for seabirds, demands this. Sightings data, such as that recorded by the Irish Whale and Dolphin Group below, shows the importance of the MUL application site for marine mammals, although simultaneously, and inevitably as it's based on sightings, it underestimates actual cetacean presence.

IWDG: Sightings of cetaceans in draft DMAP areas since 2005 (IWDG, 2023)

