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Observation to MARA on MUL 250019 – DMAP Area A Site Investigation Licence

Dear Sir/ Madam,

Blue Horizon is a community group based along Ireland's south-east coast working for the protection of our coastline, marine biodiversity, and seascapes. We support the transition to renewable energy and advocate for its responsible development through sustainable planning and correct siting of large offshore renewable energy infrastructure. This approach is essential for protecting our local environment and supporting the long-term wellbeing of our coastal communities. In response to the invitation for public submissions on an application for a maritime usage licence and an appropriate assessment published on the MARA website on February 24th, 2026, please find our submission regarding an application for a Maritime Usage Licence (Ref: MUL250019) by Helvick Head Offshore Wind Designated Activity Company.

1. Introduction and overall position

This observation relates to application MUL 250019 for a five-year programme of site investigation (SI) works at Tonn Nua, within South Coast DMAP Area A, intended to support a 900 MW offshore wind project approximately 12 km off the Waterford coast. The works include repeated geophysical and geotechnical surveys (CPTs, boreholes to 70 m, vibrocores), metocean buoys, ecological surveys,

and associated vessel activity over a multi-year period. Although impacts are described as “temporary, small-scale and reversible”, they result from intrusive seabed interventions and high-energy acoustic sources in a location that lies inside the Celtic Sea Important Marine Mammal Area (IMMA) and adjacent to several Natura 2000 sites designated for marine mammals and seabirds.

The application form ticks the box to state that Environmental Impact Assessment (EIA) is not required, yet there is no clearly identifiable, structured EIA screening assessment applying Annex III of the EIA Directive in the material submitted in support of the application. Furthermore, there exists no structured assessment of whether the proposed works constitute an integral part of the main infrastructure works (i.e., the wind farm). The Natura Impact Statement (NIS) accepts that likely significant effects on multiple SPAs and SACs could not be ruled out at screening, leading to Stage 2 Appropriate Assessment. This combination, AA required, without EIA screening, is inconsistent with a proper planning and environmental assessment process and is inconsistent with the policies of the National Maritime Planning Framework (NMPF).

2. What MUL 250019 proposes

The applicant emphasises that MUL 250019 is “not for construction” but for site investigation works. However, the scope and duration go well beyond a short, one-off survey, and includes:

- Geophysical surveys: multibeam echosounder (MBES), side-scan sonar and sub-bottom profiling (SBP and ultra-high-resolution seismic (UHRS) equipment), with SBP/UHRS source levels in the range of 185–247 dB re 1 μ Pa @ 1 m for Pinger/chirp, boomers, and sparkers.
- Geotechnical surveys: 10–40 cone penetration tests (CPTs), 5–15 boreholes to 70 m below seabed, and 30–60 vibrocores, each involving direct seabed penetration and sediment removal or disturbance.
- Metocean installations: deployment of buoys or floating LiDAR for 12–36 months, including moorings and associated maintenance vessel visits.
- Ecological surveys and vessel activity: multiple survey campaigns over a period of up to five years, with associated sea bed disturbance, underwater noise, lighting, and physical presence.

These works are therefore multi-year, involve repeated vessel campaigns, and include intrusive seabed interventions and use of high-energy acoustic equipment. The environmental risk cannot be

characterised by the words “temporary” and “small-scale” without consideration of duration, repetition, and ecological sensitivity of the site.

3. Annex IV framework and species present

The Annex IV Species Risk Assessment correctly identifies Article 12 of the Habitats Directive and the transposing Birds and Habitats Regulations 2011 as the relevant legal framework. Article 12 requires a “system of strict protection” for Annex IV species (all cetaceans), prohibiting deliberate disturbance, capture or killing and destruction or disturbance of breeding and resting places, unless a derogation is granted under Article 16.

The risk assessment recognises that the Celtic Sea area supports at least five regularly occurring cetacean species; harbour porpoise, bottlenose dolphin, common dolphin, Risso’s dolphin and minke whale, with additional occasional species such as fin whale, red listed as an IUCN globally threatened species, and humpback whale and killer whale recorded. The documents also acknowledge that the region’s cetacean use is strongly linked to prey availability, including seasonal herring spawning along the south coast, with fin and humpback whales aggregating during spawning periods between August and December. This is exactly why the area has been identified as the Celtic Sea Important Marine Mammal Area (IMMA) by the IUCN Marine Mammal Protected Areas Task Force, highlighting high species diversity, key feeding grounds, and migration corridors.

Despite this, the Annex IV assessment does not meaningfully integrate IMMA status, prey-driven ecology, or shelf-edge frontal productivity into its disturbance analysis. The description of the ecological baseline is limited to generalised descriptions of species presence, without reflecting that the site lies within a multi-functional, prey-rich, consistently important marine mammal zone, that includes the red listed fin whale.

4. How the Annex IV assessment handles noise and disturbance

The Annex IV risk assessment focuses primarily on two impact pathways: underwater noise and vessel collision risk. For noise, it lists a wide range of potential sources, including SBP pinger/chirp (149–247 dB re 1 μ Pa @ 1 m), UHRS boomer (212–215 dB re 1 μ Pa @ 1 m), UHRS sparker (185–226 dB re 1 μ Pa @ 1 m), USBL (170–220 dB re 1 μ Pa @ 1 m), rotary boreholes (145–190 dB re 1 μ Pa @ 1 m), vibrocorer (188 dB re 1 μ Pa @ 1 m), CPTs (118–166 dB re 1 μ Pa @ 1 m), and vessel noise. It adopts the 2024 NMFS thresholds for permanent threshold shift (PTS) and temporary threshold shift (TTS) in different

functional hearing groups, but those are U.S. criteria rather than the standard the decision-maker must apply under EU law.

The EU requirement is to base the assessment on the best available scientific evidence and to reach conclusions that remove all reasonable scientific doubt before an authorisation can be granted. The developer should therefore have provided a site-specific assessment using Southall et al. (2019) and, for continuous or non-impulsive sources applied a cumulative Sound Exposure Level (SEL_{cum}) approach, rather than relying on indirect comparison with other projects.

The assessment does not construct a Tonn Nua-specific acoustic propagation model. Instead, it relies on results from two south-coast modelling exercises, a DECC geophysical survey model and an EirGrid south-coast SI study using a semi-empirical Rogers model, and infers Tonn Nua impact ranges by analogy on the basis that the sources are "comparable". That is a methodological shortcut, not a site-specific, and equipment specific assessment.

Based on that indirect approach, the assessment suggests maximum auditory injury onset ranges of up to around 2.2 km for very high frequency (VHF) cetaceans (harbour porpoise) for sparker/boomer sources, TTS onset ranges of up to around 4.3 km for VHF cetaceans, and behavioural disturbance ranges in the comparator studies extending to 14–19 km depending on source. However, when assessing behavioural disturbance for Tonn Nua, the report adopts a 5 km "effective deterrence range" (EDR) and a maximum daily disturbance footprint of 256 km², explicitly discounting the larger behavioural ranges on the basis that there is "very little empirical support" for the Level B harassment criteria in the underlying studies.

The mitigation package is standard: marine mammal observers (MMOs), passive acoustic monitoring (PAM) where visibility is poor, 500 m mitigation zones, 30-minute pre-start watch, soft-start/gradual ramp-up of acoustic sources, and adherence to Irish DAHG/NPWS 2014 guidelines (including a preference for operating below 202 dB re 1 μ Pa @ 1 m where possible). The assessment then concludes that, with mitigation, the risk of PTS, TTS and behavioural disturbance is "negligible" for all Annex IV species, and that no derogation licence is required.

Several problems are evident. First, the analysis is not based on site-specific propagation modelling for Tonn Nua, while actual source specifications remain indicative and subject to contractor variation. Second, behavioural disturbance is compressed from up to 19 km to a 5 km EDR assumption without strong empirical justification, particularly for harbour porpoises and dolphins in a known important feeding area. Third, the 500 m mitigation zone is significantly smaller than the cited injury and TTS

ranges for VHF cetaceans (2.2 km and 4.3 km respectively), with the gap bridged by assuming animals will move away during ramp-up.

In other words, the Annex IV assessment cannot simultaneously conclude that disturbance is "negligible" while relying on animals fleeing the area to minimise PTS and TTS harm. This internal contradiction, where avoidance behaviour is treated as both proof of negligible disturbance *and* the mechanism preventing injury, reveals the assessment's fundamental flaw. MARA must scrutinise this reasoning before reaching any view on strict protection compliance or derogation requirements.

5. IMMA status and ecological context

The Tonn Nua survey area lies within the Celtic Sea IMMA, identified through peer-reviewed scientific work as a key habitat for marine mammals due to high species diversity, seasonal fish spawning (notably herring, which are considered hearing specialists), and persistent productivity associated with shelf-edge fronts and oceanographic mixing. IMMAs are internationally recognised, science-based areas delineated under the auspices of the International Union for Conservation of Nature and are widely used to inform marine spatial planning and environmental assessment as representing the best available ecological evidence.

The Celtic Sea IMMA qualifies under multiple IMMA criteria, including:

- Criterion A (Vulnerability), due to the presence of species of conservation concern such as fin whale.
- Criterion B and C (Distribution, abundance and key life-cycle activities), reflecting its use for feeding and seasonal aggregation.
- Criterion D2 (Diversity), reflecting the high number of marine mammal species recorded.

The IMMA factsheets and associated literature note:

- At least 22 marine mammal species recorded in the region, with nine occurring regularly, representing a comparatively high level of diversity for a temperate shelf system and exceeding that of many comparable North-East Atlantic areas.
- Seasonal aggregations of fin and humpback whales along the south coast of Ireland in association with herring spawning between August and December.
- High densities of common dolphins, harbour porpoises and minke whales along the southern Irish shelf and Celtic Sea front, driven by prey concentration and frontal productivity.

In a global context, most IMMAs are designated on the basis of a single qualifying feature or a small number of regularly occurring species. The Celtic Sea IMMA is notable in that it meets multiple criteria simultaneously and supports a relatively high diversity of regularly occurring species within a temperate shelf ecosystem. This elevates its significance beyond a typical regional habitat and identifies it as a persistent, multi-species foraging system of wider ecological importance.

This indicates that marine mammal presence in the Tonn Nua area is not incidental, but reflects a recognised, prey-driven feeding habitat with predictable ecological function. The area supports recurring aggregations linked to spawning events and persistent frontal systems, creating stable foraging hotspots. In such environments, animals are more likely to exhibit repeated feeding behaviour, remain within confined high-value habitat, and show reduced displacement responses where prey availability is concentrated.

The Tonn Nua Annex IV assessment acknowledges some of these ecological relationships in passing, for example by noting overlap between fin whale presence and herring spawning, but does not integrate prey-driven habitat use or the IMMA designation into its disturbance analysis. Instead, it treats the area as a generic part of the Celtic Sea with “low to moderate” cetacean density and assumes animals will move away from the survey footprint, implying disturbance will be limited and ecologically insignificant. This approach is not consistent with the best available scientific evidence or with EU and Commission guidance on strict protection, which emphasises the need to account for ecological context, including feeding, aggregation and habitat function, when assessing disturbance risk.

6. AA and Natura 2000 interactions

The NIS for MUL 250019 explicitly records that likely significant effects on multiple Natura 2000 sites could not be ruled out at screening, necessitating Stage 2 Appropriate Assessment under Article 6(3) Habitats Directive. The sites and pathways include: (i) SPAs such as Seas off Wexford, Mid-Waterford Coast and Helvick Head to Ballyquin, with potential disturbance, noise-related displacement and visual disturbance for species such as roseate tern, sandwich tern, kittiwake, gannet, puffin, guillemot and razorbill; and (ii) marine mammal SACs including Hook Head, Blackwater Bank and Rockabill to Dalkey Island, with qualifying interests such as harbour porpoise, bottlenose dolphin and grey seal, and risk pathways including auditory injury, TTS and disturbance from survey noise.

Article 6 assessment concerns: No Article 6(2) assessment appears to have been conducted to assess that sufficient steps have been taken to 'avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive'. It is the responsibility of the MARA to ensure that all aspects of proposed works are compliant with Article 6 before granting any such works. The Article 6(3) Stage 2 AA screening is inadequate because it fails to properly address underwater noise disturbance against NPWS conservation objectives, which state that "human activities should occur at levels that do not adversely affect the [species] population" and "should not introduce man-made energy (e.g. underwater noise) at levels that could result in a significant negative impact on individuals and/or the population", including where key resources such as feeding habitat are affected.

Article 12 strict protection (separate regime): Tonn Nua lies within high-value cetacean foraging/commuting areas of the Celtic Sea IMMA. Article 12 prohibits disturbance of any individual, regardless of SAC boundaries and regardless of whether it reaches a "significant" threshold at population level – particularly pregnant or dependent animals whose ecological function (foraging, resting, calving) spans the species' full range (2021 EU Commission Guidance). Displacement from multi-year surveys constitutes behavioural disturbance and incremental deterioration of breeding/resting habitat function – exactly the insidious, cumulative effect Article 12 prohibits. The Directive's "deterioration" standard (not the higher Irish "damage" threshold) applies.

The fact that Stage 2 AA is required under Article 6(3) confirms that likely significant effects on European sites could not be excluded, even on the applicant's analysis. This sits uneasily alongside the unstructured assertion that EIA is not required, with no explanation for how Article 6(3)-level effects fall below Annex III screening thresholds. This observation asks MARA to: (i) confirm whether an Article 6(2) assessment was conducted; (ii) explain the Article 6(3) noise assessment adequacy; and (iii) clarify how Article 6 findings – alongside Article 12's individual-level, range-wide protection – align with the EIA screening position.

7. Ornithology – Methodological Deficiencies in SISAA and NIS

The assessment of impacts on seabirds and Special Protection Area (SPA) qualifying interests within the Screening for Appropriate Assessment (SISAA) and Natura Impact Statement (NIS) for MUL 250019 is characterised by a consistent pattern: impact pathways are correctly identified at screening stage, but are subsequently minimised or dismissed without robust evaluation. This results in an assessment

that is internally inconsistent and does not meet the requirements of Article 6(3) of the Habitats Directive.

At screening stage, the SISAA identifies multiple relevant impact pathways, including above-water noise, underwater noise, visual disturbance, displacement, and impacts on prey species. It concludes that Likely Significant Effects cannot be excluded for a wide range of SPA species, including auks, kittiwake, terns, divers and cormorant. However, in the NIS, these same pathways are systematically downgraded as “localised”, “temporary” or “reversible”, without any site-specific quantitative assessment of exposure, displacement, or ecological consequence. No modelling is undertaken of seabird displacement, foraging exclusion, or energetic cost, and no population-level implications are assessed. Impact pathways sufficient to trigger screening concern are therefore not meaningfully assessed at Appropriate Assessment stage but instead dismissed through assumption. This does not meet the requirement to reach conclusions based on complete, precise and definitive findings capable of removing reasonable scientific doubt.

This deficiency is particularly significant in the context of the recent identification by BirdWatch Ireland (2025) of offshore Important Bird and Biodiversity Areas (IBAs) for seabirds along the south coast, including waters off County Waterford. These IBAs are based on empirical tracking and at-sea survey data and identify persistently used offshore foraging habitats functionally linked to coastal SPAs. While not yet designated, IBAs represent the best available scientific evidence of areas likely to qualify for classification as SPAs under the Birds Directive. The failure of the NIS to reference, incorporate, or assess this dataset represents a material omission of relevant and up-to-date scientific information. In effect, the assessment is undertaken on an incomplete ecological baseline.

A central flaw is the reliance on assumed habituation to anthropogenic disturbance. The NIS suggests that certain seabird species are tolerant of vessel traffic and noise and uses this to conclude that survey activity will not materially alter baseline conditions. No site-specific evidence is provided to support this assumption. The presence of existing disturbance does not reduce ecological sensitivity nor remove the obligation to assess additional disturbance. Existing pressure cannot be used to justify further disturbance, particularly where conservation objectives require maintenance or restoration of favourable conditions. This is especially relevant in offshore IBA areas, which have been identified precisely because they support concentrated and repeated seabird use; such areas are, by definition, not interchangeable or expendable. No evidence is provided to demonstrate that repeated disturbance over a five-year period falls within any tolerance threshold for the species concerned, particularly for diving seabirds such as guillemot and razorbill.

The treatment of puffin foraging ecology represents a further material deficiency. The NIS adopts a highly constrained foraging range (approximately 1 km from breeding sites), thereby excluding offshore habitat from assessment. This assumption is unsupported and inconsistent with established scientific evidence. Puffins are central-place foragers whose foraging ranges are highly variable and commonly extend tens of kilometres, particularly where prey availability is reduced. Empirical studies consistently indicate mean foraging ranges in the order of 10–60 km, with greater distances recorded under conditions of prey scarcity. The adoption of a minimal foraging radius artificially restricts the spatial scope of assessment and excludes ecologically relevant offshore habitat, including areas functionally linked to colonies such as the Saltee Islands SPA and the recently identified offshore IBA network. This materially understates the potential zone of impact and disregards the ecological connectivity between breeding sites and offshore foraging grounds.

The omission of prey-mediated effects is also notable. While the SISAA identifies disturbance to prey species as a relevant pathway, the NIS does not carry this forward into any substantive assessment. Impacts on fish and benthic prey are dismissed as “localised” and “temporary”, despite the use of high-intensity geophysical equipment capable of disturbing prey distributions. Many SPA species depend on localised prey aggregations, and disruption of these resources may directly affect foraging success. Offshore IBAs are frequently defined by oceanographic features that aggregate prey and thereby attract foraging seabirds; disturbance within such areas therefore has the potential to disproportionately affect feeding efficiency. The absence of any assessment of prey-field disturbance or its ecological consequences represents a significant gap.

The treatment of displacement is similarly inadequate. The NIS repeatedly concludes that birds will “move away” from survey activity and therefore avoid impact. In ecological terms, this movement constitutes displacement from functional foraging habitat. No assessment is provided of the spatial extent, duration, or energetic consequences of such displacement, nor of repeated disturbance events over the five-year licence period. Displacement is therefore not assessed as an impact pathway but is implicitly treated as mitigation. This is particularly material given the duration and repeated nature of the proposed works and the increasing recognition, as reflected in the IBA dataset, that seabirds repeatedly utilise specific offshore areas rather than uniformly distributed habitat.

Cumulative effects are not adequately addressed. Temporary effects are considered in isolation and there is no assessment of the cumulative effect of repeated disturbance over time or in combination with other pressures in the Celtic Sea, including other offshore developments and existing anthropogenic activity. The aggregation of multiple short-term disturbances may result in sustained ecological effects, particularly in relation to foraging behaviour and prey availability, yet this is not

evaluated. This omission is further compounded by the failure to consider the role of offshore IBAs as focal points of seabird activity, where cumulative disturbance may be spatially concentrated rather than diffuse. Available evidence does not support any assumption that seabird populations are resilient to additional disturbance. Regional survey data indicate variability and decline in seabird densities and distribution patterns in Irish waters, reflecting existing environmental pressures. In this context, additional disturbance should be assessed with caution. The absence of any population-level or density-based analysis further undermines the conclusions of the NIS.

These deficiencies must also be considered in light of obligations under the Birds Directive 2009/147/EC, which requires protection of bird species and their habitats, including avoidance of disturbance and deterioration. These obligations extend beyond designated SPAs to the full ecological range of species, including offshore foraging habitats. The identification of offshore IBAs reinforces the scientific basis for recognising these areas as integral components of the ecological network supporting SPA populations. The failure to assess displacement, foraging habitat use and prey-mediated effects at this functional ecological scale is therefore inconsistent with these requirements.

In combination, the methodological assumptions applied in the SISAA and NIS, including reliance on habituation, constrained foraging ranges, dismissal of prey effects, and treatment of displacement as avoidance, together with the omission of the recently identified offshore IBA network from the assessment baseline, result in a systematic underestimation of impacts. The assessment does not provide a scientifically robust basis on which adverse effects on the integrity of European sites can be excluded.

8. EIA screening: absence of a structured, transparent assessment

The application form box for “Is an EIA required?” is ticked “No”, but there is no standalone EIA Screening Report or clearly labelled “EIA Screening” section in the Marine Planning and Environmental Considerations document or associated files. What appears instead is a narrative pattern where:

- The applicant describes the works as temporary, reversible, and limited in footprint - while providing no evidence to support these contentions.
- The National Biodiversity Action Plan (NBAP) compliance statement and planning documents repeatedly characterise effects on biodiversity as “negligible”, “trivial” or “non-significant”.
- From this, the conclusion is drawn that EIA is not required.

However, the reasoning for this conclusion is insufficiently outlined.

There is no visible, criteria-based application of Annex III of the EIA Directive, which requires consideration of project characteristics, sensitivity of the project location and type/characteristics of potential impacts. In particular, there are no structured assessments of:

- Characteristics: five-year duration, scale of geotechnical works (number and depth of CPTs, boreholes, vibrocores), range of acoustic sources, and cumulative interaction with other survey, shipping, and development activity in the Celtic Sea.
- Location: presence of IMMA, adjacency to multiple SACs and SPAs, location within prey-rich feeding and migration corridors.
- Potential impacts: underwater acoustic disturbance over tens of square kilometres, displacement from feeding habitat, cumulative effects of repeated surveys and later construction across South Coast DMAP areas.

The NBAP compliance statement similarly contains conclusions about negligible or non-significant impacts but again does not amount to a structured screening exercise. MARA's own Request for Further Information (RFI) on MUL 250019 probes technical details and Annex IV/derogation issues but does not, on the public record to date, ask for or refer to any EIA screening or Annex III analysis. The applicant's response reiterates "negligible" impact conclusions and confirms no derogation is required but still does not supply an EIA screening report.

EU case law indicates that Article 12 must be preventive and that the onus is on the state (in this case MARA) to ensure a system of strict protection is in place. The responsibility to ensure compliance with Article 12-16 cannot be outsourced to the developer, even if enforcement of subsequent potential breaches are theoretically possible through Irish transposition. Furthermore, EU case law makes clear that projects cannot be excluded from EIA solely by reference to classification or thresholds where significant environmental effects may still arise (*C-72/95 Kraaijeveld*; *C-392/96 Commission v Ireland*). Preparatory and exploratory works that may give rise to such effects must be assessed in their own right (*C-531/13 Marktgemeinde Straßwalchen*), and Member States may not use broad exclusions to remove entire categories from screening without case-by-case consideration (*C-255/08 Commission v Netherlands*). In this light, the absence of a visible, Annex III-based screening for MUL 250019 is not just a presentational gap but a potential breach of these effects-based requirements.

In modern practice, especially in marine contexts where Annex II "deep drilling" and Annex III sensitivity factors clearly arise, EIA screening is expected to be traceable and explicit, not inferred from

general assertions of low impact. Even if some of the geotechnical elements were to be characterised as “soil investigation”, EU law (e.g. C-255/08 *Commission v Netherlands*) confirms that such categorical labels cannot be used to bypass a case-by-case assessment of environmental effects where significant impacts are reasonably foreseeable. This observation therefore asks MARA to undertake and publish a formal screening, so that the reasoning can be understood and evaluated.

9. Project splitting and “salami-slicing”

A further concern is the relationship between MUL 250019 and the broader 900 MW Tonn Nua wind project. The SI works are clearly preparatory for a large offshore wind development in South Coast DMAP Area A, yet they are treated in the applicant’s material as an isolated, low-impact exercise not requiring EIA. MARA has already considered similar issues in MUL 240036, an EirGrid SI licence in the same regional setting, where its determination expressly addressed concerns about project fragmentation and the need to consider cumulative effects and functional links between SI works and the parent project.

In MUL 240036, MARA’s reasoning demonstrates an awareness that site investigation licences cannot be regarded as wholly separate from the larger development context, particularly where boreholes and geophysical surveys are designed to de-risk or enable specific grid or generation projects. The pattern of reasoning, recognising functional linkages and cumulative effects and then deciding how far they can be dealt with at SI stage, is a relevant precedent. It would be helpful and important for MARA, in its decision on MUL 250019, to explain how it is applying the same principles here, given that the Tonn Nua SI programme over five years, in a DMAP zone explicitly earmarked for major offshore wind capacity, is clearly part of a larger project in the same sense as the Eirgrid project (MUL 240036).

The EIA Directive and CJEU case law make clear that projects should not be artificially split into smaller components to avoid or dilute environmental assessment. The *Straßwalchen* judgment (C-531/13) is one example where the Court emphasised that exploratory works associated with larger developments must be assessed with regard to their cumulative and functional context, not as isolated exercises (see also C-2/07 *Abraham*, C-227/01 *Orex*, and C-428/17 *ACP* on the inadmissibility of artificially splitting projects to avoid EIA). This submission asks MARA to take that case law into account when making a determination on MUL 250019.

10. Article 12 strict protection and Ireland's outdated guidance

The Annex IV assessment and the MARA RFI/response exchange indicate that the central test for Annex IV species has been approached largely through the lens of the "Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters" (DAHG, 2014). These guidelines remain non-statutory and have been widely acknowledged as outdated given subsequent scientific advances and policy developments, including the Commission Notice C(2021) 7301 – *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive*.

The key legal question is not whether a developer has cited the 2014 guidelines, but whether Ireland's regulatory system, including those guidelines, licensing practice and enforcement, delivers a "system of strict protection" compliant with Article 12. The 2021 Commission Guidance clarifies that:

- Article 12(1)(a)-(c) prohibitions apply to individual specimens, not just population-level effects – disturbance of one pregnant marine mammal breaches strict protection;
- "Deliberate disturbance" covers activities where protected species presence is known and disturbance foreseeable, regardless of conservation status at biogeographic level;
- Article 12(1)(d) prohibiting deterioration of breeding/resting sites applies regardless of specimen numbers present, protecting ecological function (foraging, calving, resting) across the species' full range;

Critically, where local population status differs from the wider biogeographic region (*Syddá Skoggen* principle), assessment must begin at local population level before considering regional cumulative effects. "The state and condition of the local population of a species in a certain geographical area might well be different from the overall conservation status of populations in the biogeographic region in the Member State (or even the natural range)" (Commission Guidance, 2021, section 3-69).

In the Tonn Nua application, the Annex IV conclusion depends on assumptions that animals will detect survey activity and move away before exposure reaches harmful levels, and that such avoidance is ecologically negligible. However, displacement from active feeding areas in an IMMA, serving as ex-situ foraging/commuting habitat for nearby SAC populations, is behavioural disturbance at individual and local population level. This sits uneasily with NPWS targets that "human activities should occur at levels that do not adversely affect" these populations or deteriorate key resources such as feeding habitat. Avoidance may reduce acute injury risk but constitutes disturbance/deterioration under Article 12, particularly over repeated multi-year campaigns in a prey-rich IMMA.

MARA's RFI rightly raised whether a derogation under Regulation 54 (Article 16) is required. Before concluding, MARA must scrutinise whether an avoidance-based approach, anchored in 2014 guidance and generic MMOs/PAM, meets Article 12 standards in this IMMA/SAC context, where local population disturbance is foreseeable and mitigation effectiveness uncertain. Strict protection cannot rest on unverified assumptions; the Directive prescribes transparent assessment and, where necessary, Article 16 derogation.

11. South Coast DMAP plan-level treatment of marine mammals

At the plan level, the South Coast DMAP (SC-DMAP) SEA and NIS describe regional marine mammal distributions and recognise that underwater noise from offshore wind could disturb cetaceans and seals, but they explicitly defer detailed impact assessment to project-level EIA and AA processes. Marine mammals are treated at a broad, regional scale, with limited use of fine-scale habitat datasets such as IMMAs, fish spawning grounds or frontal systems. Detailed noise modelling and site-specific habitat analysis were not undertaken at the DMAP stage because turbine technology, layouts and specific project envelopes were not yet known.

This means that the DMAP identified development zones, including Area A – Tonn Nua, as suitable “in principle” without fully resolving marine mammal habitat sensitivity. The burden of detailed assessment was shifted to project-level consents and MULs. In that context, the weaknesses identified in the Tonn Nua Annex IV assessment, IMMA treatment and EIA screening become more significant: they are not merely project-level details, but the actual area where the marine mammal issue is being assessed in practice. When a plan-led system fails to assess such key ecological issues at the planning stage, and leaves these questions to be answered later, it becomes crucial that project-level assessments are robust, transparent, and precautionary. Indeed, one might suggest that the assessment of a D-MAP site being considered for development of four major offshore wind farms in the middle of a designated IMMA SHOULD have addressed this at the plan stage. This observation is concerned that this was not done and is not demonstrated in this current application.

12. MARA's MUL 240036 determination as an indicator of regulatory thinking

MUL 240036, an EirGrid site investigation licence in the south-coast grid context, provides a valuable insight into MARA's own reasoning. In that determination, MARA engaged with:

- The nature and scale of geotechnical works, including boreholes.
- The relationship between SI works and the subsequent grid project.
- Cumulative and in-combination effects with other offshore activities.
- The need to avoid project “salami-slicing” by assessing SI works in their functional context.

Although the factual details and technology differ, the underlying regulatory approach in MUL 240036 recognised that intrusive investigation works cannot simply be dismissed as trivial because they are “temporary”, especially when they are the enabling stage of a larger development programme. It would be difficult to understand if MARA were now to accept a much more minimal, assertion-based treatment of MUL 250019, in the same general area and ecological setting, without at least a comparable level of structured reasoning on EIA screening and cumulative assessment.

This submission therefore asks MARA, when finalising its assessment on MUL 250019, to explain clearly how its approach aligns with, or is justified as different from, its published reasoning in MUL 240036.

13. Concerns about uncertainty and “strict protection”

The MUL 250019 application documentation illustrates the core tension between Article 12’s demand for strict protection and the unavoidable scientific uncertainties in marine noise and ecology. Their assessment recognises uncertainty in cetacean density, behavioural responses, noise propagation, and mitigation effectiveness but tends to resolve that uncertainty through assumptions favourable to development: animals will avoid the area; impacts will be short-lived; cumulative exposure will be low; population-level effects are unlikely.

From a legal and ecological perspective, the way this uncertainty is resolved, through assumptions favourable to development, raises serious doubts about compliance with strict protection requirements, particularly in an IMMA known for feeding and migration. The Commission’s guidance suggests that, where there is reasonable scientific doubt about disturbance in important habitats, the precautionary principle should apply and authorities should adopt protective measures and, where necessary, use derogation procedures under Article 16 with transparent justification. In the present case, disturbance is effectively discounted based on assumption and generic mitigation, rather than being explicitly accepted and, if necessary, authorised through a derogation process.

14. Summary of key issues

In summary, the main concerns regarding MUL 250019 are:

- **No structured EIA screening:** No assessment appears to have been carried out to assess if the proposed works constitute an integral part of the main infrastructure works. A determination of no EIA requirement are premature in the absence of such an assessment. Absence of a clear, Annex III criteria-based assessment despite multi-year intrusive works in an ecologically sensitive IMMA and acknowledged need for Stage 2 AA under Article 6(3) Habitats Directive.
- **Inadequate noise assessment:** Non-site-specific modelling using U.S. NMFS criteria rather than Southall et al. (2019)/SELCum for continuous noise sources; behavioural disturbance compressed from 14–19 km to 5 km EDR; 500 m mitigation zone smaller than 2.2–4.3 km injury/TTS ranges for VHF cetaceans.
- **Ecological baseline failure:** No integration of IMMA status, prey-driven feeding ecology (herring spawning), shelf-edge frontal productivity, or local population effects into Annex IV analysis.
- **Outdated guidance and logical contradiction:** Reliance on 2014 DAHG guidance; cannot claim both "negligible disturbance" *and* animals flee to avoid PTS/TTS injury – avoidance itself is Article 12 behavioural disturbance.
- **Deficiencies identified:** These extend not only to marine mammals but also to seabird species and SPA qualifying interests, where the Natura Impact Statement fails to adequately assess displacement, foraging habitat use, and prey-mediated effects, further reinforcing the conclusion that likely significant effects cannot be excluded.
- **Failure to apply Article 12 test:** No systematic assessment of each Article 12(1) prohibition – deliberate disturbance of individuals or deterioration of breeding/resting sites potentially impacted by the proposed works – despite 2021 Commission Guidance requiring individual-level analysis.
- **MARA inconsistency:** RFI lacks EIA scrutiny despite detailed Annex IV engagement; contrasts with robust reasoning in MUL 240036 determination on comparable SI works.
- **Project splitting:** No assessment has been carried out to determine the functional link between SI works and 900 MW Tonn Nua windfarm, which raises artificial separation concerns (*C-2/07 Abraham, C-531/13 Straßwalchen*).
- **Incomplete Article 6 regime:** No visible Article 6(2) deterioration assessment; Article 6(3) noise analysis inadequate against NPWS conservation objectives.

15. Requests to MARA

Considering the above, this observation respectfully requests that MARA:

1. Withholds approval of MUL 250019 based on the current application documentation without first addressing the issues raised above.
2. Undertake and publish a formal EIA screening determination, explicitly applying Annex III criteria to the characteristics, location, and potential impacts of the Tonn Nua SI works, with particular attention to the IMMA, Natura 2000 interactions, multi-year duration and cumulative context.
3. Re-examine the Annex IV assessment in light of Article 12, Commission Guidance, and relevant CJEU case law, and consider whether a derogation under Regulation 54 (Article 16) is in fact required, given that avoidance-based mitigation still entails behavioural disturbance in an important feeding and migration area.
4. Ensure that, when evaluating MUL 250019, the functional relationship between the SI works and the 900 MW Tonn Nua wind project is considered, in line with MARA's own reasoning in MUL 240036 and the EIA Directive's approach to cumulative and staged projects.
5. Where uncertainties remain about marine mammal habitat use, prey-driven aggregation and behavioural response to noise, apply the precautionary principle and the requirements of strict protection, rather than resolving uncertainty through optimistic assumptions.
6. Reassess the adequacy of the Natura Impact Statement in respect of seabirds and SPA qualifying interests, including displacement, foraging habitat use, and prey-field impacts, and in particular the omission of the recently identified offshore Important Bird and Biodiversity Areas (IBAs) off the south coast as part of the ecological baseline, and determine whether further assessment is required.

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

Yours sincerely,

Niall Ó Faoláin

Dr Michael O'Meara

Directors