

1. ATTACHMENT 2.6

1.1 Existing Authorisation

The proposed activity comprises routine inspection surveys of the existing East West Interconnector (EWIC) submarine electricity cable and associated cable protection measures within Irish maritime waters.

The activity is authorised under Foreshore Licence FS004527, which permits EIDAC to inspect the EWIC cable and cable protection infrastructure along the authorised cable corridor. The route of the EWIC cable corridor in the EEZ was subject to prior approval on behalf of the former Minister for Communications, Energy and Natural Resources pursuant to the UN Convention on the Law of the Sea. The proposed surveys are limited to the collection of geophysical and visual data for asset integrity and maintenance purposes and do not involve the installation, alteration, extension or replacement of infrastructure.

The proposed surveys therefore constitute operational inspection and maintenance activities associated with an existing authorised electricity interconnector and do not comprise development requiring planning permission.

Please note that this Attachment 2.6 encloses (in this order of priority):

1. EIDAC AA Screening Determination (Appendix A)
2. Intertek Supporting Information for Screening of AA (SISAA) (Appendix B)
3. Foreshore Licence FS004527 (Appendix C)
4. Email from DCENR confirming approval of the EWIC cable route including in EEZ (Appendix D)
5. PAD Route Approval Letter (Appendix E)
6. Environmental Report submitted with Foreshore Licence application (Appendix F)
7. MLVC Report (Appendix G)

1.2 Environmental Impact Assessment

1.2.1 Original EWIC Authorisation

The application for EWIC Foreshore Licence FS004527 was accompanied by an Environmental Report which recorded that:

“As the installation of cables alone is not a form of development that is listed under Annex I or II of the EU Council Directive 85/337/EEC (on the assessment of the effects of certain public and private projects on the environment), the works do not fall under the remit of those regulations. However, there are a number of regulatory consents required for such installations, and this document is intended to provide the information required by the regulatory authorities in the consenting process.”

It remains the case under Directive 2011/92/EU as revised by Directive 2014/52/EU (the EIA Directive) that EWIC is not a project type for which EIA is or was required under the EIA Directive, the Foreshore Act 1933 as amended, or the Planning and Development Act 2000, as amended.

The Environmental Report further states that an environmental scoping/screening report was issued to the relevant regulatory authorities in Britain and Ireland in late February 2008, that those authorities consulted their advisers, and that both the Marine Licence Vetting Committee (Ireland) and the Marine and Fisheries Agency (Britain) considered that EWIC did not require EIA. EirGrid therefore provided an Environmental Report that covered the same issues as a typical EIA report, and focused on the scoping comments of the various statutory consultees who had provided responses.

To the best of EIDAC's knowledge:

- No Environmental Impact Assessment Report (EIAR) or EIA screening report was submitted with the Foreshore Licence application, because none was required.
- No formal EIA Screening Determination by the Minister has been identified in the publicly available records.
- The Marine Licence Vetting Committee (MLVC) and Minister's consideration of environmental effects was informed through the Environmental Report prepared for the EWIC project and the associated statutory consultation process.

1.2.2 Proposed Inspection Surveys

The current application relates solely to routine inspection surveys of existing infrastructure.

The surveys will use standard marine geophysical and visual survey techniques including:

- Multibeam echosounder (MBES).
- Side-scan sonar.
- Ultra Short Baseline.
- Visual survey equipment; and
- Associated positioning and navigation systems.

No seabed excavation, cable burial, cable recovery, cable installation, rock placement, dredging, or construction works are proposed.

The surveys are temporary, short-duration, non-intrusive and observational in nature and are undertaken to assess the condition and integrity of existing authorised infrastructure.

The proposed inspection programme does not constitute a project listed under Annex I or Annex II of the EIA Directive, and is not therefore subject to a requirement for formal EIA screening or EIA. Furthermore, given the limited nature of the activity, EIDAC considers that it is not of a scale or character likely to give rise to significant environmental effects.

1.3 Appropriate Assessment

1.3.1 Statutory Context

MARA is the competent authority for the purposes of Part 5 of the Maritime Area Planning Act 2021 ("MAP Act"). Accordingly, where an application for a Maritime Usage Licence (MUL) is made, MARA is responsible for undertaking Appropriate Assessment (AA) Screening and, where required, AA in accordance with Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations 2011.

Section 114 of the MAP Act provides for the making of regulations prescribing classes of exempted usage. Pursuant to section 114(2), a Schedule 7 usage cannot constitute exempted usage where an AA or EIA is required in respect of that usage.

Where a declaration is sought under section 115 of the MAP Act that a proposed exempted usage does not require a MUL, MARA may be required to consider whether AA Screening is necessary and to undertake such AA Screening in the context of determining whether the activity requires a MUL.

The present application differs from that scenario. EIDAC is not seeking a declaration that a Schedule 7 usage is exempt from the requirement for a MUL pursuant to regulations made under section 114. Rather, EIDAC seeks a declaration that the proposed inspection survey of the authorised EWIC cable and cable protection (the "Facilities" as defined by the Foreshore Licence) does not constitute a Schedule 7 usage in the first instance and therefore falls outside the scope of the MUL regime entirely.

In those circumstances, EIDAC's understanding is that any statutory obligation to undertake AA Screening before issuing the section 115 declaration does not arise automatically, as the proposed activity is not a Schedule 7 usage and no exemption under section 114 is being relied upon.

1.3.2 Existing Authorisation and Natura 2000 Context

The Environmental Report (Appendix F) prepared for the original EWIC project identified European and RAMSAR sites but recorded that the EWIC cable route itself did not pass directly through any European sites in Ireland. The Environmental Report assessed the likely effects of the construction and operation of the EWIC on European sites.

The MLVC having considered the Environmental Report and other relevant materials considered that an Appropriate Assessment under Article 6(3) of the Habitats Directive was not required given that the EWIC cable route did not lie within any European site and considered that the works would not impact any European site.

The Minister granted the Foreshore Licence authorising the construction, inspection, maintenance, repair and replacement of the EWIC Facilities on the basis that AA was not required, having concluded that:

"the proposed cable route on the foreshore does not lie within any designated Natura 2000 site and that the works would not impact on any designated Natura 2000 site."

Subsequent to the grant of the Foreshore Licence, the Minister formally proposed the designation of the North-West Irish Sea SPA (Site Code 004236). Part of the EWIC route corridor is located within this proposed SPA.

The activities requiring consent identified for the proposed SPA include:

"ARC 35 - Undertaking active acoustic surveys in the marine environment."

The qualifying interests of the proposed SPA comprise seabird species and associated supporting habitat and ecological processes. As routine inspection of the EWIC Facilities may involve the use of active acoustic geophysical survey equipment, including MBES and SSS systems, EIDAC recognises that the activity occurs within a different Natura 2000 context than that which existed when the Foreshore Licence was originally granted.

1.3.3 Assessment of the Proposed Inspection Surveys

The proposed inspection surveys are limited to the acquisition of geophysical and visual data for the purposes of asset integrity verification, condition assessment and operational monitoring of existing authorised infrastructure.

The surveys will utilise standard survey techniques, including:

- MBES.
- SSS.
- Associated positioning and navigation equipment.

No cable installation, cable replacement, cable recovery, dredging, trenching, seabed excavation, rock placement or other physical intervention in the maritime area is proposed.

The survey techniques form part of the routine operational inspection regime previously envisaged for the EWIC. The 2008 Environmental Report identified periodic cable route surveys during operation using side-scan sonar, ROV inspections and related survey equipment to monitor cable burial and integrity and concluded that any associated ecological effects would be temporary, localised and slight.

An updated Supporting information for Screening of Appropriate Assessment (SISAA) Report accompanies this application. The SISAA Report was commissioned for the purposes of providing EIDAC with objective scientific information on whether the proposed inspection surveys, individually or in combination with other plans or projects, would have a significant effect on any European site.

The SISAA concludes on the basis of objective scientific information that the proposed inspection surveys, individually and in combination with other plans or projects, will not be likely to have significant effects on any European site, including the proposed North-West Irish Sea SPA, and recommends that Appropriate Assessment is therefore not required.

As the public authority proposing to undertake the inspection surveys, EIDAC has undertaken a Screening for AA pursuant to Regulation 42(1) and (2) of the Habitats Regulations, and has made an AA Screening Determination pursuant to Regulation 42(7) of the Habitats Regulations that an AA of the proposed inspection surveys is not required because it can be excluded on the basis of objective scientific information that the proposed surveys, individually or in combination with other plans or projects, will have a significant effect on a European site.

Pursuant to Regulation 42(18) of the Habitats Regulations, EIDAC's statutory AA Screening Determination has been made available for inspection, together with the SISAA setting out the reasons for the Determination, on <https://cms.eirgrid.ie/sites/default/files/publications/EWIC-AAS-Supporting-Information.pdf> and https://cms.eirgrid.ie/sites/default/files/publications/EIDAC-AA-Screening-Determination_0.pdf.

When determining the section 115 application for a declaration that a MUL is not required for the proposed surveys, MARA may pursuant to its statutory obligations under section 112 of the MAP Act and Regulation 27 of the Habitats Regulations take due account of the statutory prior AA Screening Determination made by EIDAC that AA is not required.

The precise legal basis for this is set out in the next section 1.3.4.

1.3.4 Updated AA Screening Determination

Section 2 of the Electricity Regulation (Amendment) (EirGrid) Act 2008 gave EirGrid the power to construct, operate (transport electricity across and maintain), and own an electricity interconnector. This power was expressly subject to the Commission for Regulation of Utilities (CRU) granting both an authorisation to construct an interconnector (under section 16 of the Electricity Regulation Act 1999) and a licence to operate (to transport electricity across and maintain) an interconnector (under section 14 of the 1999 Act). Section 2(5) of the Act gave EirGrid the power to carry on any activity which appears to EirGrid to be requisite, advantageous or incidental to or which appears to EirGrid to facilitate, the performance by EirGrid of any function under the Electricity Regulation Act as amended. Section 5 of the 2008 Act gave EirGrid the power to establish subsidiary companies to undertake functions of EirGrid, subject to first obtaining the approval of the Minister and the Minister for Finance.

EIDAC was established as a wholly-owned subsidiary of EirGrid for the purposes of owning and operating EWIC pursuant to the authorisation to construct and licence to operate the interconnector granted by the CRU, and the EirGrid statutory functions delegated to EIDAC. Therefore, it is considered that both EIDAC and EirGrid fulfil the prescribed criteria to be considered a "public authority" as defined by Regulation 2(1) of the Habitats Regulations. Furthermore, MARA as a statutory body is a "public authority" for the purposes of the Habitats Regulations and this position is reinforced by section 112 of the MAP Act which designates MARA formally as a "competent authority" for the purposes of Part 5 of the Habitats Regulations and the AA procedures to which that Part applies.

Under Part 4 of the Habitats Regulations ("Activities, Plans or Projects Affecting European Sites"), Regulation 27 provides:

(2) a public authority whose functions have implications for nature conservation shall exercise those functions so as to secure compliance with the Habitats and Birds Directives and the Habitats Regulations.

(3) insofar as their functions are relevant to the Habitats Regulations, a public authority shall exercise those functions so as to avoid the deterioration of habitats and the significant disturbance of species for which the European sites have been designated.

(4) a public authority shall avoid pollution and deterioration of European sites and shall strive to avoid deterioration of bird habitat elsewhere, outside of SPAs.

(5) in the exercise of their statutory functions and responsibilities, public authorities shall avoid damaging European sites through activities that may cause deterioration of natural habitats or to the conservation status of the species for which the sites have been designated, including such activities that take place outside the boundaries of the sites, and to avoid significant disturbance of species. Public authority shall further take account of *inter alia* relevant NPWS Guidance and of ARCs (including, for example, "ARC 35 - Undertaking active acoustic surveys in the marine environment.")

(9) a public authority shall at the request of the Minister provide evidence of compliance with the Habitats Regulations and take such steps as the Minister may require to ensure compliance with the Habitats and Birds Directives and the Habitats Regulations.

Under Part 5 of the Habitats Regulations ("Appropriate Assessment"), Regulation 42 provides in relation to Screening for Appropriate Assessment and Appropriate Assessment of implications for European Sites:

(1) a Screening for Appropriate Assessment of a plan or project which a public authority wishes to undertake or adopt shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.

(2) such AA Screening shall be carried out by the public authority before a decision to undertake or adopt the plan or project is taken.

(6) AA of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

(7) a public authority shall determine that an AA is not required if it can be excluded on the basis of objective scientific information that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

(9) where, pursuant to (6) it is determined that AA is required, a public authority is required to conduct an AA in relation to a plan or project that it proposes to undertake or adopt, and the public authority shall prepare a Natura Impact Statement (NIS) and such other evidence as may be provided to the Minister not later than six weeks before the public authority proposes to adopt or undertake the plan or project.

(10) where the NIS and other information has been submitted to the Minister pursuant to Regulation 42(9), the public authority shall not without the Minister's agreement conclude the AA before the six weeks has expired. In determining the AA, the public authority shall take account of the Minister's submissions (if any).

(11) an AA Determination shall be made by the public authority pursuant to Article 6(3) as to whether or not a plan or project would adversely affect the integrity of a European site and the assessment

shall be carried out by the public authority before a decision is taken to undertake or adopt a plan or project, as the case may be.

(13) where the public authority has determined pursuant to Regulation 42 (6) that an AA is required the public shall be consulted before the AA Determination is made under Regulation 42 (11).

(18) any determination made by a public authority under Regulation 42 in relation to a plan or project, including the reasons for the determination, shall be made available for inspection as soon as may be after making the determination.

(19) the Minister (NPWS) may request a public authority responsible for adopting or undertaking a plan or project to conduct an AA and the relevant public authority shall comply with that request.

The SISAA Report was commissioned for the purposes of providing EIDAC with objective scientific information as to whether the proposed inspection surveys, individually or in combination with other plans or projects, would have a significant effect on any European site.

EIDAC considers that the proposed inspection surveys for the authorised EWIC are not a Schedule 7 usage for which a MUL is required, and are not therefore subject to the consent provisions of the MAP Act. EIDAC is the public authority proposing to undertake the inspection surveys for the authorised EWIC, and is conferred with statutory responsibility under Regulations 27 and 42 of the Habitats Regulations to ensure that an AA Screening Determination is made before such surveys are undertaken. EIDAC has therefore undertaken a Screening for AA pursuant to Regulation 42(1) and (2), and has made an AA Screening Determination pursuant to Regulation 42(7) of the Habitats Regulations that an AA of the proposed inspection surveys is not required because it can be excluded on the basis of objective scientific information that the proposed surveys, individually or in combination with other plans or projects, will have a significant effect on a European site.

Pursuant to Regulation 42(18), the AA Screening Determination has been made available for inspection, together with the SISAA setting out the reasons for the Determination, on <https://cms.eirgrid.ie/sites/default/files/publications/EWIC-AAS-Supporting-Information.pdf> and https://cms.eirgrid.ie/sites/default/files/publications/EIDAC-AA-Screening-Determination_0.pdf

In determining this application for a declaration pursuant to section 114 of the MAP Act that the proposed inspection surveys of the authorised EWIC are not a Schedule 7 usage and that a MUL is not required, MARA is entitled to take account of the prior AA Screening Determination made by EIDAC pursuant to Regulation 42 of the Habitats Regulations. It is EIDAC's understanding that MARA has no automatic obligation to undertake AA Screening before issuing the section 115 declaration, as the proposed inspection activity is not a Schedule 7 usage and no exemption under section 114 is being relied upon.

Without prejudice to this, even if MARA considers that it has a statutory obligation to undertake its own AA Screening before issuing the declaration, Regulation 42(21) of the Habitats Regulations clarifies that where EIDAC ("the first authority") has carried out a statutory AA Screening and made a statutory AA Screening Determination in relation to the proposed inspection surveys of the authorised EWIC, MARA ("the second authority") undertaking an AA Screening of the same project "*shall take account of*" the AA Screening of the first authority and any information prepared for the purposes of that AA Screening, and "*shall consider the extent to which the scope*" of the AA Screening "*covers the issues that would be required to be addressed by the second authority in a screening for Appropriate Assessment*" and "*shall identify any issues that have not, in that regard, been adequately addressed*". The second authority may limit its requirement for information to those issues that it determines have not been adequately addressed for the purposes of the second authority in the process of AA Screening.

2. CONCLUSION

The proposed activity comprises routine inspection and monitoring of the existing EWIC cable and associated cable protection measures within Irish maritime waters. The activity is undertaken for the purpose of asset integrity verification, condition assessment, operational monitoring and maintenance planning in respect of existing authorised infrastructure.

The proposed surveys are limited to the acquisition of geophysical and visual data using vessel-mounted equipment. The works are non-intrusive, temporary in duration and observational in nature. No construction activity, installation of infrastructure, seabed excavation, dredging, cable burial, cable recovery, or other physical alteration of the maritime area is proposed.

The activity is authorised under Foreshore Licence FS004527, which expressly provides for the inspection of the EWIC cable and cable protection measures. The surveys do not facilitate a new development, an extension or modification of the authorised infrastructure, nor do they constitute site investigation works in support of an application for a Maritime Area Consent, Maritime Usage Licence, development consent or any other future authorisation.

While the survey methodologies are similar to those employed for marine environmental surveys or site investigations, the purpose of the activity is materially different. The surveys are undertaken solely as part of the operation, monitoring, inspection and maintenance regime for an existing authorised electricity interconnector.

Having regard to:

- the nature and purpose of the proposed activity;
- the absence of any seabed disturbance or physical intervention in the maritime area;
- the existing authorisation provided by Foreshore Licence FS004527 and all other relevant consents obtained prior to the installation of EWIC;
- the temporary and non-intrusive character of the surveys; and
- the fact that the activity relates exclusively to the inspection and monitoring of existing infrastructure.

EIDAC considers that the proposed activity does not constitute a maritime usage of a class specified in Schedule 7 of the Maritime Area Planning Act 2021 and therefore does not require a Maritime Usage Licence.

Accordingly, EIDAC respectfully requests that MARA issue a declaration pursuant to Section 115 of the Maritime Area Planning Act 2021 confirming that a Maritime Usage Licence is not required for the proposed EWIC inspection survey programme.

APPENDIX A

EIDAC AA SCREENING DETERMINATION

File name: P2827_Attachemnt 2.6_Appendix A_EIDAC AA Screening Determination (Signed)

APPENDIX B

Intertek SISAA

File name: P2827_Attachment 2.6_Appendix B_SISAA_R6975_Rev1

APPENDIX C

Foreshore Licence

File name: P2827_Attachment 2.6_Appendix C_EWIC_Irish Foreshore Licence 20.12.10

APPENDIX D

Email from DCENR confirming EWIC cable route beyond EEZ

Filename: P2827_Attachment2.6_Appendix D_Email from DCENR confirming approval of the EWIC cable route including in EEZ

APPENDIX E

PAD Route Approval Letter

File name: P2827_Attachment 2.6_Appendix E_PAD Route Approval Letter

APPENDIX F

Environmental Report submitted with Foreshore Licence

File name: P2827_Attachment 2.6_Appendix F_Irish (EWIC) Environmental Report

APPENDIX G

MLVC Report

File name: P2827_Attachment 2.6_Appendix G_mlvc-report-east-west-interconnector-135-mb