

**FS007037 Cork County Council –Dredging at Ballycotton Harbour**

**Prescribed Bodies Observations –  
Regulation 42 under EC (Birds and Natural Habitats) Directive**

Table of Contents

Department of Housing, Local Government and Heritage – Marine Advisor Environment (MA_Environmental).....	2
UAU.....	5
Department of Housing, Local Government and Heritage – Marine Advisor (MA_Engineer) .....	6
Department of Agriculture, Food and the Marine (DAFM) .....	6
Marine Institute (MI) .....	6
Marine Survey Office (MSO) .....	6
Inland Fisheries Ireland (IFI).....	6

Ballycotton Bay is itself a Special Protection Area (SPA) [IE004022] and this site and a number of other important European sites in its vicinity are described below.

**Ballycotton Bay SPA** hosts nationally important populations of eleven species of birds, of which two, Golden Plover and Bar-tailed Godwit, are listed on Annex I of the E.U. Birds Directive.

**Ballymacoda Bay SPA** is one of the most important sites in the country for wintering waterfowl. It is of international and national importance for its Golden Plover and Black-tailed Godwit populations. These species are listed on Annex I of the Birds Directive. It also supports nationally important populations of a further twelve species.

**Blackwater Estuary SPA** support a national and international important population of on its wetlands. The site is also of national importance for seven species including Little Egret, Golden Plover and the aforementioned Black-tailed Godwit all of which are listed on Annex I of the Directive.

**Sovereign Islands SPA** is of ornithological importance mainly for the breeding colony of Cormorant which is national importance. The non-migratory population of Great Black-backed Gull here is also of national importance.

**Cork Harbour SPA** is of international importance for both its numbers of wintering birds and its populations of Black-tailed Godwit and Redshank. It supports nationally important wintering populations of 22 species, as well as a nationally important breeding colony of Common Tern. Several of the species which occur regularly are listed on Annex I of the Directive, i.e. Whooper Swan, Little Egret, Golden Plover, Bar-tailed Godwit, Ruff, Mediterranean Gull and Common Tern.

**Blackwater River (Cork/Waterford) SAC** the site is also important for the presence of several E.U. Habitats Directive Annex II animal species, including Sea Lamprey (*Petromyzon marinus*), Brook Lamprey (*Lampetra planeri*), River Lamprey (*L. fluviatilis*), Twaite Shad (*Alosa fallax fallax*), Freshwater Pearl Mussel (*Margaritifera margaritifera*), Otter (*Lutra lutra*). The river is noted for its enormous run of Annex II species Salmon (*Salmo salar*) over the years.

**Ballymacoda (Clonpriest and Pillmore) SAC** The saltmarshes at this site are largely Atlantic salt meadows and Mediterranean salt meadows. However a rarer sub-type of Mediterranean salt meadow with Borrer's Saltmarsh-grass (*Puccinellia fasciculata*) is also present here. This is a very notable population of this rare species which has only been found in small areas along the Barrow Estuary, Wexford and Dublin shorelines since 1960. It is listed on the Flora (Protection) Order 2015 and is also listed in the Red Data book.

#### **Assessment Process**

The Minister for Housing, Local Government and Heritage, is responsible for carrying out environmental screening and any environmental assessments determined as being required following screening, in accordance with the requirements set out in Directive 92/43/EEC (**Habitats Directive**)

and Directive 2009/147/EC (**Birds Directive**), in respect of applications under the Foreshore Act 1933, as amended.

### **Habitats Directive**

The Appropriate Assessment process (AA) is an assessment of the potential for adverse or negative effects of a plan or project, in combination with other plans or projects, on the conservation objectives of a European Site (Natura 2000 site). The focus of AA is targeted specially on Natura 2000 sites and their conservation objectives.

Article 6(3) and 6(4) of the **Habitats Directive** place strict legal obligations on Member States to regulate the conditions under which development that has the potential to impact on European Sites can be proceed. It requires that an Appropriate Assessment be carried out of plans or projects, not directly connected with or necessary to the management of a site as a European Site, but which are likely to have a significant effect thereon, either individually or in combination with other plans or projects. An AA Screening assessment is carried out to determine whether a plan or project is likely to have a significant effect on a European Site.

- Article 6.3 states that: *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*
- Article 6.4 states: *“if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*
- *Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”*

In giving effect to the above as a matter of Irish law, the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows:-

Regulation 42(1) of the Birds and Natural Habitats Regulations states that: *“A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of the 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 Sites.”*

Regulation 42(2) provides that: “A public authority shall carry out screening for Appropriate Assessment under paragraph (1) before consenting for a plan or project is given, or a decision to undertake or adopt a plan or project is taken.”

The Birds and Natural Habitats Regulations further provide as follows at Regulation 42(6) and 42(7):

6. *The public authority shall determine that an Appropriate Assessment 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 European site.*
  
7. *The public authority shall determine that an Appropriate Assessment of a plan or project is not 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 can 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.*

Furthermore, under section 42A(13) of S.I. No. 293 of 2021 an Appropriate Assessment, including the specified public consultation, must be carried out before the public authority makes a decision to undertake or adopt the proposed plan or project.

#### **Risk Assessment for Annex IV Species**

Article 12 of the Habitats Directive (92/43/EEC) affords strict protection to species listed in Annex IV of the Directive wherever they occur. Outside of designated Natura 2000 sites, the waters around Ireland’s coast are a suitable habitat for a number of Annex IV species. Where necessary a risk Assessment for adverse effects of the proposed works on these species must be undertaken and a report produced.

The purpose of the Risk Assessment is to examine the possibility that the proposed project either individually or in combination with other plans and projects, may result in the deliberate disturbance or destruction of any of the species listed in Annex IV which may be present in the works area. The Risk Assessment should take into account the status (e.g. as indicated in the latest Article 17 reporting for Ireland, NPWS 2019) and sensitivities of relevant Annex IV species to potential impacts associated with the proposed project.

The Risk Assessment for Annex IV Species should be precise, with definite findings, mitigation and conclusions removing all reasonable scientific doubt as to the effects of the proposed project on any Annex IV species. This assessment is separate to that undertaken under Article 6.3.

#### **Conclusion/Recommendation**

In principle I have no objections to this application.

## UAU

We refer to correspondence received in relation to the above planning application. The application and supporting documents, including the Underwater Archaeological Impact Assessment (UAIA) (Mizen Archaeology, March 2021) have been reviewed by the Underwater Archaeology Unit of the National Monuments Service of the Department of Housing, Local Government and Heritage. We concur with the recommended archaeological mitigation outlined in Section 7 of the UAIA and recommend the following CONDITION be attached to any foreshore licence that may issue:

1. Archaeological monitoring is to take place of all works that involve an impact to the seabed and foreshore, as below:

a. The services of a suitably qualified and suitably experienced underwater archaeologist shall be engaged to carry out the archaeological monitoring.

b. The archaeological monitoring shall be licensed by the Department of Housing, Local Government and Heritage and a detailed method statement that sets out the monitoring strategy is to accompany a licence application. A Finds Retrieval Strategy shall be included in the methodology and all excavated deposits shall be spread and metal detected (under licence) to recover any archaeological objects that they may contain.

c. The monitoring archaeologist shall obtain a dive survey licence in order to facilitate investigation of underwater archaeological materials should they be uncovered/identified.

d. Please note vetting of licence applications by the Department takes 3-4 weeks.

e. A communication strategy is to form part of the monitoring strategy to ensure full communication is in place between the monitoring archaeologist and the plant operator(s) at all times during works. The archaeological personnel undertaking the monitoring will be in a position to monitor directly all elements of the works, to ensure they have unobstructed views of the excavations, and the plant and machinery operators shall be prepared to facilitate the archaeological personnel in the undertaking of their monitoring work.

f. Should archaeological materials be found during the course of monitoring, the archaeologist shall have work on the affected area of the site stopped pending further archaeological investigation and a decision by the Department regarding appropriate mitigation. The developer shall be prepared to be advised by the National Monuments Service with regard to any mitigating action (preservation in-situ and/or excavation). The developer shall facilitate the archaeologist in recording any material found.

g. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of the monitoring and any subsequent required archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

Department of Housing, Local Government and Heritage – Marine Advisor (MA\_Engineer)

No observations to make.

Department of Agriculture, Food and the Marine (DAFM)

There are no further comments from the Department of Agriculture, Food and the Marine.

Marine Institute (MI)

The MI has no observations at this time.

Marine Survey Office (MSO)

After careful consideration the Marine Survey Office has no objection to the proposed works in the application from a navigational safety perspective. However the following shall be noted;

- A Marine Notice shall be published for the information of all local maritime users detailing the proposed dredging campaign and any associated hazards to navigation arising for the duration of the licence period.

Inland Fisheries Ireland (IFI)

We have no comment to make.

DAU

No comment to make.

Sea Fisheries Protection Authority (SFPA)

Following a review of the observations and comments from the local SFPA office which covers Ballycotton, Co. Cork, I can confirm that there are no comments regarding this application.