

FS007134 ESB Wind Development Ltd., Site Investigations at Sea Stacks Offshore Wind, off Dublin and Wicklow

Pulic Consultation on Appropriate Assessment, during period 11 July 2022 to 09 August 2022.

1. Private [REDACTED]
2. Coastal Concern Alliance
3. Wild Defence Ireland
4. Private [REDACTED]
5. Killiney Community Council

1. Private

From: [REDACTED] <[REDACTED]@gmail.com>
Sent: Monday 11 July 2022 23:36
To: Housing ForeShoreORE
Subject: FS007134 (Foreshore SI License ESB)

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Dear Sir/Madam,

I am in support of this foreshore application. The magnitude of power which could be harnessed from the wind offshore in Ireland is significant and it's a no brainer that this should commence now given the objectives of Project 2040 and ESBs 2030 plans to offset fossil fuel generation with renewable sources.

Hopefully it's the first of many offshore wind projects.

Kind Regards,
[REDACTED]
South Dublin

2. Coastal Concern Alliance

From: Coastal Concern Alliance <info@coastalconcern.ie>
Sent: Tuesday 9 August 2022 15:47
To: Housing ForeShoreORE
Subject: ESB Sea Stacks: Screening for Appropriate Assessment Ref: FS007134
Attachments: Sea Stacks ESB Wind Development Ltd. Appropriate Assessment. Ref FS007134 August 2022.pdf

Follow Up Flag: Follow up
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Dear Sir/Madam

Please accept this brief submission on behalf of Coastal Concern Alliance.

We would appreciate acknowledgement of receipt.

Kind regards



CCA Policy Team

info@coastalconcern.ie

www.coastalconcern.ie

@coastalconcern

93 George's Street Lower



Submission in Response to application by ESB Wind Development Ltd.

for a

Foreshore Licence for site investigation and monitoring.

Screening for Appropriate Assessment

Ref: FS007134

Coastal Concern Alliance is an independent voluntary citizens' group, set up in 2006 to campaign for reform of Foreshore Legislation and for the introduction of Marine Spatial Planning to balance competing interests in our seas and conserve marine wildlife, habitats and coastal landscapes. We are supportive of the development of offshore renewable energy to meet climate and energy targets when developments are properly sited, to a proper scale and managed under a democratic fit-for-purpose marine planning regime. We have no affiliation with any political party or industry group.

9th August 2022

Sea Stacks Foreshore Licence Application

Brief Comments

Introduction

Coastal Concern Alliance reference our previous submissions to this consultation and welcome the decision, following assessment by the Minister, that an Appropriate Assessment is required because the project, individually, or in combination with other plans or projects, is likely to have significant effects on European sites, many of which are either encompassed by, adjoin or are closely associated with the 30,461.9 Ha site selected by the ESB.

Site selection

Careful site selection is internationally recognised as the key to avoiding damaging environmental impacts. As is the case with other adjacent sites, this site has been selected by the ESB with no government oversight and without any consideration of environmental impacts in advance of selecting the site where these investigations are proposed.

This site adjoins both the site for the proposed Dublin Array (112,986.34 Ha) and proposed Codling Bank (51523.3 Ha) offshore wind developments, the cumulative area of the three totalling 200,000 Hectares. There is some overlap in the sites, which means that large areas of the near-shore waters adjoining the Dublin & Wicklow coastline could be subject to repeated invasive surveys, with consequent detrimental impacts on habitats and species, if these proposals were allowed to advance. Clearly this cumulative effect of multiple surveys is one that should be considered in the Appropriate Assessment.

Marine Advisor Environment Screening Stage Environmental Report

This report states that the nature, size and cumulative impacts of the proposed development are not 'exceptional' in the context of the existing environment, that it is not adjacent to environmentally sensitive sites and does not have the potential to impact on environmentally sensitive sites. This conclusion seems at odds with the conclusion that an Appropriate Assessment is required, where it is acknowledged that impacts on environmentally sensitive sites cannot be ruled out.

That the bore holes can be said to be purely for the purpose of testing soil stability, and therefore exempt from EIA, is also questionable.

Coastal Concern Alliance support for other submissions

We are supportive of the submission of the Irish Whale and Dolphin Group, who raise serious concerns about the reliability of the methodology and conclusions drawn by the developer, and the omission of species that should have been considered. They stated in their submission

'It is felt that lack of any apparent knowledge that the survey impacts an SAC with Harbour Porpoise as a qualifying interest, which is now to be subjected to repeated human pressure from survey activity and construction activity for a number of years, renders it unsuitable for approval in its present form. Indeed, mitigation within and adjoining the SAC needs to be improved if such activity is to permitted to continue'

Given that the whole of the Irish coast is designated a whale and dolphin sanctuary and the increase in the awareness of the ecological and economic value of this to Ireland and to the conservation of threatened species, we concur that this proposal is unsuitable for approval. It is also worth considering that if concerns are raised about the environmental impacts of survey works, there seems little doubt that if construction activity was to be proposed on these sites environmental impacts simply could not be mitigated.

We note submissions from other important statutory consultees, notably Irish Lights, Dublin Port Authority, the Adela-Hare Centenary Commemoration Committee and a number of fisheries groups. These all emphasise aspect of this proposal that require detailed scrutiny.

The need to prioritise conservation

It is truly time for Ireland to prioritise conservation over development and to acknowledge the need to act to address Ireland's biodiversity crisis, announced 2019, and to meet the requirements of the National Biodiversity Action Plan.

It is accepted that Ireland has an issue with energy, in some measure due to years of inactivity and failure to put in place proper planning and environmental assessment processes. However, the energy crisis cannot be tackled at a cost to biodiversity.

We trust that the Appropriate Assessment will insist on robust environmental standards as are required to address the significant issues already raised by us in our previous submissions and that it will address the numerous data gaps that have been flagged by the Irish Whale and Dolphin Group and others.

ENDS.

www.coastalconcern.ie

info@coastalconcern.ie

@coastalconcern

3. Wild Ireland Defence

From: [REDACTED] <[REDACTED].wildirelanddefence@gmail.com>
Sent: Tuesday 9 August 2022 17:07
To: Housing ForeShoreORE
Subject: Re: FS007134 - Stage 2 Appropriate Assessment (AA)- Submission to Foreshore Licence Application FS007134 - ESB Wind Development Limited Site Investigations at Sea Stacks Offshore Wind off Dublin and Wicklow.

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To: Minister for Housing, Local Government and Heritage, Foreshore Section, Department of Housing, Local Government and Heritage, Newtown Road, Wexford, Co. Wexford;
Email foreshoreORE@housing.gov.ie

Re: FS007134 - Stage 2 Appropriate Assessment (AA)- Submission to Foreshore Licence Application FS007134 - ESB Wind Development Limited Site Investigations at Sea Stacks Offshore Wind off Dublin and Wicklow.

Date: 09 August 2022

A chara,

The following is submitted in good faith and based on concerns relating to the achievement of the objectives of the nature directives.

Responding to the ecological crisis at an international level the EU Commission states that both the Habitats and Birds Directives (providing strict protection for protected habitats and species) remain fit for purpose. However, the need to better implement both directives is emphasised:

"Commission evaluation shows Nature Directives are fit for purpose.

...

On 16/12/2016 the Commission has published the 'Fitness Check' evaluation of the EU Birds and Habitats Directives (the 'Nature Directives') and concluded that, within the framework of broader EU biodiversity policy, they remain highly relevant and are fit for purpose. However, full achievement of the objectives of the Nature Directives will depend on substantial improvement in their implementation in close partnership with local authorities and different stakeholders in the Member States to deliver practical results on the ground for nature, people and the economy in the EU." (Available at: https://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm)

Our coastal, marine and protected environments are experiencing ever increasing pressures from various developments, including the development of offshore alternative energy. To be sustainable, these

developments *must* be reconciled with meeting the State's obligations regarding environmental protection. It is imperative that all EU legal instruments supporting sustainable development and coexistence of relevant but conflicting activities in our marine environment are fully implemented in a manner consistent with legislation and case law.

It is requested that competent authorities ensure their observations, examinations, assessments and determinations relating to the AA for the foreshore project proposed in application FS007134, include the cumulative effects of all protected habitats and species utilising the habitats at issue and are fully informed in accordance with the provisions of the Birds and Habitats Directives as interpreted by case law.

Consideration must also be given to the project's impacts on species protected under articles 6 and 12 of the Habitats Directive occurring outside the network area of Natura sites.

Amid the state of *National Climate and Biodiversity Emergency*, and at this time of unprecedented loss of biodiversity, it is critical that competent authority, on behalf of the public and future generations, is certain his/her determination clearly demonstrates the ***precautionary principle***.

Please acknowledge submission receipt.

Is mise le meas,

[REDACTED]

[REDACTED]

Wild Ireland Defence CLG,

North Allihies, Beara, Co. Cork.

4. Private

From: [REDACTED] <[REDACTED]@gmail.com>
Sent: Tuesday 9 August 2022 17:22
To: Housing ForeShoreORE
Subject: ref: FS007134 further submission and observation on FLA - NIS and AA (Screening) process for ESB Sea Stacks proposal for investigative site works.

Dear Officer, please see below in the body of this email, my further observations and objections (subsequent to my initial submission on this FLA) on the Sea Stacks / ESB FL application FS007134. Please acknowledge receipt of this further submission in writing and please do not include my name if posting on any public site.

Thank-you,
[REDACTED]

ref: FS007134 Public consultation – Appropriate Assessment

Further Objection and observations pursuant to initial submission by member of the public/ local community
By email to: Minister for Housing, Local Government and Heritage, Foreshore Section,
foreshoreORE@housing.gov.ie .

The closing date for submissions is 5:30pm on 9 August 2022.

A site area named "Sea Stacks Offshore Wind", situated off the Dublin and Wicklow coasts.

Public Consultation - Appropriate Assessment

*A public consultation was held between 23rd December 2021 and 30th January 2022, following which - in accordance with Regulation 42(8) of S.I. No. 477/2011 - European Communities (Birds and Natural Habitats) Regulations 2011 - the Minister for Housing Local Government and Heritage, in considering an application for a foreshore licence under the Foreshore Act 1933, as amended, and in particular whether or not the plan or project would have a significant impact on a European Site, **has determined that an Appropriate Assessment is required.***

*The **Minister will carry out an Appropriate Assessment** and in doing so, shall have regard to the matters in Regulation 42 (12). The Minister will make a determination as to whether or not the proposed plan or project would adversely affect the integrity of a European site in accordance with **Regulation 42(11) of the European Communities (Birds and Natural Habitats) Regulations 2011.***

Any person who wishes to make an objection to, or a representation in respect of, the grant of the Licence sought should do so in writing, giving reasons, between 11 July 2022 and 9 August 2022 (quoting ref: FS007134)

Objections to the Applicant's responses to Public Consultation and narrow parameters and omissions in the grounds for appropriate assessment which will form the basis for the Minister's further determinations on the proposed works.

- The Applicant's original NIS which was the basis for initial public consultation and the subsequent grounds and basis for the consequent determination for appropriate assessment as set out by the Marine Advisor (for NPWS) was responded to by a Local Community Group Killiney Bay Community Council. The Applicant, in their response to public consultation, does not respond to valid points raised by the community council but discards them apart from the first point (page 132 of Screening for AA report).

Expert Marine Assessment (EMA) – Statement of authority - I see no evident expert input or expertise on birds or on cetaceans. Birds and critical data omissions and gaps in the Applicant's Screening for AA are not mentioned anywhere in EMA report.

Cetaceans: "Risk Assessment of Annex IV Species The applicant provided a Risk Assessment for Annex IV species which covered cetaceans and marine turtles. This report stated that the protocols in the Guidance to Manage the Risk to Marine Mammals from Man-made Sound (DAHG 2014) will be followed at all times. It therefore concluded that it is very unlikely that any Annex IV species will be injured or disturbed as a result of the proposed works. Having considered the application by ESB Wind Development Ltd. and the applicant's Risk Assessment of Annex IV species I agree with and accept this conclusion for the species considered in this report. However the Annex IV species European Otter was not considered in this report. The species is known to occur where this proposed project makes land-fall. Signs of otters have been noted on the northeast of Dublin Port around the coastal to Clontarf and the causeway to Bull Island, and on the south wall out to Poolbeg Lighthouse (Macklin, 2019). Mitigation measures to protect these species will be included as site specific conditions. It should be noted that this risk assessment is not part of the Article 6.3 assessment and therefore identification and inclusion of mitigation measures within the risk assessment is appropriated at this stage."

Sectoral interests and pressures on NPWS as a body tasked with assessment of Offshore wind applications. My concern is that NPWS in general as an advisory body on such SI applications, could be subject to pressure by sectoral interests that are determined to make up for lost time in addressing climate change action and hurriedly roll out offshore renewable wind plans. A 2021 report on the NPWS alluded to such potential policy pressures:

" Policy context and conflicts

*There are a large number of international, national and sectoral policies and plans that affect biodiversity conservation in Ireland.... However, the power to implement EU Directives is challenging (as evidenced by ongoing cases taken by the EU for non-compliance, Appendix 2), and there is a general lack of clarity on the extent to which plans are effective at guiding actions at stakeholder-level. Whilst the NPWS is responsible for delivering on a range of national and international policies and agreements, these are implemented within a national policy context with a strategic focus **on increased production and intensification**, for example, in dairy, forestry and aquaculture.... Although all these sectors, and wider society, rely on biodiversity in farmland, forests and seas, **measures to protect biodiversity tend to be peripheral to core policies, and only mitigate marginal damage**. Although agricultural, forestry and marine policies are improving in terms of measures to protect biodiversity, **doubt still exists as to whether sufficient and appropriate consideration is given to biodiversity outside protected areas in the development planning process**. In addition, the rate of change in sectoral policy and practice was deemed insufficient to address continued biodiversity loss...In addition, the NPWS is responsible for implementation and enforcement of the EU 'Nature Directives' and national law ... Over the coming decade, there will be a further pressure on the NPWS, and indeed the whole of Government, as national, EU and international targets for restoration and protection of nature ramp up to 2030 goals for biodiversity, climate and sustainable development. **This not only brings technical challenges given the current state of nature, but increasing risk of policy conflicts.**"*

Perception of Project Splitting and extent of intrusive geotechnical and geophysical methods: the cumulative and individual impacts of the SI stage of this application, which include extensive deep borehole drilling at proposed sites are an integral part of the construction and operation decommissioning phases of this project, so the issue of perception of project splitting in relation to this ESB FLA continues to be overlooked by both the Applicant ESB and it seems by the Marine Advisor in question. The need for avoidance of any perception of project splitting is set out in the wind energy guidelines:

"In the context of EIA, best practice is that an integrated planning application is made for the whole project (i.e. the wind energy development and the grid connection **and any other works which are ancillary to the development of the wind energy development**) and that the EIAR submitted with the planning application addresses the cumulative impacts of the whole project ... However, in order to ensure that the environmental issues arising in the overall project have been considered in an EIAR, and that neither project splitting nor its perception arises, wind energy development proposals must demonstrate that the effects on the environment of the whole project have been taken into account **at the earliest possible stage** in the technical, planning and decision-making process and that issues arising from cumulative effects have been properly assessed."

In relation to the above points, the width and drilling depth, precise location and number of the proposed vibrocore drillings and boreholes is unclear/unspecified and as such, this fails to provide adequate information on the proposed SI project at this stage. The amount and extent of dredging to investigate cable pathways is also unspecified or unclear.

Cumulative Effects on foraging ecology of repeated also unnecessary intrusive site investigations are still ignored and have not been addressed by Marine Advisor.

Cumulative Effects on foraging ecologies and serious Foodweb impacts – a clear lack of expert assessment of cumulative impacts with other offshore wind (OW) projects persists and this fundamental issue seems to be again overlooked by the Marine Assessor.

SeaStacks/ ESB site investigations are planned to take place at the same time and overlapping with other significant, intrusive large scale offshore wind companies exhaustive and redundant site investigations which will clearly negatively and adversely impact on SPAs, SACs, protected species (in particular annex IV species which are protected in their full range, not just within SACs) and seabirds, beyond cumulative and long-lasting serious damage to the most critical part of these protected species' food web: sandbank prey such as sand eel critical to the survival of protected species. The unique benthos and spawning grounds for sand eel and herring over the Kish and Bray sandbanks (a 1110 habitat as recognised by NPWS) and the surrounding foraging, feeding and resting grounds for birds and cetaceans. The NPWS recognises this pressure on the 1110 habitat of Kish and Bray banks:

"Mobile epifauna at the surface of the sandbank may include mysid shrimps, gastropod molluscs, crabs and fish. Sand-eels (Ammodytes spp.), an important food for birds, also live in sandy sediments. Where coarse stable material, such as shells or stones is present on the sediment surface, hydroids, bryozoans and ascidians are present. Shallow sandy sediments are often important nursery areas for fish and consequently can provide feeding grounds for seabirds (especially puffins (Fratercula arctica), guillemots (Uria aalge) and razorbills (Alca torda)) and sea-duck (e.g., common scoter (Melanitta nigra)). A survey undertaken upon the habitat of terns in the Irish Sea showed that the Kish Bank had significant numbers of auks (guillemots, razorbills etc.) and terns in the area. Roseate, Common and Arctic Terns were recorded roosting on the Kish Lighthouse and peaked in numbers during late August and early September."

Data omissions and gaps

Birds

There are underwater and airborne noise and displacement disturbance threats from SI methods to internationally important roseate tern colonies in the area, which depend on habitats within the SI area. These LSEs are still not addressed for this species (a red list and annex 1 protected species under the Bird Directive).

In the Applicant's response to public submissions – and consequently from what I can see, in the Marine Advisor's current report dated 28 June 2022, the LSEs arising from intrusive works on the principal foraging ground for these bird species are still ignored, dismissed or deflected through omission or misclassification of species behaviour, numbers and presence in the proposed SI area, in relation to foraging ecology, breeding and post-fledging needs and foraging distance and prey reliance (e.g. sand eel, herring, crustaceans).

1) ROSEATE TERNS:

The Applicant continues to insist that this amber listed annex I species is exclusively a surface feeder. This is for the purposes of screening this species out at NIS stage. The Marine Advisor makes no comment on this important oversight. It is established by expert literature that the roseate tern can dive up to 5 metres in depth and forage dives further than other tern species. It also forages by diving into the water column. Regardless of that, screening out protected bird species on the basis of whether they are diving or non-diving gives rise to a false baseline or a misleading differential on the part of the applicant which has still not been addressed. It is largely irrelevant as to whether protected and migratory species are diving or non-diving as drilling and sonar activities will disturb and displace birds above (vessels, jack up barges, reverberations) and below water and overall negatively impact on breeding and nesting behaviour, prey and will result in a deterioration of marine and coastal habitats for both surface feeding birds and diving birds with resulting population decline.

Most tern species have established expansion colonies / staging posts on the adjacent Dalkey Island SPA, and they forage around this area over the Kish and Bray sandbanks central to the proposed investigative site. It seems that this critical ecological data continues to be set aside by the Developer / Applicant:

Dalkey Islands SPA: (004172) Sterna dougallii (Roseate Tern) (passage) Sterna hirundo (Common Tern) (passage) Sterna paradisea (Arctic Tern) (passage)
https://epawebapp.epa.ie/licences/lic_eDMS/090151b28046d5f7.pdf

The Applicant ESB also continues to reject the findings of an expert baseline report that I refer to in my original submission. This report – commissioned by a developer in the area, advises against any kind of wind farm activity (including site investigations) in the larger area of the Kish and Bray sandbanks – ESB refers to this report as “outdated” in an attempt to deflect from the findings in the report. The excuse of the report being outdated is spurious as the ESB / applicant relies in their response to public submissions on reports which are dated variously ” 1985, 1989, 1999, 2000 (several), 2001 and 2002 but does not seem to find their selective use of such reports as being redundant because these reports are dated earlier or around the same time as the bird report in question “Kish Bank Proposed Offshore Wind Farm Progress Report No. 2 on Seabird Surveys by Dr Steve Percival Eugene Archer, and Peter Cranswick”. This in depth and dedicated report drawn up by expert ornithologists, finds that the Kish and Bray banks are a critical ground for feeding, breeding and resting for this internationally important and Annex I protected species, and that no form of turbine related activity should take place there as it would inevitably compromise the integrity of this critical sandbank habitat and its surrounding waters and result in population decline through irreversible deterioration of foraging grounds of the roseate tern, along with other protected species such as the guillemot and razorbill.

Beyond this anomalous approach to this valuable and expert report, the proposed intrusive site investigation works in this area will breach the objectives set out in a 2021 EU Action Plan on the roseate tern, which notes the international importance of the roseate tern colonies in this area. Dalkey Island and Maiden Rock is now an expansion colony (as noted by Birdwatch Ireland for this species). Roseate terns fly up to 30 km (twice the maximum distance allowed for in the applicant's screening for appropriate assessment) from Rockabill Island to forage for sandeels for their chicks – so the site investigation area in proven to be a fundamental habitat for a keystone prey (and for breeding and population purposes) of this protected species:

*The overall goal of the Action plan is to maintain the growth of the East Atlantic roseate tern population, while securing suitable sites for colonisation within a coherent network of European colonies ... **it is necessary to maintain or introduce intensive management of the key roseate tern colonies (Objective 1), it is also important to provide safe nesting conditions at large common tern colonies in preparation for roseate tern expansion (Objective 2).*** This EU action plan notes in particular the threat from wind farm development to this species:

*“**Development of offshore windfarms** is a potential threat for roseate terns, which might have a threefold effect: collision risk, reduction of foraging area and changes to pelagic fish habitat. The accelerating rate of offshore windfarm developments and other spatially occurring threats is further concerning in the light of the **lack of sufficient protection of foraging areas** around the colonies. This is aggravated by the slowness in the process of reviewing SPA- and other Marine Protected Area (MPA) networks in all principal states within the breeding range of the roseate tern.”*

The action plan requires that the following actions are undertaken by Ireland and the UK:

Corresponding threats	Result	Action and scope	Priority	Timescale	Responsibility
I. Potential impacts of offshore renewable energy and other coastal/ marine developments (Medium)	1.3 Spatial planning and coastal/ marine development projects fully consider offsite direct and indirect impact pathways on roseate tern food	Action 1.3.1 Require impact assessments which adequately evaluate and monitor direct and indirect ecosystem impacts of windfarms, nuclear power plants and other large-scale coastal/marine developments near roseate tern colonies, especially those potentially	Medium	Ongoing	<ul style="list-style-type: none"> National competent authorities Statutory agencies Applicants seeking

	resources and foraging areas	affecting forage fish and roseate tern foraging area use			development consent <ul style="list-style-type: none"> • Environmental consultancies and academic institutions • NGOs
		Ensure that the assessment guidance of competent authorities includes the need to assess offsite impact pathways, and indirect impact pathways – especially through direct effects on food resources and foraging area use of roseate terns (IE, UK).			
		Ensure applicants for coastal and offshore developments undertake to provide the information on forage fish and roseate tern foraging areas necessary to carry out the analysis for informing the impact assessment (IE, UK).			

INCORRECT DATA ON LSEs ON OTHER PROTECTED AND MIGRATORY BIRD SPECIES REMAINS and IS STILL UNADDRESSED

Omission The Black Guillemot is absent entirely from all SeaStacks FLA assessments and reports that I can see. It is a Birds Directive Annex1 species and on the amber list and listed in the Bern Convention on Migratory Birds, its EU population status is threatened (https://eunis.eea.europa.eu/species/953#legal_status). It nests and breeds in the coastal area of Dalkey and Dun Laoghaire. As this bird forages for food by deep diving in the water column, I am puzzled as to why it has still not been screened in:

*The NPWS carried out a survey of Coliemore Harbour in 2015 in which they surveyed the area for Black Guillemot (Cepphus grille) – a highly marine bird only found on land during the breeding season in Spring. The findings of this survey concluded that there were approximately 6-7 pairs of Black Guillemot found within Coliemore Harbour, nesting within drainage pipes along the north wall. Black guillemot, an amber-listed species, are known to breed in the pier walls of Coliemore Harbour. The NPWS carried out a survey of Coliemore Harbour in 2015 in which they surveyed the area for black guillemot, **a highly marine bird only found on land during the breeding season**. Of the species recorded during the survey, seven (black-headed gull, black guillemot, cormorant, guillemot, herring gull, lesser black-backed gull and shag) are amber-listed (i.e. of medium conservation concern) and four species (kittiwake, oystercatcher, razorbill and redshank) are red-listed (i.e. of high conservation concern) due to their declining populations."* (https://www.dlrco.co.ie/sites/default/files/atoms/files/coliemore_harbour_permanent_works_ecia_issue.pdf)

GANNETS

Gannets are still dismissed by the Applicant in their response as a non-diving bird which is a serious red flag to me about the quality of ornithological input into the Applicants FLA, NIS and Screening for AA. in recent reports the Gannet was found to be able to dive to 35 metres when using underwater wing beats to propel itself. It also has a remarkable flight range when foraging ("The foraging ranges of birds extended up to 536 km from the colony", flying even from Scotland on occasion to forage around Ireland's east coast. As should be finally accepted, this protected annex I species **is a diving species**:

"Visual observations provided evidence that those seabirds were Northern Gannets Sula bassana. **Analysis of trace extent suggests a mean dive depth of 19.7 m (n = 19, SD = 7.5)** These observations have implications for our understanding of the foraging capabilities of gannets, and the interactions of gannets with commercially targeted fish species." (<https://www.jstor.org/stable/30243896>)

GUILLEMOT: Threatened, protected Annex I species

https://ec.europa.eu/environment/nature/conservation/wildbirds/threatened/u/uria_aalge_ibericus_en.htm

The applicant in their response continues to dismiss the significance of the presence of this protected species in the site investigation area, where it is present. It is also a deep diving bird which forages for food by benthic diving. The British Trust for ornithology notes that: “Guillemots are among the deepest diving flying birds in the world, typically diving beyond 30 m, but capable of reaching depths up to 180 m (deeper than the average depth of the North Sea!) and staying underwater for a couple of minutes.” The use of the proposed site area by the guillemot (and note please also the Common Scoter another protected species), for nesting and breeding is established:

Other species recorded between December 2010 and April 2011 A peak count of 29 Common Scoter was recorded off Dun Laoghaire West Pier in South Dublin Bay. Small numbers of seabirds were recorded in inshore waters (i.e., west of a line between Sandycove in South Dublin Bay, and the Martello Tower in Sutton in North Dublin Bay), with peak counts of 4 Common Guillemot and 17 Razorbill off Sutton, 15 Common Guillemot, 4 Black Guillemot and 17 Razorbill in the Scotsman’s Bay to West Pier Dun Laoghaire area of the South Bay. A peak of 13 Black Guillemot was recorded in the Liffey Estuary – there is a small breeding colony of this species in Dublin Port, and also in Dun Laoghaire Harbour.

The Guillemot has a wide flight and foraging range of up to 32 km, so it is wrong to exclude this species from consideration to LSEs by means of the developer establishing an estimated 15 km radius of impact around the proposed site works for this species and other bird species.

Both Lambay Island and Ireland’s Eye SPAs host important colonies of gannets, guillemots and also Manx Shearwater and Kittiwakes (which were screened out initially by the Applicant):

Lambay SPA:

A survey in 1999 recorded internationally important populations of Cormorant (675 pairs), Shag (1,122 pairs) and Guillemot (40,705 pairs). A further six species have breeding populations of national importance, i.e. Fulmar (585 pairs), Lesser Black-backed Gull (309 pairs), Herring Gull (1,806 pairs), Kittiwake (4,091 pairs), Razorbill (2,906 pairs) and Puffin (265 pairs). The island’s populations of Cormorant, Shag, Herring Gull and Guillemot are the largest in Ireland. Lambay Island holds the only known colony of Manx Shearwater (25 pairs in 2002) on the east coast of Ireland; in addition, Black Guillemot also breeds here (4 pairs in 1999). In 2007 two new species were added to the island’s list of breeding seabirds: Gannet (68 pairs) and Common Gull (1 pair). A survey in 2004 recorded breeding Cormorant (352 pairs), Shag (1,734 pairs), Guillemot (38,999 pairs)

Ireland’s Eye

The Cormorant, Herring Gull, Kittiwake, Guillemot and Razorbill populations are of national importance. The majority of the Cormorant population nest on Thulla and when considered as part of a larger grouping with the colonies on nearby Lambay and St. Patrick’s Island, this population is of international importance. The Gannet colony is of particular note as it is one of six in the country and one of only two sites on the east coast. The colony has only been established as recently as the late 1980s and as all breeding ledges became fully occupied in 2006 a satellite colony was then established on the nearby island of Lambay.

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004069.pdf>

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004117.pdf>

CETACEANS (Harbour Porpoise)

It is clear, also from the submission by the Irish Whale and Dolphin Group which found “huge oversights” in the NIS and Screening for AA of the applicant, that the LSE on the harbour porpoise – a IV protected species and a QI for the major SAC in the site proposal area. This is indefensible and I am amazed that the Marine Advisor can find in her report that the Screening for AA complies with the Habitats Directive in relation to this species at this stage of the application process. Did the ESB actually consult directly with the IWDG before or after any reports or assessments? Surely such consultation is part of statutory requirements and Habitats Directive requirements? Having read the report the finding of huge oversights by an expert group remains unaddressed by the Marine Advisor or by the Applicant. On the basis of such

deficiencies, this application should be rejected and not allowed to progress any further given these critical data oversights in relation to cetaceans. The NPWS itself writes of the proposed site exploration area:

Rockabill to Dalkey island conservation objectives:

*“The size, community structure and distribution or habitat use of harbour porpoise inhabiting Rockabill to Dalkey Island SAC are not fully understood. In acknowledging limitations in the understanding of aquatic habitat use by the species within the site, **it should be noted that all suitable aquatic habitat (Figure 3) is considered relevant to the species range and ecological requirements at the site and is therefore of potential use by harbour porpoises.** Target 2: Human activities should occur at levels that do not adversely affect the harbour porpoise community at the site. **Proposed activities or operations should not introduce man-made energy (e.g. aerial or underwater noise, light or thermal energy) at levels that could result in a significant negative impact on individuals and/or the community of harbour porpoise within the site. This refers to the aquatic habitats used by the species in addition to important natural behaviours during the species annual cycle. This target also relates to proposed activities or operations that may result in the deterioration of key resources (e.g. water quality, feeding, etc) upon which harbour porpoises depend.**”*

In relation to both species above alone, Cetaceans (in particular harbour porpoise) and roseate terns, the minister cannot exclude at this stage on the basis of “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” and should reject the FL application in the whole at this stage.

BASKING SHARKS

A further large oversight remains as regards basking sharks which also use the wider area and are bound to be affected by the intrusive and lengthy site investigations proposed. The applicant remains (un)surprisingly uninformed as to the fact that the Basking Shark now has legal protection as a proposed protected species:

<https://divemagazine.com/scuba-diving-news/basking-sharks-protected-in-ireland>

Ireland’s Minister of State for Heritage and Electoral Reform, Malcolm Noonan said that the basking shark will be given the status of ‘protected wild animal’ under the Irish Wildlife Act, which will be supported by the development of a code of conduct to support sustainable wildlife tourism.

‘Work has been underway in my Department for a number of months to progress protections for the Basking shark and I’m delighted to be able to announce today that they will be finalised in the near future,’ said minister Noonan. **‘Basking sharks are extraordinary creatures and they’re facing increasing pressures from a range of sources, including disturbance. This move will confer legal protections on them in the short term and enhance their protection in the longer term** through the collaborative development of a Code of Conduct to support best practice in sustainable eco tourism.’

‘This is great news for the Basking shark and for the many people that have been calling for its protection,’ **added Minister for Housing, Local Government and Heritage, Darragh O’Brien TD. ‘Marine protection is a vital element of the work we do in this Department and strong progress is being made in that regard, particularly on Marine Protected Areas,** which will form a crucial pillar in ensuring that we have a clean, healthy, diverse and sustainably used marine environment.’

Why is it that two months after this announcement was made, the applicant is able to screen out the basking shark as a QI for the area? Why is this oversight (see below) not picked up on by the Marine Advisor in her report?

“ESB has assessed the implications of this project, both individually and in combination with other plans and projects, against the conservation objectives of the European Sites referenced in the NIS and SISAA and have concluded that following application of suitable mitigation measures this project will not adversely affect the integrity of the sites concerned. **Basking Shark is not an Annex II species and therefore are not a species of QI within any of the Designated Sites covered by the NIS and SISAA.** “

Angel Shark

The Angel Shark is critically endangered, near extinction. It is reported as being present to forage and breed in the area of the proposed site investigation (around the Kish and Bray sandbanks) and yet the applicant continues to fail to consider the impact of the proposed works on this species. Ireland is signatory

of various conventions which aim to prevent the angel shark becoming extinct. Why is this oversight not addressed?

*The Angelshark (*Squatina squatina*) has been depleted throughout much of its historical range over the past century and is listed as Critically Endangered on the International Union for Conservation of Nature (IUCN) Red List of Threatened Species. The angel shark family (*Squatinidae*) were identified as the second most threatened of all the world's sharks and rays after a global review of extinction risk by the IUCN Shark Specialist Group. In the 2015 European Red List of Marine Fishes report, the angel shark was amongst the 2.5% of species assessed as Critically Endangered (Nieto et al., 2015). The European Red List assessment was based on estimated and suspected declines of at least 80% over three generations and the likelihood of continued future declines. https://angelsharknetwork.com/wp-content/uploads/sites/16/2018/03/cms_cop12_ca.12.5_angelshark_ENGLISH.pdf*

EELS GLASS EEL - *Anguilla Anguilla*

The European eel is listed on Annexes IIa & Va of the EC Habitats Directive and on Annex III of the Barcelona Convention. It was successfully nominated for Appendix II of CITES which entered into force in March 2009. It is listed as "critically endangered" under the IUCN Red List.

The Applicant dismisses concerns raised by Coastal Concern Alliance and elsewhere by the IFI as to the protection on the European Eel by incorrectly stating that the eel only spawns in the sargasso sea. It is in fact unknown where the *Anguilla Anguilla* spawns and regardless of that, the spawn in the form of glass eels is then transported up around the coasts of Ireland, including the proposed site area, in the form of tiny glass eels which are the first developmental stage of this critically endangered and red listed species. Ireland is signatory to various conventions and agreements which undertake to prevent further depletion of this species and to help retrieve this endangered species from its red listed status.

Ireland is supposed to create a management plan for eels – has it done this? The SAA report should have referenced this,:

*"Establishment of Eel Management Plans Member States shall identify and define the individual river basins lying within their national territory that constitute natural habitats for the European eel (eel river basins) **which may include maritime waters**. If appropriate justification is provided, a Member State may designate the whole of its national territory or an existing regional administrative unit as one eel river basin. ... For each eel river basin defined under paragraph 1, Member States shall prepare an Eel Management Plan. ... **The objective of each Eel Management Plan shall be to reduce anthropogenic mortalities so as to permit with high probability the escapement to the sea of at least 40 % of the silver eel biomass relative to the best estimate of escapement that would have existed if no anthropogenic influences had impacted the stock.** The Eel Management Plan shall be prepared with the purpose of achieving this objective in the long term."*

Foraging Ecology and Cumulative Effects - the applicant in their response to submissions continues to 'salami slice' and isolate out the cumulative adverse effects of the investigative works on prey and foraging habitats (also diminishing the impacts of disturbance, displacement and avoidance) i.e. it frames them in isolation from the negative effects on protected species which in fact rely on these non-protected prey species for survival. In this way the screening for AA leaves out cumulative adverse threats to food web, breeding, and population survival of protected species.

It is noted in an EU document that 'salami slicing' often arises at the AA screening stage but it is not permitted under the relevant directives and law and I wish the Marine Advisor and relevant minister to note that I believe the following points in bold continue to effect the FLA / AA process in relation to the ESB / SeaStacks project :

"Typical problems encountered with applying Article 6.3/6.4

Trying to avoid Art 6.3. AA - inappropriate screening, non-respect of the Precautionary Principle / inappropriate nature impact assessments: e.g. no AA on projects outside Natura 2000 but which affect Natura 2000 nearby or **Downstream effects on species or habitats not well assessed, poor expert input / effects assessed on species and habitats status quo, not on the conservation objectives/ Lack of consideration of cumulative impacts (salami slicing).**

On the basis of persistent omissions and data gaps and lack of objective scientific proof as to the absence of LSEs on habitats birds and cetaceans in the proposed site area of Sea Stacks / ESB, the Minister is asked to please keep in mind the requirements of the project application process:

27. (3) Public authorities, in the exercise of their functions, including consent functions, insofar as the requirements of the Habitats Directive are relevant to those functions, *shall take the appropriate steps to avoid, in European Sites, 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 the Habitats Directive.*

(4) Public authorities, in the exercise of their functions, insofar as the requirements of the Birds Directive and the Habitats Directive are relevant to those functions, shall—

(b) take the appropriate steps to avoid damage to 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,

(c) take the appropriate steps to avoid disturbance of the species for which European Sites have been established, in so far as such disturbance could be significant in relation to the objectives of the Birds Directive or the Habitats Directive,

(d) outside special protection areas, strive to avoid pollution or deterioration of habitats within the meaning of the second sentence of Article 4(4) of the Birds Directive, and

(ii) threat response plans under Regulation 39, (see EU Roseate Tern action plan and Eel management plans set out above)

In conclusion I would like the authorities and deciding Minister to note a 2017 Dáil quote from the current Minister Eamon Ryan, outlining his position on the damaging effects of repeated and intrusive marine exploratory investigations for gas and oil in the North Atlantic - survey methods which are entirely comparable in nature and extent to the survey methods and techniques proposed by the SeaStacks/ESB Applicant, only in the Applicant's case these intrusive surveys will take place much closer to the coast and shore and in close vicinity or even traversing our designated SAC and SPA areas:

Minister Eamon Ryan Question: "Is it the Government's intention to save the whale in the North Atlantic or to save the oil and gas industry? The Department has commissioned the ObSERVE programme with significant funding of €2.7 million to monitor the presence of whales, dolphins and sea birds in the area. Is that done with the intention of excluding areas from exploration or from seismic testing, which is known to have an effect on such wildlife populations? Or is it to help and support the oil and gas exploration industry ... There is a certain irony for those interested in the whole protection of nature that the very industry causing such damage, changing the North Atlantic, altering the feeding patterns and causing immediate harm to these creatures due to the exploration work, is now being wrapped in the description of it being a beneficial step forward. If he does find that there are certain areas where there are very large populations or specifically sensitive important feeding operations etc. for whales, dolphins or sea birds will the Minister of State exclude those areas from any future exploration? What is the purpose of this programme? Is it just to provide a baseline to help the oil and gas exploration industry do an environmental impact assessment or is it actually an attempt to reduce or stop the environmental impact assessment caused by those companies? Will it mean the Minister will say to certain companies, sorry but

*they cannot go into that area of the North Atlantic because it is sensitive and important for these other reasons? ... On the basis of the ObSERVE programme, **if there are certain areas where there are very large populations or where it is important for that natural world, will he exclude those areas from any future gas and oil exploration? Or is this just to measure what is there so when we ruin it with further exploration we will know what has gone?***

https://www.oireachtas.ie/en/debates/question/2017-02-07/46/#pq_46

5. Killiney Community Council

From: KILLINEY COMMUNITY COUNCIL <info@killineycommunitycouncil.ie>
Sent: Tuesday 9 August 2022 21:04
To: Housing ForeShoreORE
Subject: Foreshore Licence for Sea Stacks Offshore Wind

Foreshore Licence Application to the Department of Housing, Local Government and Heritage

We request clarification in regard to the positioning and site selection process conducted by ESB along the Eastern Irish coastal waters. These waters have not yet been assessed for marine protection.

Mapping of Marine Protected Areas should be delineated in tandem with, or even, prior to, the seizure of areas for windfarms development. In addition, we observe the fact that there is little respect for the in situ ecological resources which will be damaged or destroyed permanently due to the mechanical destruction of the sea bed and marine life which depends on free movement and unpolluted sea water.

We request clear answers to our questions which refer to:

- the absence of MPAs along the coast of the Irish Sea
- Preliminary site survey selections with no reference to MPAs
- Sites which are undergoing effectively pre-construction activities
- Technical data which are monitored by the developers themselves
- Legal rights allowing developers to add to the numbers of turbines to be installed.