

FS007261 Shelmalere Offshore Wind Farm - Site Investigations off Counties Wexford and Wicklow

Public Consultation

**(Under Regulation 42(6) of the European
Communities (Birds and Natural Habitats) Regulations 2011)**

Held 1 November 2022 - 30 November 2022

CONTENTS:

Submissions from Representative Groups:

1. Irish Whale and Dolphin Group
2. Augustus Cullen Law on behalf of East Coast Fishers

Marine Planning and Foreshore Section,
Department of Housing, Planning and Local Government,
Newtown Road,
Wexford, Co. Wexford
Email: foreshoreore@housing.gov.ie

29 November 2022

Re: IWDG foreshore application FS007261, Shelamere OWF site investigations

Dear Sir or Madam

The Irish Whale and Dolphin Group (IWDG) was established in December 1990 and is an All-Ireland group “dedicated to the conservation and better understanding of cetaceans (whales, dolphins and porpoises) in Irish waters through study, education and interpretation”. While the IWDG is primarily concerned with cetaceans we have broadened our comments in this case to also include all marine mammals.

The IWDG welcomes this opportunity to comment on this foreshore licence. We would like to make the following points regarding the above foreshore application:

Investigative Foreshore Licence Application

Geophysical Surveys

1. Page 6 of the schedule of activities details use of an Edgetech 4200 Side Scan Sonar which is taken as a system indicative of that to be used. Frequency ranges of 300 to 900 Hz are described as the potential operating frequency range. Yet the Edgetech manual (Edgetech, 2021) states this system also operates at 100 kHz, which is well within marine mammal hearing range.
2. As with many acoustics sources for geophysical investigation side lobes of energy exist which can affect animal behaviours (Deng et al., 2014). Therefore allowances in mitigation should be flexible to allow for adaptation to circumstances where necessary. PAM should also record and attempt to explain changes in acoustic output from survey with spectrogram highlighting frequencies of noise sources used, as much of the equipment given is merely a sample and what is used but may be different. Which if frequencies are similar and source levels lower or the same may not present any issue.
3. Page 32 of the schedule of activities, Marine Mammal Acoustic Monitoring details use of CPODs (now replaced by FPODs) over an 18 to 24 month monitoring period. The area is almost certainly going to be frequented by humpback and minke whales and the recording of these as well as dolphin whistles cannot be achieved by CPODs and we recommend acoustic recorders, such as Soundtraps are required in order to record these and any fish acoustics that may be present. Also

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SEAI (2018) guidance recommends three years of acoustic data with an “**absolute minimum**” of 2 years.

4. The Annex IV Risk Assessment, page 20, Table 3-1 details single metric noise criteria for marine mammals from Southall et al. (2007). This information has been updated in Southall et al. (2019) with different values and it would be best to assess based on these. See table below from Southall et al. (2019).

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Southall et al.

Table 7. TTS- and PTS-onset thresholds for marine mammals exposed to impulsive noise: SEL thresholds in dB re 1 $\mu\text{Pa}^2\text{s}$ under water and dB re (20 μPa)²s in air (groups PCA and OCA only); and peak SPL thresholds in dB re 1 μPa under water and dB re 20 μPa in air (groups PCA and OCA only).

Marine mammal hearing group	TTS onset: SEL (weighted)	TTS onset: Peak SPL (unweighted)	PTS onset: SEL (weighted)	PTS onset: Peak SPL (unweighted)
LF	168	213	183	219
HF	170	224	185	230
VHF	140	196	155	202
SI	175	220	190	226
PCW	170	212	185	218
OCW	188	226	203	232
PCA	123	138	138	144
OCA	146	161	161	167

5. The Annex IV Risk Assessment, page 27, soft-start, the decision to pause the ramp-up or soft start if marine mammals are detected during this operation is welcomed.
6. The Annex IV Risk Assessment, page 27, soft-start, specifies a soft start period of 20-40 minutes. This is misleading. NPWS requirements are for a 40 minute soft start for boomers, sparkers and airguns and 20 minutes for the rest.
7. The Annex IV Risk Assessment, page 27, Line changes. Lines are not specified anywhere in the assessment documentation therefore likely implications for line changes is very difficult to assess. A tentative line plan would be welcome at least. A commitment to shutdown when not acquiring required data for over 40 minutes would also be welcome.
8. Issues such as night time operations and time between end of ramp-up and data acquisition are not dealt with by the guidelines and not with here either.
9. The commitment to full reporting is noted (page 28, Risk Assessment for Annex IV species) with full MMO and Operations requirements to be met. Though Operations reporting as required is non-standard in the industry some of the information assists with regulatory monitoring.
10. There seems to be only limited consideration for cumulative effects, with only FS006960 considered. Effects from FS007045, FS007339, FS007188, FS007038, FS007374, FS007222,

FS007219, FS007224, FS007367, FS007330, FS007546, FS007163, FS007283, FS007464, FS007384, and FS007509 are all close to the proposed to development and should be considered as they may be within auditory range of the survey area.

The above comments are just a selection of points we can make at this time, this should not be regarded as an exhaustive review of this submission. We welcome the extra consideration that has been given to mitigation and to consideration of conforming with what are often overlooked but mandatory requirements.

Yours faithfully

██████████

IWDG Officer on behalf of the IWDG
██████████@iwdg.ie

References

Deng, Z.D., Southall, B.L., Carlson, T.J., Xu, J., Martinez, J.J., et al. (2014) 200 kHz Commercial Sonar Systems Generate Lower Frequency Side Lobes Audible to Some Marine Mammals. PLoS ONE 9(4): e95315. doi:10.1371/journal.pone.0095315

Edgetech, (2021). 4200 Side Scan Sonar System. User Hardware Manual. 0004842_REV-P. Edgetech, 4 Little Brook Road, West Wareham, MA 02576, USA.

NPWS (2014). Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters. National Parks and Wildlife Service. DAHG (Department of Arts, Heritage and the Gaeltacht).

SEAI (2018). Guidance on Marine Baseline Ecological Assessments & Monitoring Activities for Offshore Renewable Energy Projects Part 1, Dept. Comms. Climate Action and Environment [online]
https://www.dccae.gov.ie/documents/Guidance%20on%20Marine%20Baseline%20Ecological_part%201.pdf
(accessed 15/08/2020)

Southall, B.L., Bowles, A., Ellison, W., Finneran, J., Gentry, R., Greene, C., Kastak, D., Ketten, D., Miller, K., Nachtigall, P., Richardson, W., Thomas, J., and Tyack, P. (2007). Marine mammal noise exposure criteria: initial scientific recommendations, Appendix C. Studies Involving Marine Mammal Behavioral Responses to Nonpulses. *Aquat. Mammals*, 33, 509–521.

Southall B.L., Finneran J., Reichmuth C., Nachtigall P.E., Ketten D.R., Miller J.H., Bowles A. E., Ellison W.T., Nowacek D.P., Tyack P.L. (2019). "Marine Mammal Noise Exposure Criteria: Updated Scientific Recommendations for Residual Hearing Effects." *Aquatic Mammals* 45(2): 125-232

Submission 2

From: [REDACTED]@aclsolicitors.ie>

Sent: Thursday 24 November 2022 18:39

To: Housing ForeShoreORE <foreshoreORE@housing.gov.ie>; Housing Minister Of State <ministerofstate@housing.gov.ie>

Subject: FW: Objection to FS007546 Codling Wind Park Ltd. Site Investigations for proposed Offshore Wind Farm, off Counties Wicklow and Dublin [RYA123/0001]/[East Coast Fishers]/[East Coast Fishers]

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Augustus Cullen Law thoughtful clear advice

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24 November 2022

Department of Housing and local government,
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Foreshore Unit, Department of Housing,
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Wexford, Co Wexford, or email

foreshoreORE@housing.gov.ie ministerofstate@housing.gov.ie

Cc Minister for Fisheries and Minister for Energy

Our Ref: GC/COB/RYA123/0001

Objection to Shelmalere Wind Farm Survey FS007261. Site Investigations for proposed Offshore Wind Farm, off Counties Wicklow and Wexford

Dear Sirs,

We are instructed to refer you to our objection of 3 June 2022 attached hereto and register with you Objection to Shelmalere Wind Farm Application reference number: FS007261

Shelmalere Ltd. Site Investigations for proposed Offshore Wind Farm, off Counties Wicklow and Wexford on behalf of East Coast Fishers including the following:

(1) [REDACTED], (2) [REDACTED], (3) [REDACTED]
[REDACTED] (4) [REDACTED] (5) [REDACTED]
[REDACTED] (6) [REDACTED] (7) [REDACTED]
[REDACTED] (8) [REDACTED] (9) [REDACTED]
[REDACTED] (10) [REDACTED] (11) [REDACTED]
[REDACTED] (12) [REDACTED] (13) [REDACTED]
[REDACTED] (14) [REDACTED] (15) [REDACTED]
[REDACTED] (16) [REDACTED]
[REDACTED] (17) [REDACTED] (18) [REDACTED]
[REDACTED] (19) [REDACTED] (20) [REDACTED]
[REDACTED] (21) [REDACTED] (22) [REDACTED]
[REDACTED] (23) [REDACTED]
[REDACTED] (24) [REDACTED] (25) [REDACTED]
[REDACTED] (26) [REDACTED] (27) [REDACTED]
[REDACTED] (28) [REDACTED] hereinafter "East Coast Fishers",

The Objection is the failure to access and hold accountable the cumulative effect of all the East Coast Windfarms on the Environment of the Irish Sea off the coast of Dublin, Wicklow and Wexford particularly for the Whelk, Lobster, Scallop and Crab fisheries and their ecological system and secondly the EU Parliament 1.6.2021 reference A9-0184/2021 Report and Resolution on the impact on the fishing sector of offshore wind farms and other renewable energy systems. Please also See the EU Commission analysis of 3/5/22 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0185&qid=1660062565915> where it notes “Article 6(2) (c) of the MSP Directive requires Member States “to aim to promote coherence between maritime spatial planning and the resulting plan or plans and other processes, such as integrated coastal management or equivalent formal or informal practices”. Article 8 of the Directive introduces the fourth dimension – time – by requiring that maritime spatial plans ‘identify the spatial and temporal distribution of relevant existing and future activities and uses in ... marine waters’. Article 9 requires that “Stakeholder consultation in MSP processes is especially important in accommodating the various interests of established sectors (like fisheries or shipping) and addressing the increasing need for space for nature protection areas and new developing sectors (like offshore renewable energy).” Also see https://www.europarl.europa.eu/doceo/document/A-9-2021-0184_EN.html AND <https://theskipper.ie/eu-parliament-raises-alarm-on-interaction-of-fishing-and-offshore-windfarms/> Parliament further stresses the ‘need for early spatial planning which includes all relevant stakeholders, with regard to both the placement and the lay-out of OFWs [offshore wind farms] and calls for ‘effective participation, dialogues and networks to be set up at an early stage, in order to reduce and avoid conflicts. See https://www.europarl.europa.eu/doceo/document/E-9-2022-001227_EN.html .

For clarification, our clients concern and objection to all Windfarm applications is that the cumulative effect of the all the windfarms will end the whelk, lobster and crab industry off the East Coast through reduced suitable fisheries, replacement by Windfarms, disruption and restriction (500 metres or otherwise in all directions) during survey, construction and operation, and enforced additional competition among fishers, reduced commercial viability for processors and fishers and consequential overfishing and depletion of stocks to extinction due to displacement. See supporting scientific article from Oceanography on

adverse effects of Windfarm Design, Construction and Operation on shellfish stocks. .Our clients repeat that it will be necessary for them to seek compensation, through litigation or such other alternative compensation mechanisms the State deem fit, from the State and complain to EU Commission, based upon their report of 2/5/22 because of Irelands failure as a member state to properly implement the 2014 Maritime Spatial Areas Directive to take into consideration the cumulative effect of all the windfarms on the environment ,flora , fauna and fish stocks right up the Irish Sea and looking at the interactive map the Windfarms run continuously from North Dublin to South Wexford.

The provisions of the Public Participation Directive were applied to consent applications under the Foreshore Acts which require the preparation of an Environmental Impact Statement by the [European Communities \(Foreshore\) Regulations 2009 \(S.I. No. 404 of 2009\)](#) and the [European Union \(Environmental Impact Assessment\) \(Foreshore\) Regulations 2012 \(S.I. No. 433 of 2012\)](#). These regulations amend the Foreshore Act and apply to the consideration of foreshore consent applications subject to EIA and provide “(1)(a) The appropriate Minister shall, as part of his consideration of a relevant application, in accordance with paragraph (b), ensure that, before a decision on the application is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an environmental impact assessment.”

There is talk of co-existence by the Wind Farm Projects with the fishers. But the simple truth and experience of the fishers is that the Wind Farm projects see the fishers as a mere nuisance. It is acknowledged by the Fishers that Wind Farms are an essential source of energy and that both the fishers and the Wind Farms derive their rights in the Irish Sea pursuant to their licences granted by the State. The fishers right to continue to hold and fish under such licences is a Constitutionally Protected Property Right . Constitutionally protected Property Rights may not be removed or significantly restricted by the State without a scheme of compensation for the loss of such rights. It appears that the State will grant Wind Farm Survey foreshore licences, followed by multiple MACS ,resulting in 1100 to 1500 Turbines up the East Coast, in a manner which will undermine the marine environment, destroy fish ecology by noise, vibrations, 500m restrictions and prohibitive increases to fishers insurance ,displace licenced fishers and deny such fishers their continued right to a livelihood . The EU legislation , directives and reports flag clearly that each Member State should take into account and balance the interest of each of its regional fisheries and where there is displacement , which it is contented will occur here, that there be put in place a scheme of compensation . The State is empowered to make provision and impose levy or contribution on each Wind Farm Project at each stage of survey , construction and operation of Wind Farms . It is respectfully submitted that it is and will be unwise of the State to grant any further survey licences without levying the Wind Farms sufficiently to finance the compensation necessary for the fishers. If no such levy is put in place the State will have to burden the tax payer for its failure for take into account the cumulative effect and displacement of this fisher industry by the Wind Farm Industry.

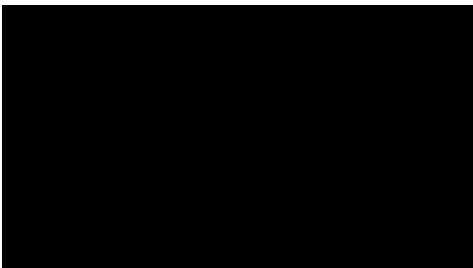
It is noteworthy that this application states that fishers will only be compensated if their gear is directly in the path of survey. The demonstrates that the applicant sees the fishers as a mere nuisance and does not take into account the initial survey sonic damage and displacement of fishing stocks , the lasting effect of this on fish stocks in this particular survey area and the cumulative effect of the all the windfarms which will end the whelk, lobster and crab industry off the East Coast through reduced suitable fisheries, replacement by Windfarms, disruption and restriction (500 metres or otherwise in all directions) during survey, construction and operation, and enforced additional competition among fishers,

reduced commercial viability for processors and fishers and consequential overfishing and depletion of stocks to extinction due to displacement.

It is also noteworthy and objectionable that the applicant conducted no baseline fish surveys before its proposed survey even though requested by fishers and their representatives . Fishers know first hand that stocks were depleted by the applicant's earlier survey and that stock are only starting to recover 15 months after initial survey. The request for fish survey should be considered independently of the request for a further fish stock damaging sonic survey.

In order to address this concern and objection please furnish a map of the East Coast of Ireland showing all windfarms applications for surveys and other licences and the cumulative area of fishing grounds likely to be taken up by all the wind farms and secondly the consideration given to the cumulative effect of all windfarms on the marine environment and ecology for the whelk , scallop, lobster and crab stocks and industry off the East Coast through reduced suitable fisheries, replacement by Windfarms, disruption during survey, construction and operation, and forced additional competition among fishers, reduced commercial viability for processors and fishers and consequential overfishing and depletion of stocks to extinction due to displacement and thirdly any mitigation measures proposed and fourthly proposals to compensate such fishers for this likely destruction of their livelihoods.

We look forward to hearing from .



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One attachment received with this submission, please see next page.

(Submission 2 - Attachment 1)

Augustus Cullen Law thoughtful clear advice

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3 June

2022

Department of Housing and local government ,Mr. Darragh O'Brien T.D. ,Minister for Housing, Planning and Local government, Custom House, Custom House Quay, Dublin 1, D01 W6X0, Foreshore Unit, Department of Housing, Local Government and Heritage, Newtown Road, Wexford, Co Wexford, or email foreshoreORE@housing.gov.ie ministerofstate@housing.gov.ie

ref: HPLG-MoSB-00228-2020

Dept. of Agriculture and Marine Mr. Charlie McConalogue T.D. Minister for Agriculture and the Marine Agriculture House Kildare Street Dublin 2, ref 2020164179N minister@agriculture.gov.ie

Minister Eamon Ryan and Mark Griffin Secretary General Department of Climate Action, Communications Networks and Transport 29–31 Adelaide Road, Dublin 2, Email :

secretary.general@dca.gov.ie Minister.Ryan@dca.gov.ie Ref: CCAE-MO-02795-2020

East Coast Fishers Objection to SSE Arklow Bank , Codling on Codling Bank , ESB Wind Development Limited Site Investigations at Sea Stacks Offshore Wind off Dublin and Wicklow , RWE in Kish Dublin Array and Reath Na Mara east of RWE, Energia at South Irish Sea and many more in the pipeline projected to take over and lead to the demise the Whelk , Lobster and Crab fishing industry off the East Coast from Dun Laoghaire to Arklow South

Dear Sirs,

We are instructed to refer you to our objection of 29 September 2020 and your responses as per attached references above and to file this further objection and FOI request on behalf of East Coast Fishers including the following:

- (1) [REDACTED] (2) [REDACTED] (3) [REDACTED]
[REDACTED] (4) [REDACTED] (5) [REDACTED] (6) [REDACTED]

(7) (8)
(9) (11)
(12) (14) (15)
(16) (17)
(18)
and (19) (20) (21)
hereinafter "East Coast Fishers" (22)
(23) (24)

Primary Concern

We have been retained by the fishermen whose names and vessels are set out [Above] fishermen primarily from the Codling , East Coast Sea Stacks, Dublin Array, Kish ,Wicklow, and Arklow area. Our clients are increasingly concerned at the far reaching proposals for wind farms in the Irish Sea. They see major lacunae and neglect in the approach of the sponsoring companies to their opportunity, income and livelihoods in fishing in the Irish Sea. They agree there are merits in Windfarms and need for greener energy . If it was one wind farm it would not be such a concern . It is the cumulative effect of multiple windfarm projects surveying and applying for construction permits for Windfarms invading their fisheries , forcing out the whelk , lobster and crab to the demise of their whelk , lobster and crab industry and the future livelihood of our clients with their boats and equipment .

National policy implications

The nature and extent of these applications and related adjacent applications by other Wind Farm Companies are of such a scale that a comprehensive framework is required if these developments are to proceed in a manner consistent with the interests and constitutional rights of traditional fishermen, navigation, and the community generally. It is the adverse cumulative effect of all the surveys and all the windfarms that is of concern and the subject of this objection.

The development of wind energy is important strategically and economically. It requires an coherent and joined up approach which gives due regard to the interests not just of wind power developers and the exigencies of energy planning, but also to the impacts on the marine environment, on fishing activity and the livelihoods of the fishermen who have traditionally made their livelihood from fishing in the area.

The following issues arise:

1. Nature and extent of the applications
2. Stages of Development: surveys, construction, development and operation.

3. Impact on fishers - fisheries impact assessments
4. Impacts on Environment
5. Exploitation of marine resources.

1. Nature and extent of applications

The applications for foreshore licences cover substantial areas in the immediate vicinity of the East Coast of Ireland and in this application Arklow, Codling, Sea Stacks, Dublin Array, Bray Banks and Kish. It is also clear that significant areas of the Exclusive economic zone outside the foreshore area may be absorbed or impacted by wind farms. They are included in this geotechnical surveys. If the true impact of these developments is to be assessed, then it should not be done on a piece meal basis, but it should be done in an integrated way. This will involve both the Foreshore Acts 1933 as amended and the Continental Shelf Acts. It appears that some of the proposed development and surveys will extend beyond the Foreshore and into Ireland's exclusive economic zone on the Continental Shelf and require careful statutory processes to avoid an ultra vires situation. It must consider the MARA Act and National and EU policy documentation and Marine Spatial Plans.

2. Stages of Development

The proposed developments will have different impacts as they progress. It is necessary to distinguish four stages as follows (a) the surveys stage, (b) the physical planning stage, (c) development stage and construction, and (d) the operating stage. It is suggested that a coherent and consistent approach to the each of these stages should be mapped out, so that all those concerned and affected by these major developments are in a position to take an informed view. In what follows below we concentrate on the fisheries and environmental aspects

3. Impacts on fishers.

Of critical concern to us is that the current daily users of the Irish Sea, the fishermen we represent, who use it as a workplace have not been consulted adequately in the process to date. Their concerns relate to the impacts of each of the stages of large-scale development identified in paragraph 2 above. These impacts concern (i) the potential loss of opportunity to fish, (ii) the loss of income and, (iii) ultimately the loss of livelihood. If these developments are to proceed in a manner consistent with established rights of local fishers, it is imperative that the agencies of the state ensure that mechanisms are put in place to vindicate the fisher's rights. We believe that inter alia, this requires an independent assessment of the impacts in paragraph 3 on fishers at each of the stages mentioned at paragraph 2. We believe that to expedite development the most effective means would be to put in place a mediation process to compensate for those losses at each stage. Ideally a national strategy and framework would be negotiated and agreed. It is of real concern that the environmental impact studies do not include mention of Whelk, Crab or Lobster.

4. Impacts on the environment.

A major consideration in assessing these applications must be evaluation of the likely impact of developments of this scale on the spawning beds and fishery grounds in the area being assessed for proposed development. It is suggested that the parameters of the exploratory work should be in partnership with the existing users, and not independently of them and their ongoing activities. Our fisher client report to us that their catch since the last RWE and Codling survey is down 40% to 70% . This devastating damage to whelk and other fish stocks since the last survey needs to be independently investigated . Our fisher clients firmly believe this reduction is a consequence of the last surveys . Our clients are willing to liaise with the evidence of their reduced turnover with an investigation by you. Our client's experience is that after each sonic/seismic survey the whelk disappear from the surveyed area for at least 2 years . It is of real concern that the environmental impact studies do not include mention of Whelk , Crab or Lobster. The loss and damage from construction and operation stage is likely to be far greater. Our clients experience of the existing underwater power cables is that there is no fish life within a half mile of each side of the existing power cables . When Turbines are constructed safety regulations and 4.5 knot tides make it too dangerous for fishermen to operate near or between turbines. Evidence of the decline of fish stocks caused by the surveys is the reduction of the fish factories (Sofimar and Errigal) from 7 days per week to 5 days per week. The CJEU developed this point when it issued a ruling in case C-461/17 ("Brian Holohan and Others v An Bord Pleanála") that determined inter alia that Article 6(3) of Directive 92/43/EEC must be interpreted as meaning that an appropriate assessment must on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site. In that regard, consideration has been given in this Habitats Directive appraisal to implications for habitats and species located outside of the European sites considered in the appraisal with reference to those sites' Conservation Objectives where effects upon those habitats and/or species are liable to affect the conservation objectives of the sites concerned. This means all environmental impact studies ought take into account the negative effect of the survey and works on all species including whelk both in and outside the survey area. I have done a word search the for "whelk" in one environmental impact study and it is not there. This is not good enough.

Further we have been instructed by our client to draw your attention to the proposed bore holes surveys in the Cable Corridors off the Booterstown Special Area of Conservation in the Codling, due to be carried out in the next week as per Marine Notice 29 of 2022 , and other likely survey

applications . Our clients understand that some of these boreholes will be in 2 metres of water at or adjacent to the Land Bird Sanctuary of the Booterstown Special Area of Conservation

5. Exploitation of wind resource.

The offshore wind resource is a national marine resource in much the same manner as fish or hydrocarbons. It therefore raises issues regarding exploitation and distribution of benefit. There needs to be fairer balance and proper consideration of the destruction of the Whelk , Lobster and Crab fishing grounds It is of real concern that the environmental impact studies do not include mention of Whelk , Crab or Lobster.

Proposal for a way forward

Our clients have identified the following as critical:

1. Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 envisages maritime spatial planning as a cross-cutting policy tool enabling public authorities and stakeholders to apply a coordinated, integrated and trans-boundary approach. At the core should be a national strategy, a National Marine Spatial plan, drawn up in consultation with the competing economic interests, and those effected by the possible or probable Marine development. Members of the public should be afforded the opportunity to input and comment on any draft plan. The adoption of such approach would be a matter for government, as well as EU level, much as the County Development Plans are a matter for local authorities. Such an approach could consider in a holistic way, not just the distribution of economic benefits, but also environmental impacts, the impacts on fishing communities, impacts on Navigation, the impacts of exclusion zones and so forth. It is of real concern that the environmental impact studies do no include mention of Whelk , Crab or Lobster.

2. Financial and compensatory arrangements in relation to the short, medium and longer term should be independently assessed and developed to address the loss of opportunity to current economic players , and in particular fishermen for their loss of opportunity during exploratory work , and their loss of income during development, and any loss of livelihood consequent on operation of the wind projects. It is our clients' sincerely held view that their traditional fishing industry , particularly whelks, crabs and lobsters will cease to exist because these fish stocks will be wiped out .Their traditional livelihoods will be ended . The new wind industry will displace and destroy this traditional whelk , crab and lobster fishing industry . Such displacement and destruction is not authorised by Marine Spatial Plan but unless duly considered it will happen by stealth and neglect. Any good wind developer must be asked as part of their survey application be asked to take on board the likely demise of this fishing industry. Further your department as grantor of licences and

body responsible for implementation of the EU Directive must bear responsibility for any failure of balance of interest giving rise to the demise of the whelk , lobster, and crab industries.

3. Appropriate environmental studies should be identified in conjunction with fishers and scientists and concluded before embarking of elements of these projects which might have unassessed impacts. It is of real concern that the environmental impact studies do not include mention of Whelk , Crab or Lobster.

4. The Department is requested in its consideration of the granting of Maritime Area consents under the Act to give due consideration to the whelk and inshore fishermen including :

- a. under section 282(3)(f) “conditions aimed at protecting rights to fish in the maritime area;”
- b. under section 282(3) (g) “conditions for, or in connection with— (i) the protection of the marine environment (including the protection of fisheries),”
- c. under DIRECTIVE 2014/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 establishing a framework for maritime spatial planning , Article 5 Objectives of maritime spatial planning, 1. When establishing and implementing maritime spatial planning, Member States shall consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses. 2. Through their maritime spatial plans, Member States shall aim to contribute to the sustainable development of energy sectors at sea, of maritime transport, and of the fisheries and aquaculture sectors, and to the preservation, protection, and improvement of the environment, including resilience to climate change impacts. In addition, Member States may pursue other objectives such as the promotion of sustainable tourism and the sustainable extraction of raw materials.
- d. under DIRECTIVE 2014/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 establishing a framework for maritime spatial planning , Article 6 Minimum requirements for maritime spatial planning 2(b) “take into account environmental, economic and social aspects, as well as safety aspects;” and Article 8 requires when Setting-up of maritime spatial plans to take into account “—fishing areas,” .
- e. under section 120 of the Act application for surveys SCHEDULE 8 sets out Types of conditions that MARA may attach to Licence including 13. A condition requiring the holder of a licence to appoint—
- f. (a) a fisheries liaison officer to consult with the Sea Fisheries Protection Authority and relevant fishers ’ groups to ensure that appropriate actions are taken to avoid or minimise any adverse interactions between the activities or operations the subject of the licence and any ongoing fishing activities in the part of the maritime area the subject of the licence . It is contended by our clients that this is not happening and that the fisheries liaison officers are more concerned with

telling fishermen why they must give way to the Windfarm industry to the detriment and eventual demise of the Whelk , lobster, and Crab fishing industry .

Conclusion

It is of concern to our fishing clients that consents are being considered and granted on a piecemeal basis without due consideration for our clients' industry interests as stakeholders in the Irish Sea.

The projects now being contemplated involve a major incursion into the Irish Marine area. As such it would be appropriate to agree an overall approach and principles. A collaborative consultative process with the fishers being impacted could be used to guide developments and take proper and timely account of impacts, and avoid the dislocation and delays which failure to involve the affected fishermen will trigger.

On behalf of our fishers clients, we would ask to be included in a meaningful process in relation to the impacts on our clients, with a view to a mediated resolution of the income and opportunity issues which these proposed developments raise for our clients.

There is a parallel between the manner in which it was necessary to articulate a policy in relation to offshore hydrocarbon exploration. It is pointed out that the environment and economic implications of wind power development could be at least as significant - possibly even more so.

This is an opportunity for the relevant Departments to take a leadership role and balance and mediate a pragmatic co-existence relationship and financial framework between the fishermen and the Windfarm developers. If the Government departments responsible for implementation of the EU Directives choose not to adequately protect our clients fishing livelihoods or compensate in lieu it is contended that this is a failure to so implement those directives and liability for such loss will then lie with the State. Please consider the legal implication of this .

Further we are instructed to hereby under FOI to seek from you a map showing all of the existing , proposed and applied for windfarm foreshore licences in the area from Dun Laoghaire Southward in the Irish Sea , together with projected cable corridors and each Department assessment its estimated impact on the Whelk , Lobster and Crab fisheries in the area the subject matter of this letter.

We look forward to hearing from you.

Yours faithfully



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