



Offshore Renewable Energy:
Maritime Area Consent (MAC) Assessment
for
Phase One Projects

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.

16th February 2022

Summary

This consultation document refers to the "*much needed reform of marine governance*". All agree that this is necessary. A brief glance at marine governance to date indicates why this is the case.

Ireland's Marine Governance - Speculation and Inadequate regulation

Plans for development of Ireland's marine space have been entirely developer led. Under 100-year-old legislation and in the absence of marine planning and proper regulation, over the past 20 years developers have been allowed to pick out any site they wished on what was described by the Marine Institute as "*a first come first served*" basis.

There was

- No preselection of potential development zones by government
- No statutory involvement of local authorities
- No public right of appeal
- No tender for use of public seas
- No designation of Marine Protected Areas

Under the undemocratic legislation drawn up before any development at sea was envisaged, leases for construction and licences for investigation were awarded to private developers on the sole authority of the Minister for the Marine. The sites chosen were largely on shallow near shore sandbanks, important marine Annex 1 habitat.

Developments in question.

CCA calculate that the fast-tracking system envisaged for the first phase of offshore renewable energy projects and discussed in this consultation, which will be administered under the sole authority of the Minister for Environment and Climate Change, Eamon Ryan, covers in the region of 600,000 hectares, situated almost exclusively in the near-shore zone 5-13 km from shore off Ireland's east and south coasts.

Reform of marine governance captured by development interests

The proposed advancement of these vast developer-led offshore wind farms, including so called Relevant Projects, progressed on important near shore habitats over the past 20 years, under an inadequate legislative and regulatory regime in advance of marine spatial planning makes it impossible for Ireland to introduce a system of democratic **marine spatial planning based on an ecosystem approach** as required by EU legislation.

Site selection is recognised internationally as the key to avoiding environmental harm with marine developments. These legacy/relevant projects have been advanced on sites selected by developers with no environmental constraints, in contravention of EU environmental legislation, Birds' and Habitats' Directives, in breach of the Aarhus convention and without Strategic Environmental Assessment. These facts are well known.

The awarding of Maritime Area Consents to these projects which will serve to progress their development is totally contrary to the Public Interest. This strategy must be reconsidered. The State has recognised the inadequacy of our historic marine governance. It is unacceptable that large scale develop-led projects, with vast economic, social and governance implications should be progressed under this discredited regime. Stakeholders, NGOs and the entire apparatus of the State have engaged in consultations designed to produce modern up to date marine governance in line with good international practice. Such a system is now almost in place. There is no need for Ireland to rush ahead with these potentially damaging marine area consents. Rather the State should hasten to finalise the new fit for purpose regime due to be in place by 2023. All offshore wind projects, including 'relevant projects', should be assessed under this new regime by the new Maritime Area Regulatory Authority (MARA) in the public interest.

State Failure

If Ireland fails to protect our coastal waters in line with good international marine planning practice, this failure cannot be hidden. The construction of any of the legacy/relevant projects on the sensitive near shore sites proposed will expose Ireland's failure to protect our marine resource (biodiversity, habitats and landscape) in line with current good international practice. Ireland with one of the most unique and rich coastal environments in the EU, will become a poster boy for bad marine planning. The current administration will have to bear responsibility for the failure to protect the common good.

Government action required

Given the concerns set out in this document on the designation of 'Relevant Projects', we call on the government to halt the awarding of Maritime Area Consents until the new planning regime is established and all applications for offshore wind development can be properly assessed by Ireland's new Maritime Area Regulatory Authority.

Introduction

As a voluntary group who have campaigned for over 15 years for much needed reform, Coastal Concern Alliance welcome the widespread acceptance among all stakeholders that reform of marine governance is necessary. We are however dismayed that the Maritime Area Planning Act incorporates so many of the shortcomings of the discredited Foreshore Act 1933 and that it is proposed to perpetuate these in the management of legacy/ relevant projects.

In fact, it appears that the current plan to grant Maritime Area Consents to these proposed developments weakens further the necessity for prospective developers to have any timely regard to environmental impacts of extensive construction at sea.

Furthermore, it is clear that, rather than pursue promised reform, government has created a circuitous system specifically designed to facilitate development, with each component of the process designed to be the spring board for the next.

For example, one consideration listed in Schedule 5 of the Maritime Area Planning Act, as a factor to be considered by the Minister in granting Maritime Area Consents is the National Marine Planning Framework (NMPF) presented as a Marine Spatial Plan. To comply with the MSP Directive, this Framework should have been ecosystem-based, but was not. The NMPF was based on Harnessing our Ocean Wealth, a document that was not subject to any environmental assessment or full public consultation, had two overarching economic objectives and was not ecosystem-based. A central objective of the NMPF was to promote the development of offshore wind, not to balance competing interests in the marine. This development focus has been heavily criticised by eNGOs.

2. Background and Context

This section of the Consultation Document states that the document sets out the legislative and policy basis for MAC assessment of 'Relevant Projects'. It implies, without question, that these proposed developments have been adequately assessed and earned this special status. This is not the case. As a result, CCA contend that the awarding of Maritime Area Consents to these projects which will serve to progress their development is totally contrary to the Public Good.

The awarding of 'relevant' status was not subject to public consultation or environmental assessment and was facilitated through the drafting, behind closed doors, of a 'transition protocol' that was shared only with development interests. Projects granted 'relevant' status were announced when Ireland was in Covid lockdown on 19th May 2020 with no explanation.

In May 2020 Coastal Concern Alliance wrote to Minister Damien English, who announced the 'relevant' designations, and copied the letter to his government colleagues requesting an explanation for the decision to award special status to these projects. We received no acknowledgement of our correspondence.

The awarding of relevant project status must be re-assessed.

Proposed 'Relevant Projects'

The proposed 'relevant project' developments cover vast areas of our vulnerable near shore marine space and have been selected for priority fast-tracking in a manner which CCA contend is in breach of the Aarhus Convention. This convention states that the public have (1) the right to receive environmental information that is held by public authorities ("access to environmental information") (2) the right to participate in environmental decision-making, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, ("public participation in environmental decision-making") and (3) the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice"). With regard to the awarding of special 'relevant' status to the proposals in question, none of these Aarhus Convention requirements have been met.

The legality of the designation of this special status has already been challenged in the High Court by Energia, a company whose proposed offshore wind farm developments were not given 'relevant project' status in May 2020. However, the High Court Judicial Review challenge was dropped after the Department awarded Foreshore Licences to Energia for two proposed wind farms off the south and east coasts. These two sites, off Waterford and Wexford total 200,000 hectares, 5km from shore at nearest point.

1.2 Terminology

The section, headed 'Terminology' does not seem to clarify terminology, but simply states that projects other than those that are referred to as 'relevant', may also apply for funding under Renewable Energy Support Scheme 1 (RESS 1).

CCA calculate that the fast-tracking system discussed in this consultation, which will be administered under the sole authority of the Minister for Environment and Climate Change, Eamon Ryan, covers in the region of 600,000 hectares, situated almost exclusively in the near-shore zone 5-13 km from shore off Ireland's east and south coasts.

2.3.1 Offshore Renewable Energy and Ireland's Climate Targets

In recent months there has been extensive focus in the media on the reliability of Ireland's energy policy and climate targets, so this is by no means an area to which any certainty can be attached.

A variety of issues have prompted this focus.

- Economist, Colm McCarthy, in an article published in September 2019, stated 'Ireland's climate policy has been attracting public demonstrations, media coverage and political attention in recent weeks, but no greater clarity has emerged ...The numbers just don't add up to support the future of Ireland's climate policy'.
- Government's plans to develop numerous data centres have come under severe criticism over a number of years as a result of their very high energy requirements. Government now appears willing to acknowledge, and hopefully address, this issue. The concern about development of data centres is compounded by the fact that, recently, Ireland's energy supply has scarcely been adequate to meet the needs of

citizens. While energy blackouts have been avoided, there have been a number of amber alerts.

- In an effort to protect against the risk of power cuts, government now accepts the need for an adequate supply of natural gas. Eamon Ryan, Minister for the Environment, Climate Action and Communications, recently confirmed that building new gas-fired electricity plants was a “national priority”.
- In 2020, renewable sources contributed 42% of electricity generation, but this was unusual and is the highest on record. While precise 2021 figures are not yet available, low wind penetration last year meant that the percentage of energy generated from wind was significantly reduced over the 2020 figure, with, it appears, a fall of in the region of 10%.
- This fact also underlines a significant challenge with energy generated by wind, i.e. its variability. This was evidenced in 2021 when according to a Met Eireann meteorologist, we ‘had the lowest mean wind for a year since 2010 at 14 stations, and at Dublin Airport mean wind has been the lowest since 1959’.
- With regard to emissions reduction targets, doubt has been cast on whether the target of reducing emissions by 7% per annum is realistic. This was not achieved in 2020, when the country was almost brought to a stand-still by Covid lockdown.

Ireland’s energy policy must be re-evaluated to take into account these valid concerns.

The document states: ‘The 5GW target of installed offshore wind generation (by 2030) will be primarily met through development of offshore renewable energy in Ireland’s eastern and southern coastal regions. This reflects the suitability of water depths in these regions for deployment of conventional fixed bottom offshore wind turbines. Subsequent cost-effective deployment of renewables in deeper waters off the West coast should be increasingly feasible through future advances in floating turbine technology.’

This assertion is out of date. Floating wind technology is developing rapidly. Ireland could choose to protect its sensitive near shore environment by developing floating wind rather than pursuing an outdated policy of vast fixed bottom near shore wind development which has been ruled out by all other EU countries. (The average distance from shore of offshore wind farms under construction in the EU last year was 45km.)

2.3.2 Maritime Area Planning and the legislative basis for MAC

The Maritime Area Planning Act may, in the future, represent some reform of marine governance, but with regard to the aspects of it under discussion in this current consultation, it encompasses all that was flawed about the Foreshore Act 1933, and reduces safeguards in environmental protection rather than enhances them. It is difficult to see how there is any aspect of the current consultation that could be said to ‘protect our rich and unique marine environment.’

Indeed, as outlined above, with regard to ‘relevant’ project designation, it represents a determination by government to further erode the democratic process. This has been evident throughout the past two years when Ireland was suffering the worst effects of the Covid pandemic and the ability of citizens to congregate and interact was very seriously compromised. In this environment, government advanced the flawed National Marine Planning Framework, in spite of substantial objections expressed by a range of environmental NGOs, designated these ‘relevant’

projects, and pushed through the Maritime Area Planning Act, again in spite of well-founded objections from the opposition and environmentalists.

On the positive side, Minister Malcolm Noonan, Minister of State for Heritage and Electoral Reform, commissioned an independent review of National Parks and Wildlife which was completed in July 2021. However, this review that is highly critical of the ability of NPWS to carry out their mandate 'to preserve, protect and present our Natural Heritage', has still not been published. Unless the reforms that are recommended in the Review are implemented to provide a robust, well-resourced and independent nature protection service and the urgently needed designation of Marine Protected Areas is progressed, there is a serious risk that the Ireland's marine environment and its associated biodiversity will be seriously degraded.

In order to ensure that *'our rich and unique marine environment'* is protected, it is essential that, before any consents for development are progressed

- (a) recommendations detailed in the Review of the NPWS are implemented
- (b) additional Marine Protected Areas are agreed and designated

Ireland's Biodiversity Action Plan 2017-2021 aims to conserve and restore biodiversity and ecosystem services in the marine environment. It states *'... the importance of biodiversity can no longer be considered a niche concern. Biodiversity awareness is a central element in wider efforts to combat loss of habitats and species across the planet and to combat the potentially devastating effects of climate change.'*

Commitments were made in the Fianna Fáil Programme for Government 1999 to reform The Foreshore Act 1933, but it is only now, more than two decades, later that any legislative reform has been initiated.

The failure to implement reform over these decades must not now be used as a justification for accepting a less than adequate protocol for ensuring the protection of marine habitats and species, especially in the context of the ever-increasing awareness of the need to protect biodiversity and when unprecedented aspirations for marine development are being pursued by the current government.

2.3.3 Maritime Area Consent and the Relevant Projects

The Maritime Area Planning Act is presented as *'the State's leading response to the much-needed reform of marine governance'*. However, as already stated, the matters under consideration in this current consultation do not represent reform. This process as outlined seeks to rubber-stamp, and facilitate the progression of, proposals for development that have not been subject to any site-selection oversight or independent environmental assessment.

The Document states: *'To enable achievement of Ireland's 2030 targets, a pathway was provided to permit a select number of projects which had advanced under the existing Foreshore regime to transition to the new MAC regime once established.'*

The achievement of Ireland's 2030 targets can in no way justify the progression of legacy/relevant projects advanced without SEA which pose a direct threat to biodiversity, habitats, coastal processes and landscape.

The Document states: *'The Transition Protocol as set out in the General Scheme of the Marine Planning and Development Management Bill gave guidance regarding the treatment of certain offshore wind projects in the context of the anticipated progression of the Maritime Area Planning Bill. Relevant Projects are those that either applied for or were granted a lease under the Foreshore Act 1933, or offshore wind projects that were eligible to be processed to receive a valid grid connection offer in December 2019.*

This paragraph exposes another two examples of the circuitous manoeuvrings employed by Government to circumvent adequate public participation and independent environmental assessment of legacy wind farm applications.

1. It provides for a project that has **applied for a Foreshore Lease to be designated a 'Relevant Project'**. This is tantamount to stating that the very act of making a planning application confers some right on the applicant. We strongly contend that this is not acceptable. It would completely undermine the whole of the land-based planning system if such a provision were to be set as a precedent and makes a nonsense of the commitment to reform.
2. It also provides for projects that 'are eligible to processed to receive a valid grid connection offer in December 2019' to be designated as 'Relevant Projects'. A January 2020 communication from the Commission for the Regulation of Utilities to Eirgrid, stated '... the CRU therefore directs Eirgrid, pursuant to Section 34(1) of the Electricity Regulation Act, 1999 to commence processing any such applications from projects that may be deemed to meet the definition of "Relevant Projects", as outlined in the MPDMB Proposed Transition Consenting Protocol.' It is clear from this communication that Eirgrid had been directed by the CRU to commence the processing of grid connection applications for 'Relevant Projects' and then made this a condition that would entitle the project to receive the 'Relevant Project' designation.

The footnote (2) states that additional projects, other than the initial seven, may still be considered eligible to be granted this special status. Reference to the five projects in the footnote represents more manoeuvring, (a) to facilitate the consideration of two proposed developments on the Codling Bank as one and (b) to merge the Kish Bank and Bray Bank applications as one. While Codling 1 was granted a Foreshore Lease in 2005, Codling 2 does not hold a valid licence and has not made any application for a lease.

The document states: *Under the special transition provisions in the Act, the Minister for Environment and Climate Change (MECC) has the responsibility for assessing and granting MACs for this first phase of offshore projects.*

This leaves enormous power in the hands of one Minister, an aspect of the previous regime that has been heavily criticised. For example, in 2010, the Environmental Report of the Strategic Environmental Assessment of the OREDP was prefaced with the following: *'a Parliamentary Statement, provided by Eamon Ryan, Minister of DCENR confirmed that the SEA should not influence or affect the processing of existing Foreshore Lease applications.'* This Ministerial statement had far-reaching consequences for environmental assessment of the Offshore Renewable Energy Development Plan.

NOTE: It is important to note that the government committed to a full review of the OREDP and its accompanying SEA in 2020. This review has not been carried out.

One might ask if it is appropriate that a single Minister has been granted the power, at his sole discretion, to assess and grant Maritime Area Consents to these very same projects, that have still not been independently assessed as to their potential impacts on the environment.

The granting of Maritime Area Consents by a single Minister, proposes reverting to and perpetuating the outdated and undemocratic regime, widely criticised by all parliamentarians, which the reformed marine governance system is designed to replace.

2.3.4 MARA

The establishment of MARA will be a critical factor in the future management of the marine. It is essential that this body includes representation from professional independent marine scientists and landscape and visual impact expertise to ensure that the development bias that has dictated the management of the consenting process to date is superseded by a fit-for-purpose democratic process. This will require dedication of considerable resources and must be prioritised, so that promised *'robust compliance and enforcement'* can be put in place urgently.

In addition, the recommendations detailed in the Review of the National Parks and Wildlife section of the Department of Housing, Local Government and Heritage must be implemented urgently so that this body has the resources and expertise it needs to fulfil its nature conservation functions.

2.4 Phased Approach to Offshore Wind Deployment

Phase One: Policy Objective.

This section summarises Government strategy for the deployment of offshore wind. Notable in the Policy Objective is that there is no reference whatsoever to environmental considerations. Consideration is given to the *'maximum competitively procured'* capacity and *'the earliest feasible deployment stage'* from the *'most advanced offshore wind projects'*. It is regrettable that no environmental considerations will be included and it is difficult to see how the criteria that are included will be assessed, given that:

- (1) that there is no competition for sites and therefore no competitive tendering process to deliver developments that are *'competitively procured'*
- (2) projects will be looking for financial support through the ORESS 1 scheme, so essentially private multinational energy companies will be subsidised, presumably by Irish taxpayers
- (3) the speed of deployment will depend on whether or not initial applications meet environmental standards, and this remains to be seen.
- (4) Given that none of those likely to apply for MAC have completed acceptable environmental assessments or, if any have, they will not be assessed as part of this Phase One process, it is impossible to ascertain at this point which projects are the most advanced.

This narrow policy objective for Ireland's unique marine resource cannot overrule other national planning policy objectives with regard to other key sectors, fishing, tourism shipping etc, and environmental policies re biodiversity, landscape protection etc. This is especially true given that those that may be deemed to be *'the most advanced offshore wind projects'* have been entirely developer led, advanced with no environmental constraints on sites selected by developers on a first come first served basis, based on potential profitability.

Development Permission

As already discussed, projects who had applied for Foreshore Leases were eligible to be designated as 'Relevant Projects'. However, it appears that projects that have not applied for development permission may apply for financial support through the ORESS 1 scheme and for a Grid Connection Assessment. This highlights again the circuitous manoeuvring that is central to Governments' strategy to advance major industrial developments 6-13Km from shore along Ireland's east and south coasts in the absence of any environmental or financial cost benefit analyses and without accurately informing the Irish people about the planned enormous industrialisation of our coasts.

The document states: *'Following receipt of a MAC (expected by Q3 2022) projects will be eligible to apply for development permission, otherwise known as planning permission, directly from ABP.'*

The widespread concerns about absence of democracy apply here. These vast developments will have widespread economic, social and environmental implications. Right of public appeal is being severely restricted. Democratically agreed local development plans will be superseded, control over important county designations, such as coastal AONBs and protected views and prospects, recognised in all EU countries (apart from Ireland) as being of key national and citizen concern will be handed over to an unelected body.

Critical Review of NPWS

The recent Review of National Parks and Wildlife identified that as a result of lack of independence and poor resources *'the NPWS lacks capacity to deliver on its statutory roles in regard to Marine development and conservation, as set out in the EU Habitats and Birds Directives (for which the NPWS is responsible) and Marine Strategy Framework Directive (for which Marine Environment in the Water Division of DHLGH have the responsibility) and looking ahead, in the EU Biodiversity Strategy.'*

As the nature conservation body of the State, these deficits in the capacity in NPWS must be addressed before any marine developments on which they are required to have an input are processed.

3.1.1 Consistency with Offshore Renewable Energy Policy

The document states: *'It is important that a viable pipeline of projects is developed to deliver 2030 targets. Projects will therefore need to prove to the Department that they are consistent with the Governments climate targets, as set out in the Climate Action Plan 2021.'*

Uncertainties in relation to Ireland's Climate Action Plan have been discussed at 2.3.1 above.

In May 2019, Ireland was the second country, after the UK, to declare a climate and biodiversity emergency. After the announcement, it was stated that the Minister for Climate would return to the Dáil with proposals to address the climate issue. However, the issue of a biodiversity emergency was to be considered by a Citizens' Assembly. That this citizens' assembly has not yet even been formed exposes the truth about governments' commitment to biodiversity protection.

Referring to Irish action on biodiversity protection at the **Environment Ireland Conference**, Jan 18-19 2022, EU Director Ciobanu-Dordea, DG Environment, stated *'There is an urgent need to make tangible progress to finalise work on the identification and designation of marine sites to reflect the huge wealth of marine biodiversity that Ireland has within its waters. With less than 2.5% of the marine waters protected this represents one of the poorest records across the Natura 2000 network in Europe.'*

The Climate and Biodiversity emergencies must be given at least equal weight, although it has been suggested more recently that it is biodiversity loss that should be the greater concern. The advancing of vast developer-led industrial marine development must not be progressed in advance of the designation of Marine Protected Areas.

Conclusion

The special treatment proposed for Relevant Projects, which have advanced under the existing foreshore regime, represents a hijacking of the marine reform process by development interests and poses a significant threat to our coastal environment. – marine habitats, species and landscapes.

To *'harness Ireland's offshore wind potential while protecting our rich and unique marine environment'* all applications for offshore wind development in Irish waters including so called 'relevant projects' which have widespread economic, social and environmental implications, must be handled under Ireland's new fit for purpose marine planning regime with all maritime applications assessed by the State's new Maritime Area Regulatory Authority.