



Submission to Consultation on Offshore Wind Phase Two

From:



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Preamble and Caveat:

The opportunity to make a written submission to this consultation is most welcome. The views expressed here are mine as Environmental Law Officer of the Irish Environmental Network, IEN the coalition of national eNGOs. They are informed by the perspective of that remit – the protection of nature through the proper implementation, of environmental law and the frameworks provided therein.

They views expressed here should not be taken as the views of the IEN, or those of its members, while of course they may be shared in whole or in part.

I would be happy to clarify any of the following and apologise for the rather hasty and less than optimal presentation of these comments, owing to a multiplicity of demands.



Introduction and overarching commentary

The Consultation: Welcome and associated issues

As always the opportunity to respond to a consultation on such important matters is most welcome. However there have been concerns expressed, including through social media, around the clarity of the purpose of this Offshore Wind Phase 2 consultation, (OW2) and the separate OREDPII process. It is apparent there has been some confusion on these matters, and moreover it is also clear that it is only rather belatedly that some are coming to realise there is a consultation on Offshore Wind Phase Two which concludes today, March 9th, notwithstanding a brief extension from March 2nd.

It is understandable that this may be frustrating to the Department who are engaged and focused quite specifically on such matters. But for civil society, and eNGOs who are endeavouring to respond and keep abreast of so many diverse and challenging matters across so many sectors, and with such limited resources, the confusion is very understandable. It has also been highlighted to me by colleagues in the OREDPII Advisory Group that in the presentations delivered on the 27th of January there was no reference or mention of this OW2 consultation. Therefore my first recommendation would be to:

- Consider a further extension to this consultation and a bigger effort to publicise and clarify it, in order to ensure the Department's desire to be transparent and engage effectively is actually fully realised. This would be wholly consistent for a Department whose Minister has responsibility for the Aarhus Convention, a UNECE Human Rights Convention, concerned with participatory democracy in environmental matters, based on the interests of the individual and eNGOs in a healthy environment, Article 1 refers.

Additionally, the nomenclature around these processes, and even within the consultation document, while it may be very clear to those intimately acquainted with it over many years, is quite confusing for ordinary members of the public, and even those trying to follow the process, and the interchanges and references to phase 2 without qualification are at times very confusing in the consultation document.

It must be said, in absolute fairness to the Department, there are two very helpful clarifying statements at the front of the consultation document indicating that Offshore Wind 2 is concerned with a further tranche of capacity up to 2030 – and that OREDPII is concerned with post 2030 stating as it does:

“The first phase of offshore wind in Ireland will be necessary but not sufficient to reach our 2030 5GW ambition. An additional phase is required comprised of projects which can deliver by 2030. The purpose of this consultation is to gather views on this Phase Two of offshore wind deployment.

It should be noted that a plan-led Enduring Regime for offshore wind projects that will deliver post-2030 offshore wind capacity beyond the Government's 5GW target is under development by the DECC and that this post-Phase Two stage of deployment does not form part of this consultation.”

The text of the consultation webpage [here](#) also serves to make the same clarification. But it would be remiss of me not to reflect there has been some of the confusion nonetheless, and what may have been previously thought to have been understood by some, may have in some instances been in fact misunderstood. Consequently the level of engagement on OW2 may be considerably less given many were focused on the latter OREDPII process.

The need for an energy transition – but the need to do it right and key issues with OW 2

There is no denying the imperative to address a transition to a more energy efficient and sustainable source of energy, decarbonising our current energy requirements. The recent further updates from the IPCC speak volumes on the necessity to act, and to act swiftly. Recent tragic world events in the last fortnight on a geo political stage impacting on energy supply, in the midst of terrible human suffering and environmental damage associated with those events, further compound that necessity.

However, while we need to move toward such a transition, it remains the consistent concern that Ireland's approach is failing to observe and comply with the EU law requirements in respect of marine spatial planning and marine protection. These are not mere technical box ticking requirements – these are requirements to ensure the protection of the environment, and are to ensure that what we deliver is not ultimately deeply damaging, and that it is truly sustainable and thus capable of sustaining environmental, societal and economic interests. Offshore renewable energy can be done positively or badly, and if done badly many of the positive environmental outcomes we need to deliver and hope to could be seriously offset, and/or create other catastrophic changes in the natural world which we need to sustain us. We are at a tipping point in respect of biodiversity and we threaten it further at our peril given gaps in our understanding of complex reactions, and also the complex interactions in play which sustain life on earth. The rhetoric which chooses to panic a response to rush toward ORE on the back of ocean acidification and temperature rises, needs to be tempered with the reality of the damage which we can do if we don't do ORE right.

Ireland's failure to comply therefore with the EU law frameworks intended to require assessments and inform planning approaches and decision making – also runs the risk that such ORE projects and the transition needed will become unseated and delayed, funding for such projects will not pass due diligence of major investors, and Ireland's reputation as a place to advance Offshore Renewable Energy will be deeply compromised. The drivers in favour of a compliant approach are manifold whatever the perspective and motivation.

We have seen in recent weeks the result of decades of failure in respect of largest onshore windfarm in Derrybrien – which has been refused consent to regularise its unlawful operations, and even 19 years after the deeply damaging bog slide – a remedial assessment of what needs to be done is not available. In the order of €19 million has been incurred in fines since a further judgment of the Court of Justice in Nov 2019 in case c-261/18. But this is probably nothing compared to the legal and consulting costs, incurred to date and to be incurred still, and the further costs needed to put this matter right and sort out the issues with the Derrybrien windfarm and the remedies required.

This new ORE is something Ireland cannot afford to fail at. The concerns expressed here are simply the need to do this right, and to acknowledge and work together to address and resolve deficiencies.

Need for a co-ordination of a holistic transition programme

Moreover, in this submission I wish to call on the Minister and the Irish Government to engage with Stakeholders to devise an overall coherent an holistic transition programme of work to enable Ireland transition to a new truly sustainable energy future. That transition programme needs to address much broader considerations than are raised in this OW 2 consultation – but they are essential complementary measures which need to be specified, martialled and co-ordinated if we are to deliver successfully here. OW 2 as specified here and on it’s own will not work.

There is no point in devising a process for OW2 envisaged to springboard off the East Coast if that is not feasible and the complementary requirements and initiatives are not also being managed.

The inadequacies of Ireland’s approach to Marine Spatial Planning and the Marine Protection.

The legal constraint and confines for Marine Spatial Planning are explicitly set out in recital 2 of the Marine Spatial Planning Directive¹ (MSP Directive) with reference to the EU’s Integrated Marine Policy, (IMP), that:

“The objective of the IMP is to support the sustainable development of seas and oceans and to develop coordinated, coherent and transparent decision-making in relation to the Union’s sectoral policies affecting the oceans, seas, islands, coastal and outermost regions and maritime sectors, including through sea-basin strategies or macro-regional strategies, whilst achieving good environmental status as set out in Directive 2008/56/EC.”

Throughout, the requirements of that MSP Directive are also clear including in respect of an ecosystems based approach and in how it looks to the essential interaction with the Marine Strategy Framework Directive, 2008/56/EC – the environmental pillar of the EU IMP.

Ireland has not only failed to put in place marine projections under multiple EU Directives, eg the Birds Directive and in accordance with both pillars of the EU Habitats Directives and the Marine Strategy Framework Directive, and also inadequately responded to multiple international conventions and agreements – but it failed in the most basic requirements in respect of marine spatial planning.

Ireland has had since September 2014 the opportunity to put in place a marine spatial planning approach which operates within that constraint of “good environmental status” and should have been seeking to ensure at all times its future plans were consistent with the carrying capacity of health and sustainable seas – it has entirely failed to do.

The “relevant projects” such as they have been historically referred to – have been included in the National Marine Planning Framework, absent any proper adherence to the spatial planning approach set out in the Marine Spatial Planning Directive. While there was an opportunity to address this in the Maritime Area Planning Act 2021,(MAP Act) has entirely failed to address such deficiencies in

¹ Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning

OJ L 257, 28.8.2014

how they will be considered. Indeed the MAP Act further compounds the decision-making to be made in respect of consents on such projects – given the role of the National Marine Planning Framework in informing such decisions and the considerations to be addressed by the relevant decision-makers under the bill, and deficiencies in the considerations needed to inform such decisions on the advance of such projects. A golden opportunity has been lost there.

Given this controversy, it seems the approach to OW2, not only fails to resolve such matters for the further projects, but will compound them. Again, instead of considering the constraints imposed by the MSP Directive, which are there to protect the public interest and the environment, and indeed societal and economic interest also – the OW2 is primarily concerned with a target on the one hand from the Climate Action Plan and physical project delivery constraint on the other – grid connectivity – the following extracts from the consultation document refers – emphasis added:

“2 Introduction

The Climate Action Plan 2021¹ recommit Ireland to the ambition to install 5GW of offshore wind capacity in our maritime area by 2030, and introduces a new objective, that by the same year, up to 80% of our electricity will be sourced from renewables.”

“3 Background

...

EirGrid’s Roadmap – Shaping Our Electricity Future

Capacity of the grid to accept offshore wind will be critical in Phase Two. EirGrid’s recently published roadmap, *Shaping Our Electricity Future*⁷, has identified the optimal regions to connect 5GW of offshore wind generation to the onshore system by the end of this decade. Notwithstanding the longer-term potential generation off the South and West coasts, it should be noted that in the pre-2030 deployment timeframe, the identified realisable grid capacity for offshore wind on the South and West coasts is extremely limited. As highlighted in Figure 1 below, drawn from *Shaping Our Electricity Future*, the vast majority of realisable grid capacity by 2030, i.e. for Phase One and Phase Two is located on the East Coast. It is important to also note that under existing conditions, there is no additional realisable grid capacity beyond 5GW for offshore wind before 2030. Accordingly, in order to achieve our 2030 offshore wind ambition, this capacity must be utilised in totality.”

And earlier in section 3 Background:

“ORESS 2 will be a competitive process designed to secure maximum value for the Irish consumer while also balancing State and project owner risk to ensure project deliverability.”

The various different options proposed to the approach to OW2 all are fundamentally compromised by virtue of an assumption that the NMPF provides a meaningful framework, and a further reliance on the MAP Act.

The deeply controversial issues within the MAP Act including in respect of Maritime Area Consents MAC which have been highlighted previously, including in the submission by the IEN's Environmental Law Officer, highlighting the significant environmental dimension to the MAC decisions, will undoubtedly compromise any of the options set out here for OW 2.

The approach remains fundamentally compromised consequent on the absence of any clear consideration of how sensitivity mapping and major data deficiencies in respect of environmental sensitivities will be addressed. There should invariably be no-go areas on the east coast, including in areas envisaged for the operation or field of operation by the relevant projects. This would be consequent on the constraints which must arise under the precautionary principle, and constraints which must arise consequent on our historic inadequate failures to designate adequately marine SPAs including provision for foraging requirements and migration routes, and also failures to adequately designate marine SACs.

These designation failures, and the further requirements of the strict protection of species under Pillar II of the Habitats Directive, will also impact complementary initiatives around port expansion and development and indeed the situation of ORE installations on the east coast, and other installations associated with Grid expansion and onshore facilities associated with processing and indeed even handling the logistics to deploy ORE. These cannot be simply fragmented into component parts. There will be elements which need to be considered together as coherent projects, and the aspiration to rely on the east coast for ORE has been entirely inadequately considered when it comes to the full environmental considerations which need to be considered in such a proposal. We are planning as if these constraints don't exist, and as if they can simply be swept aside. However the jurisprudence of the CJEU is clear, in respect of relevant considerations in respect of alternatives, and also states not being able to benefit consequent on failures. But what is eminently clear is that in the various options set out here - it is unclear from this consultation document how the framework proposed here under any of the options, and the other elements of the framework be it the NMPF and the MAP bill will in any way be able to safely or adequately assist Ireland navigate it's way to deliver a 5GW target by 2030.

There are huge gaps in the framework for terrestrial protections in Ireland associated with the Natura 2000 Network and even more major gaps in respect of the marine territory and wider protection obligations. It is not sufficient or acceptable in the context to set out a Government policy assuming this can be delivered in the absence of a wider environmental assessment of the potential feasibility to deliver such targets off the East coast. No Strategic Environmental Assessment or Appropriate Assessment seems to have been provided associated with the underlying proposals here which adequately or at all addresses the issues required to be addressed with sufficiently meaningful granularity and consideration, including of cumulative effects. I am not satisfied that this policy consideration can be resolved at DMAP level.

Such oversights and the concerns associated with them are further compounded by serious legal inadequacies in the frameworks for DMAPs under the MAP act and the absolute failure to set out a framework for them consistent with the requirements of the MSP Directive. It remains entirely unclear why there is such a departure in the approach to DMAPs from the approach to other new spatial plans under the MAP Act.

The lead time for adequate environmental surveys and assessments at the various levels in the EU law hierarchy and to establish the necessary clarity on effects and impacts, also does not appear to have been adequately factored into the thinking here in the processes set out, and to ensure the adequate skills are engaged in such matters.

The approach set out here in the various OW2 options relies on a deeply, deeply flawed approach to Maritime Area Consents, which will serve to frustrate all stakeholders, from industry to coastal communities, to fishers to environmental activists. There is an absolute necessity not to build upon sand but to acknowledge there have been mistakes, and to actively engage to resolve them and to rework the expectations and architecture that has been put in place here, as the failures here will have implications not just for the ORE industry, but major implications for other sectors when the failures to deliver have knock-on impacts on their GHG emissions and revised carbon budget allowances – quite apart from the devastation we will wreak when we plough ahead regardless of the environmental sensitivities – and push those boundaries beyond their capacity to sustain us.

The dangers with the expectations created with the processes set out here is they will fuel expectations and liabilities which will compound and compromise our proper interests, including leaving us liable to claims however unjustified under the Energy Charter Treaty, and or the chilling effect of such claims. Therefore Ireland must take a more informed and considered approach to what it can plan where, what expectations it fuels and what changes are actually needed in other sectors given a more realistic approach to deliverable ORE targets for 2030.

The recent issues within our EEZ and proposed testing by the Russian Federation also demonstrated a seriously concerning lack of engagement and leverage of the intersection of the United Nations Convention Law of the Sea, UNCLOS and our EU law obligations and how this can be used to protect our economic and conservations interests in the marine environment under our sovereign jurisdiction. This is something I would be happy to expand on separately with the Department.

Finally – in the context of such over-arching issues – consideration of the options set out in the consultation document of the more granular options does not seem appropriate, and I have felt it more appropriate to concentrate on these, as I was gravely concerned on reading the document that such matters were not clearly addressed. This has compromised the ability to respond at this juncture to those more granular considerations in focus in the consultation questions posed.

I would welcome an opportunity to engage further with the Department to assist in trying to jointly navigate our way out of these issues.

Thank you for your consideration of these remarks.