



An Cláíomh Glas

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Submission to Consultation on Draft South Coast DMAP for Offshore Renewable Energy July 2024

Introduction

The following is a brief submission in respect of the Public Consultation on the Draft South Coast Designated Maritime Area Plan for Offshore Renewable Energy (SC-DMAP). It is made on behalf of An Cláíomh Glas, ACG, and additionally in a personal capacity on behalf of the undersigned.

Overarching remark:

The importance of Ireland's potential for offshore renewable energy is acknowledged and recognised in the context of the imperative to decarbonise energy production. In our view, such a transition is welcome however, only if it is truly sustainable and not done at the expense of marine ecological resources who not only play a critical natural role in climate action and atmospheric regulation, but also given the importance of such resources entitlement to safely occupy their natural habitats, and recover from the damage with human activity and development has occasioned them. This is in addition to respecting our EU and International law obligations in respect of habitats, species and habitats for species protection, restoration and conservation.

We are conscious of the increasing focus and Ireland's role in arguing that hard decisions and choices must be made, given the overarching imperative of climate change, which is unaddressed will lead to the destruction of nature. While we appreciate this may be necessary to some extent – we are gravely concerned this is being used as an easy option to ride rough shod over nature, a total failure to properly exhaust alternatives, and to address the root cause issues of our excessive energy demands to facilitate continuance of an effective business as usual approach at the expense of nature.

Those concerns arise in the context of Ireland's approach to this DMAP.

We are also gravely concerned also at multiple relatively recent changes in the Irish legislative code relating to marine development, and that these are more about facilitating portfolio wealth creation around marine consents and development, rather than ensuring we actually deliver projects in line with our targets. The flexibility being

afforded to developers, including but not limited to, changes to consents and durations of permissions and development consents, is likely to encourage developers sit on consents as long as possible, to maximise technological developments and the implications for the bottom line, rather than encourage and require advancement and delivery of projects. The delays then in meeting climate targets, and the increasing evidence of climate change are likely to then facilitate the sector being able to further squeeze Government for a whole range of concessions, including in respect of de-regulation, subsidies, and a range of concessions including in respect of arguing IROPI.

We would be happy to discuss our specific concerns including with provisions in the Planning and Development Bill, 2023 and Maritime Area Planning Act, 2021 and to the Foreshore Act in this regard.

Conflicts of Interest

As a preliminary remark, we wish consider that there is an inherent conflict in the role of the Minister in this matter given his focus on advancing Offshore Renewable Energy, and that the conduct of SEA and AA need to be distanced from the Minister, or anyone reporting to him.

We also submit that conflict of interest needs to be assiduously managed within and throughout DECC and DHLGH, MARA and An Bord Pleanala given the vast sums of money involved in ORE which dwarf those in development heretofore in the State.

It is not clear to us how this is being addressed in the context not just of the DMAP but what falls out of it.



Transboundary Consultation:

It is not clear to us at all that consultation obligations under both the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, and under the Aarhus Conventions have been observed here. That is not just with State Parties but in with the public

Irrespective of any failure by other State Parties to those Conventions in that regard – obligations still pertain to the Irish authorities to ensure that non-discriminatory participatory rights are observed, in accordance with Articles 3(9) and Article 6 of the

Aarhus Convention. We submit that the activity is one which clearly falls within the scope of Article 6(1) of the Aarhus Convention, and the production of an NIS and SEA report testify to that.

We would be happy to provide further detail on this area on which we have significant expertise and experience if of use to the Department.

In summary on this point however, such failures compromise the consultation, including the transboundary consultation obligations under the SEA Directive.

General in respect of the Maritime Spatial Planning Directive.

In the interests of getting the point across clearly and having made these points to the Department in a range of submissions and noted them in a range of submissions made by the Environmental Law Officer of the IEN, on maritime spatial planning consultations – we plan to set the following out in very non-legalistic terms.

DMAPs need to be developed in the same way and to the same standard and principles as a Maritime Spatial Plan, as required under the Maritime Spatial Planning Directive, MSPD.

They need to provide massive contingency and to follow a precautionary approach where there are gaps on nature and what is needed for an ecosystems based approach

It is highly questionable as to whether the incremental DMAP approach the Government is pursuing here to facilitate advancement of ORE is in conformance with the obligations under the MSPD given the lack of wider accommodation and contingency for the inadequacies in the NMPF. In short we submit it does not as proposed cure the deficiencies which arise consequent on the non-compliance of the NMPF with the MSPD.

Huge information gaps on habitats and species including transitory and migratory species and implications of the DMAP for them

The legislative framework informing decisions on developments and activities under the DMAPs makes endless reference to and is still problematically influenced by and subject to an NMPF which is not compliant with the Maritime Spatial Planning Directive. Therefore the ultimate decision-making framework remains very legally complex and compromised.

The NMPF has not been developed in accordance with the requirements of the Directive, and is not a plan for the purposes of Art 8(1) of the MSPD.

Given the gaps in the DMAP we submit the same arises.

The decision making framework into which this DMAP will engage – has an entirely unusable framework in the NMPF. It is impossible to be consistent with the

NMPFAs required in our national Planning and Maritime Area Planning legislation when the NMPF is itself internally inconsistent - with unresolved conflicting objectives and no mechanism to resolve that.

Decision-makers, developers, eNGOs and the public cannot be clear on what is consistent with the NMPF.

The draft NMPF which showed the interaction of over 60 (and this was incomplete objectives). IEN's Environmental Law Officer, highlighted in a submission on the draft – this graphic made clear the framework it provides is un-implementable – The Department dropped the graphic in the final version.

These issues around its objective led focus – compound the fact it is not a plan for the purposes of Article 8(1) of the MSPD either in respect of how it has been created, or in what it contains as a Spatial Plan.

The ongoing reluctance of the Government, to address the fundamental failure address the inadequacies of the NMPF is an issue which will beset ORE. Instead of address them at source, they are opting to pursue an incremental approach to bite off convenient areas in a sticking plaster based approach with DMAPs, in we fear an attempt to be seen to try to comply with the Maritime Spatial Planning Directive (MSP Directive) for those areas and bypass the overall spatial plan failures. In that context it is hard to see any credible commitment to delivering on the required ecosystems based approach to ensure as is required under the Directive.

It is very clear that the MSP Directive is not a standalone requirements. It sits within the EU's Integrated Maritime Policy. This is clear from the recitals and the Article 2(1) of the MSP Directive

“2. Within the Integrated Maritime Policy of the Union, that framework provides for the establishment and implementation by Member States of maritime spatial planning, with the aim of contributing to the objectives specified in Article 5, taking into account land-sea interactions and enhanced cross-border cooperation, in accordance with relevant Unclos provisions”

We also rely on the recital - Recital 2 – makes clear that the Marine Strategy Framework Directive – is the Environmental Pillar of the EU's Integrated Maritime Policy.

“(2) Such an approach to ocean management and maritime governance has been developed in the Integrated Maritime Policy for the European Union ('IMP'), including, as its environmental pillar, Directive 2008/56/EC of the European Parliament and of the Council

(4). 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.”

The ongoing failure to provide for MPA's under Art 13(4) of the MSFD in such plans is a major concern and the failure to mitigate against such failures. This must be resolved in the draft DMAP.

Yours sincerely

 Chair ACG and in a personal capacity