



Maritime Area and Foreshore (Amendment) Bill 2013

Presentation to

Oireachtas Joint Committee on Environment, Culture and the Gaeltacht

12th November 2013

Maritime Area and Foreshore (Amendment) Bill 2013 (The Bill)

1. Introduction

Coastal Concern Alliance is an independent citizens' group set up in 2006 to campaign for reform of The Foreshore Act 1933 and for the introduction of a system of Maritime and Coastal Planning to balance competing interests in our coastal zone. We are a voluntary group, composed of ordinary people who care about the future of their coast and who are concerned about the lack of democracy surrounding its future. We have no political or industry affiliations.

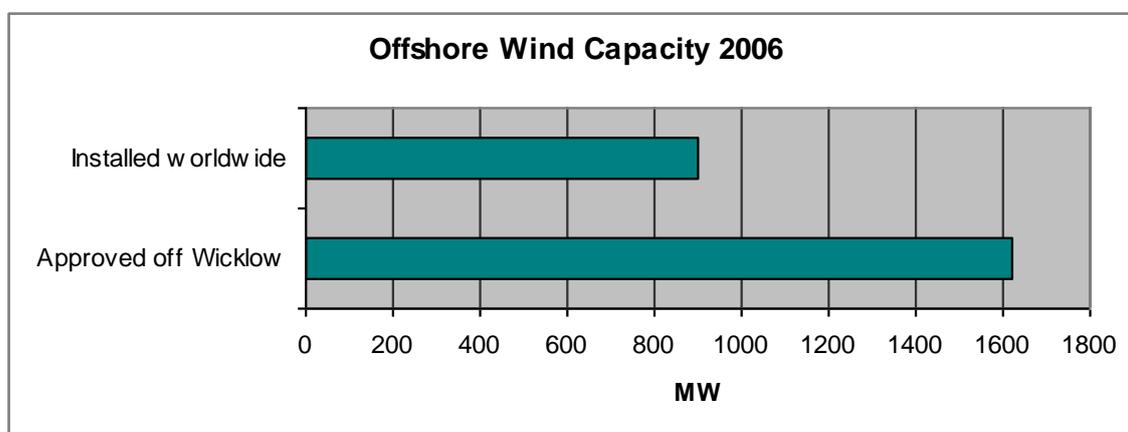
CCA very much welcome the new bill and the reforms it outlines which we deem to be essential to provide a democratic legislative process for controlling development in the public interest.

Our comments relate to development on the Foreshore, mainly to offshore wind, as we have deep concerns about the inappropriate, low key manner in which large scale developments have been permitted and progressed in Ireland's near shore zone under the undemocratic Foreshore Act 1933.

2. The Need for Reform

A brief look at the current situation illustrates how badly legislative reform is needed. During the Celtic Tiger years, the speculation and inadequate regulation well documented on land was also very evident at sea. Developers took advantage of the outdated Foreshore legislation, which was drawn up before offshore wind farms were envisaged, and of the planning vacuum in our coastal waters to obtain foreshore leases for construction of two of the biggest offshore wind farms in the world off the coast of South Dublin and Wicklow. The leases were awarded on the sole authority of the Minister for the Marine with no statutory involvement of local authorities and no public right of appeal. Other EU countries carefully controlled offshore wind development. However, in Ireland developers were allowed to pick out extensive near shore sites, on a first come first served basis, apply for a foreshore lease with no restriction on height or size of development and, in some cases, sell on the leases before construction at a price reflecting the size of development permitted, netting huge profit.

At end of 2006, 1620MW of offshore wind power had been approved off Wicklow, more than double the amount then installed worldwide (700MW).



These developments were the 520MW Arklow Wind Park, permitted in 2002 and the 1100MW Codling Wind Park 1 (off Bray Head), permitted in 2005. Both were permitted on the sole authority of the Minister for the Marine. Public consultation was inadequate. For example with regard to the massive 200-turbine Codling Wind Park, proposed in full view of Bray Head, not a single submission was received from the public.

Following the ministerial announcement in 2008 of significant price support for offshore wind , there was a rush of applications for foreshore licences, mostly on shallow sandbanks, a protected habitat close to the East coast.

Coastal Landscapes

Ireland has 18 coastal counties, all with priceless amenity value critical to the enjoyment of its citizens and to tourism, a significant contributor to the Irish economy. The development plans of these counties have numerous views and prospects designated for protection and preservation. Most of these views have as their backdrop pristine natural seascape, whether they be broad beach vistas, carefully selected heritage views from coastal roads and paths or wide panoramas from coastal hilltops.

No national body appears to have responsibility for protection of Ireland's seascape. One key objective of CCA is to protect this seascape and to ensure that all proposed developments in the marine area are examined by the appropriate bodies with the benefit of full and transparent information on the likely environmental impacts.

Applications for extensive offshore wind farms continue to be assessed under the Foreshore Act 1933, acknowledged by the Department of the Marine in 2010 to be inadequate and in need of substantial reform . The latest is an application for Dublin Array, a 145-turbine development on the Kish and Bray banks, 12 km off South Dublin and Wicklow. We use this application to illustrate our concerns. Photomontages produced by recognised experts in representation of visual impact will be presented. Whatever the rationale for such developments, it is clear that the environmental impact is enormous. The scale and the proximity to shore of the Dublin Array will alter the nature of the landscape heritage in a profound way, assessed in the developer's EIS as "adverse major".

In summary, CCA's concerns centre on the lack of strategic planning for our seas, the undemocratic, inappropriate manner in which large scale developments have been, and continue to be, assessed, the lack of importance attached to preservation of Ireland's coastal landscapes and plans to export to the UK offshore wind energy generated at the expense of the Irish environment.

3. Comment on Heads of Bill

3.1 We broadly welcome the following new provisions:-

- The requirement to apply to An Bord Pleanála (The Board) for development approval for significant developments in the Maritime Area (HEAD 3).
- The disapplication of compensation provisions (HEAD 11)

- Maritime options, which confer a time-bound & provisional interest (HEAD 15). *The length of extension which may be granted by the Minister should also be defined & time-limited.*
- That applicants for Maritime Options be required to fulfil qualifying criteria.
- The requirement that the applicant cannot alter the characteristics of a proposal that has been granted development consent. *This contrasts with the current situation where alteration is permitted (HEAD 15.8b).*
- Provision for plan-led leasing rounds and auction of maritime options for specified types of development in specified areas by open tender (HEAD 15.6).

This move towards plan-led leasing and open auction addresses the undemocratic and developer-led manner in which extensive near-shore sites have been allocated to date on the sole authority of one Minister. CCA contends that ALL licences and leases, whether in the pipeline or to be determined in the future, MUST be considered in a democratic manner.

3.2 We have concerns in relation to the following:-

- *The term ‘nearshore’ is misleading. Public perception of ‘nearshore’ would extend way beyond the low water mark. CCA suggest the use of the term ‘tidal zone’ in lieu of ‘nearshore’.*(HEAD 2)
- *CCA questions whether the development of offshore wind farms for export in the inshore zone can be viewed as strategic infrastructure. These developments will have major adverse impacts on the Irish coastline and unknown impact on marine wildlife and ecosystems.* (Head 3. 37B)
- *Particular attention must be devoted to ensuring that “the public concerned” are fully informed about proposals for major development in the in-shore zone. For complex applications on the foreshore, such as those presenting an Environmental Impact Statement (EIS), a period of six weeks is totally inadequate. These documents contain very large amounts of detailed scientific and environmental information. CCA suggest that a more realistic time frame to facilitate public consultation would be 12 weeks.*(HEAD 3. 37E)
- *An Bord Pleanála will be obliged to publish the procedures by which the procedural or substantive legality of decisions may be challenged in the courts. These appeal procedures must be defined in the legislation and must conform with the Aarhus Convention. Currently the only appeal procedure in relation to the procedural or substantive legality of a decision is to the High Court. This does not comply with the requirement under the Aarhus Convention that appeals should not be prohibitively expensive (Section 37H).*
- *The legislation confers on the Bord the power to convene oral hearings on applications at its absolute discretion. CCA believes that it should be mandatory to hold public hearings if requested by interested parties when development consent for major projects on the foreshore is being sought. (Section 134, 134A & 135)*

- Objectives specifically related to development in the nearshore area are defined in the Bill. *CCA suggest the addition of:-*

(h) protection of coastal landscapes in conformity with the objectives of the National Landscape Strategy and Local Area Development Plans. (HEAD 7).

- The Bill confers powers on the Minister to make regulation concerning procedural matters. (HEAD 9)

CCA suggests that the regulations concerning procedural matters should be defined in the legislation. Site notices should be displayed in coastal areas likely to be impacted by proposed developments at sites defined by local planning authorities and fully accessible to the public.

- *Statutory consultees should include all relevant Local Authorities, who must be obliged to make submissions reflecting the impacts of the development on the Objectives of the Local Area Development Plan. (To date, no submissions appear to have been made by Planning Departments of counties adjoining in-shore areas where large scale developments have been proposed and permitted.) (HEAD 9)*
- Enforcement measures to be applied in respect of development on the foreshore or in the maritime area remain to be clarified. *An effective transparent enforcement system should be put in place and should be rigorously applied. (HEAD 12)*
- *Qualifying criteria should include financial managerial and technical capabilities of an applicant. (HEAD 15 . 2b)*
- *Tender procedures, in accordance with EU Procurement guidelines, should apply to the granting of Maritime Options. Selection should be by the most ecumenically advantageous tender. Clear guidelines should be established in each case using appropriate weighting for visual, biodiversity and landscape impacts. (HEAD 15. 3)*
- Under the Bill the Minister for the Communications, Energy and Natural Resources has the power to designate Renewable Energy Zones in the Maritime Area. *These zones should be determined following a democratic process to put in place a **Maritime Spatial Plan** for Ireland (See 4.1 below). The scenic and amenity quality of Ireland's coastline is close to unique with little or no industrially degraded landscape and this quality should be preserved. This does not exclude sensitive economic use. (PART 8 (p124))*

4. Policy Framework

Decisions will be made by An Bord Pleanála in the context of a policy framework. We would like to expand on two crucial aspects of the new Bill which are of central importance to the protection of the public interest in defining this framework.

4.1 Maritime Spatial Planning (Head 7: Content of Development Plans)

In March 2013, The EU Commission proposed a **Directive on a Framework for Maritime Spatial Planning and Integrated Coastal Zone Management** to manage competition for maritime space.

The official documentation states:

“In order to ensure the appropriate apportionment of maritime space among relevant uses and the coordinated management of coastal zones, a framework should be put in place that consists at least in the establishment and implementation by member states of Maritime Spatial Plans and integrated coastal zone management.” Article 8 sets out *“Conservation, restoration and management of coastal ecosystems and coastal landscapes”* as a minimum requirement for integrated coastal zone management.

Ireland urgently needs a system of maritime and coastal planning to balance competing interest in our seas. Many other EU countries have now produced such a plan, primarily to ensure that offshore wind farms are located in suitable areas, democratically decided on, with input from stakeholders including local authorities, communities and environmental organisations. In line with good EU practice, coastal landscapes must be “conserved” and vulnerable wildlife must be protected based on the “Precautionary Principle”.

Technological advances mean that offshore wind farms are now being sited further offshore. Some countries (e.g. Netherlands and Belgium) have introduced 12 nautical mile (22km) buffer zones to protect wildlife and the scenic amenity of the coast. The UK offshore SEA, 2009, recommended that the bulk of new generation of offshore wind farms be sited well away from the coast, generally outside 12 nautical miles. In Germany almost all consented offshore wind farms or those in the approval process are at a distance of at least 35km from the coast.

In 2012, according to the European Wind Energy Association, the average distance from shore of wind farms under construction was 26km. This contrasts with the average 12km from shore of the two large scale wind farms permitted off Wicklow under outdated legislation during the Celtic Tiger era. These developments are out of line with good international practice with regard to size, scale and proximity to high amenity coastline.

CCA recommends that a buffer zone of at least 12 nm be adopted in this country.

4.2. Draft OREDP (Head 7: Content of Development Plans)

CCA is very concerned at the mention in the Bill of the draft Offshore Renewable Energy Development Plan 2010 (OREDPA) as potentially forming part of the policy framework within which Bord Pleanála will assess developments at sea.

If this draft OREDPA is adopted by the current Government, then the benefit of drawing up a democratic system of marine planning for our seas will be compromised from the outset.

In 2010, after a decade of unfettered speculative activity in Irish waters, the Department of the Marine moved to comply with the EU Strategic Environmental Assessment (SEA) Directive by producing this Plan and commissioning a Strategic Environmental Assessment of its environmental impacts. The Plan served to rubber stamp the extensive offshore wind development permitted and progressed with No Plan and No SEA in the period 2002 – 2009.

The draft OREDP is a clear example of retrospective planning.

In the SEA, permitted and proposed projects were classified as “*already existing renewable infrastructure*” on the instruction of the Minister for Energy. This meant that developments, such as Dublin Array, which had not even applied for a Foreshore Lease, were deemed to exist.

SEA is intended to inform leasing decisions. In Ireland’s case this central function could not be fulfilled as large-scale wind farms were already permitted and advanced in key near shore areas all down the East coast. In fact 36% of the Plan’s 4500MW “High Development Scenario” for Ireland was already fully permitted (1620MW) on protected sandbank habitat, in full view of the Wicklow coast.

Environmental and Landscape Assessment in SEA of OREDP

The SEA concludes that there is potential to develop up to 4,500 MW of offshore wind in Irish waters without any significant adverse effect on the environment. (This could involve the construction of in the region of 900 turbines, each 185 meters high in our coastal zone.)

CCA question the validity of drawing this conclusion given the scale and magnitude of the acknowledged “*uncertainties and unknowns associated with this conclusion where there is still potential for significant adverse effects to occur*” (OREDP10.5). Environmental law is based on The Precautionary Principle. This means that if there is any risk of damage to the environment, development should not be permitted.

Of particular concern is the consultants’ clear acknowledgement of “weak” seascape assessment with very low confidence expressed in crucial Landscape Character Assessments (SEA Volume 4 Appendix 4).

The Heritage Council is a statutory body with a remit to advise Government on protection of national heritage on and offshore. Its submission (28/2/2011) in response to the SEA states:-

“the draft OREDP is premature pending the development of a robust national landscape strategy (as contained in the Programme for Government) to include, at the very least, an evidence based and reliable national landscape / seascape classification system in accordance with the European Landscape Convention and which builds on work undertaken by the DoEHLG, Heritage Council and Fáilte Ireland at a national level.”

In view of acknowledged shortcomings, CCA advocate an external independent peer review of the SEA of the draft OREDP, 2010.

This draft Plan should not be adopted by the current government and should not form part of the framework for the Maritime Area and Foreshore (Amendment) Bill 2013.

5. Legacy / Export plans

Under the outdated Foreshore Act 1933, extensive offshore wind projects involving hundreds of turbines in full view of the East coast, have been permitted and progressed during a period of speculation and inadequate regulation without any strategic plan for use of their output. *The current government must acknowledge this legacy and deal with it openly in the interest of the public rather than sectional interests.*

Minister for Energy, Pat Rabbitte, has stated (January 2012) that Ireland will meet its targets for renewable energy from wind farms on land without recourse to offshore wind which he described as more than twice as expensive.

Wind developers are now lobbying to have these large scale wind farms, which cannot be constructed without major adverse visual impact on our coastal landscapes, connected directly to the UK. A private company has already signed a grid connection agreement with the UK National Grid for direct export of the output of the Codling Wind Park - a 200 turbine development off Bray Head, quietly permitted in 2005 under outdated legislation on the sole authority of the Minister for the Marine without a single submission from the public. The Irish government has applied to the EU for funding for an Interconnector to the UK for offshore windfarms off Dublin and Wicklow.

Have the residents of these counties been asked if they want their unspoilt coastline industrialised to meet the UK's renewable energy targets? There is growing opposition to the construction of offshore wind farms in the UK's in-shore zone on landscape and wildlife grounds. Are we to sacrifice the unspoilt coastline of Dublin and Wicklow to save the coastline of Devon and Cornwall?

The Irish public must be properly consulted about the future of our coast. The development of renewable energy does not have to come at the expense of our high amenity coastal areas. We have a once off opportunity to protect this sensitive space for future generations. Other EU countries are leading the way. Let us follow good international practice.

Recommendations to JOC

We are particularly pleased to have been invited to make this submission.. In your report to Government we ask you to :

- Recommend that no large- scale offshore wind farms be permitted in the near shore zone until a proper system of **Maritime Spatial Planning** and **Integrated Coastal Zone Management** , based on the ecosystem approach, is put in place to ensure local participation and balance competing interests in our seas . (*EU Directive on Framework for MSP and ICZM, 2013*)
- Recommend that the proposed Bill be amended to ensure proper weight is given to the protection of Ireland's **coastal landscapes and seascapes** and conservation of coastal views listed in County Development plans.
- Recommend that the **draft OREDP** is not adopted by the current government and that an external independent peer review of the accompanying SEA be carried out.
- **Institute an investigation** into the manner in which foreshore leases and licences for extensive offshore wind farm developments have been awarded to private developers during the Celtic Tiger years without any strategic planning under regulations and legislation officially acknowledged to be inadequate. It is not yet too late. None of the extensive offshore wind development permitted in our near shore zone is yet constructed (apart from 7 test turbines off Ark low). We do not need to construct it.
- Recommend a full **cost- benefit analysis** for any projects deemed to be strategic infrastructure (*New Politics 2010.p10*) with landscape and wildlife impacts considered.
- Recommend the development of a **Renewable Energy Export Policy and Development Framework** for offshore renewable export opportunities from Ireland to the UK informed by the carrying out of a Strategic Environmental Assessment as promised by Minister Pat Rabbitte (October 2013) in connection with on shore projects. As for onshore projects, *"protection of the natural and cultural environment"* must underpin the development framework.

Coastal Concern Alliance would like to thank the JOC for the opportunity to make this submission. We wish you well with your important work on the Maritime Area and Foreshore (Amendment) Bill, 2013 and would be happy to provide any further information you require.

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