

**Now Ireland Conference**  
**“Ireland A Green Energy Exporter”**  
**15<sup>th</sup> November 2011**

**Introduction**

The brochure for the conference refers to my presentation as “Consenting legislation and Marine Spatial Planning”. In fact, I want to broaden my speech and look at the drivers for change in relation to marine planning generally and what we are doing and proposing to do in a number of areas, including the foreshore consent process.

Some of the principal drivers I want to look at include:

- a number of recognised deficiencies and rigidities in the current planning framework for development on the State foreshore;
- Programme for Government commitments and the recognition therein of the need to deliver economic and jobs growth;
- development in relation to the preparation at EU level of an Atlantic Strategy;
- the Marine Strategy Framework Directive, a relatively short piece of EU environmental legislation whose brevity masks very significant implementation issues for the State and for sectors that operate in the marine area; and
- finally, developments in relation to Marine Spatial Planning.

**Programme for Government commitments**

First and crucially, the Programme for Government makes as its top priority getting the economy moving, restoring confidence and supporting the protection and creation of jobs. It recognises that Ireland's economic recovery must be export-led.

The Programme for Government also commits to providing an efficient foreshore licensing and leasing process for marine energy. In addition, and very much connected to this, the Programme also commits to incentivising and promoting off-shore drilling and to streamline the related planning and regulatory processes. The scale of potential development in these sectors is enormous. For example, the Strategic Environmental Assessment for the Offshore Renewable Energy Plan looks at a number of potential development scenarios, the high development scenario which consists of 4,500MW of offshore wind and 1,500MW of wave and tidal current, compared to a total estimated wind energy generation capacity in 2010 of about 1700 MW.

The potential scenarios set out in the OREDP present both opportunities and challenges – opportunities in terms of the wider supply chain and employment growth potential but also the immediate policy challenges that need to be addressed and are currently under consideration by the Minister for Communications, Energy & Natural Resources. These include the feasibility of an export regime and costs of related infrastructure.

## **Atlantic Strategy**

The EU's 2007 Integrated Maritime Policy recognizes the very substantial maritime dimension of the Union and sets out a strategy for its sustainable development.

In 2010, the Commission circulated a *scoping paper on Preparing for a Communication on the Atlantic Ocean*. This builds on work done towards the development of a regional sea strategy for the Baltic Sea and the Mediterranean.

The purpose of the Strategy is to develop a coordinated programme of actions across the economic, environmental, research, innovation, governance, safety and security dimensions of the Atlantic maritime region involving Ireland, Spain, Portugal, France and the UK. Under the guidance of the Inter-Departmental Marine Coordination Group, Ireland contributed a national submission as well as a common approach submission to the Commission by a group of "like-minded" Member States made up of Ireland, Spain, Portugal and France.

Driving economic recovery and spearheading the smart economy were among the key objectives of the joint contribution. Among the priority challenges and opportunities which Ireland identified should be embraced under an Atlantic Strategy were renewable ocean energy; hi-tech marine services; harnessing industrial value from sustainable marine biomaterials; maritime safety; security and surveillance; maritime transport and accessibility, and more generally research, innovation and capacity building.

Following a broad-based consultation exercise, the Commission is expected to publish an EU Strategy for the Atlantic shortly. The launch of the Strategy will also involve a stakeholders event and the start of the process by which governance for the Atlantic Strategy will be driven through a proposed Atlantic Forum. The exact nature of the Forum has not yet been decided but will likely involve the national governments of the Atlantic States, regional representatives and private industry. The Atlantic Forum will have about a year to make proposals and recommendations for key goals and objectives, likely reporting in time for the Irish Presidency of the EU in the first half of 2013 and in the run-up to the adoption of the next Multiannual Financial Framework for the period 2014-2020.

## **Marine Strategy Framework Directive**

While measures to protect the marine environment existed prior to the introduction of the Marine Strategy Framework Directive, they evolved on a sectoral basis, resulting in a patchwork of policies, legislation and programmes at national, regional, EU and international level.

The MSFD is the first EU binding law designed to make a significant contribution to the preservation, protection and restoration of marine ecosystems, including pollution reduction and minimization. The Directive aims at achieving good environmental status (GES) in the EU marine waters by 2020 at the latest. Member States must undertake a series of steps to progressively achieve this.

Each Member State has to work to implement measures both at the national (Marine Strategies) and regional scale, through regional cooperation and the use, when appropriate, of existing Regional Sea Conventions, in our case, the OSPAR Convention.

Ireland is obliged to:

Complete an Initial Assessment of Irish marine waters and establish environmental targets and indicators. (Appendix 1 contains an example of the pressures and impacts of some of the 11 descriptors to be used to assess GES).	15 July 2012
Establish a Monitoring Programme	15 July 2014
Establishment a Programme of Measures to achieve GES	By 2015 latest
Implementation of these measures by	By 2016 latest

Implementation work is underway under the guidance of the DECLG and the Marine Institute. The first step towards implementation involves the completion of an initial assessment of our marine waters. This is to include:

- an analysis of the essential features and characteristics of the waters based on a set indicative list of elements, and covering the physical and chemical features, the habitat types, the biological features and the hydromorphology;
- an analysis of the predominant pressures and impacts, including human activity on the environmental status of the waters; and
- an economic and social analysis of the waters, and the cost of degradation of the marine environment.

The Directive requires Member States to take the necessary measures to achieve or maintain good environmental status in the marine environment by 2020. While the Directive does not expressly restrict any maritime activity such as oil and gas exploration, gravel extraction, shipping or fishing, in practice measures will have to be put in place to reduce unsustainable pressure from human activities where these are identified during the initial assessment. Any measures developed must take account of the requirements of sustainable development including the social and economic impacts of the measures proposed. It is too early at this point to say what impacts there might be for renewable energy. This will become clearer once work on the initial assessment, the determination of GES for Irish waters and the establishment of environmental targets and associated indicators is advanced. The emerging outputs from this work will be the subject of consultation with key stakeholders.

**Marine Spatial Planning**

Marine Spatial Planning. Marine Spatial Planning is a process designed to promote a rational and sustainable distribution of human activities in marine areas to achieve ecological, economic and social objectives.

The European Commission has indicated its intent to act as a facilitator for cooperation and developing a common approach and a coherent framework for marine spatial planning within the EU. Its views are clear on this issue. :

- Ensuring that marine spatial planning is used in all Member States, on the basis of a common approach, would enhance sustainable growth in maritime sectors. Marine spatial planning is important for legal certainty, predictability and transparency, thus reducing costs for investors and operators, in particular those operating in more than one Member State.
- In addition, without any marine spatial planning in place, the increased risk of spatial conflicts between expanding maritime uses, including the protection of the marine environment, may result in a suboptimal combination of growth and sustainability.
- Marine spatial planning would also support the implementation of existing EU legislation namely MSFD.

How big a challenge will it be to develop such a plan? On the plus side, we know where our oil and gas deposits, our sand and gravel, our fishing grounds and our transportation routes are. We also know where our areas of sustained wind and waves are and will have a much better idea as to our plans in this regard once the Offshore Renewable Energy Development Plan is finalised. SPAs and SACs are in process of designation, Shellfish waters have been designated as have many areas for aquaculture. Another critical building block will be the development of an Atlas of the Irish Marine Environment which will include the collation of relevant information into a Geographical Data and Information System of activities, pressures and characteristics. This work will be undertaken as part of the initial assessment of our marine waters under the MSFD.

This is a new and complex area of governance for us and no single Department or agency has a monopoly on knowledge of this area. DECLG will be taking forward further work on this issue as quickly as possible with the relevant Departments and agencies and with the marine stakeholders concerned.

### **Foreshore consent process**

There have been a number of key criticisms leveled at the operation of the foreshore consent process; these primarily reflect that we are dealing with very dated legislation. The operative legislation was developed long before the advent of offshore renewable energy technology, oil and gas pipelines and modern port infrastructure to name but a few.

### **Improvements to date**

A number of administrative changes have been introduced since the transfer of functions into the Department. This has led to an improvement in the turnaround times for foreshore applications. These include:

- The introduction pre-application consultations on an administrative basis resulting in higher quality applications, reducing the need for additional information from and ongoing liaison with applicants. Over 87 such pre-application consultations have taken place since 2010 and these have included the NPWS where relevant to address Habitats and Boards Directive issues

- Streamlining of processes e.g. concurrent running of public consultation and prescribed bodies consultation processes and the immediate introduction of timelines for prescribed body consultations on an administrative basis.
- Prioritisation of caseload based on a scheme of priorities modelled on the Strategic Infrastructure Act and active case management through all stages of the process.
- A comprehensive caseload analysis and review of all 700 cases transferred into the Department based on the scheme of priorities referred to.
- Placing of the timelines [8 weeks EIA and 4 weeks non EIA] for prescribed body consultations on a statutory footing effective from August 2011.

The average time taken for a Ministerial decision in respect of applications received since the transfer of functions and which would have undergone pre-application consultation is around 18 weeks, broadly in line with the statutory objective period that an Bord Pleanála has for strategic infrastructure projects. This is a very significant reduction as compared to the time taken prior to the transfer of functions and the introduction of the changes.

We believe that a key contributing factor leading to such an improvement has been the pre-application consultation process and the consequent improvement in the formal application.

#### **Scheme for prioritising foreshore applications**

As mentioned, we introduced a scheme of priorities in 2010 for processing foreshore applications which is set out in the slide:

#### **Types of Project in each Priority Category**

<b>Priority 1</b>	<ul style="list-style-type: none"> <li>• Strategic Infrastructure Projects and associated works</li> <li>• All Energy related Projects including oil, gas, wave, wind, tidal projects</li> <li>• Developments in commercial ports and harbours &amp; associated works</li> <li>• Site Investigation Licences in relation to the above</li> </ul>
<b>Priority 2</b>	<ul style="list-style-type: none"> <li>• Marina developments and Piers</li> <li>• Reclamation, bridges, etc</li> <li>• Site Investigations,</li> <li>• Rock armouring</li> </ul>
<b>Priority 3</b>	<ul style="list-style-type: none"> <li>• Outfall pipes (if not part of a larger 'SI' project),</li> <li>• minor works, one day events (tag rugby, horse races etc)</li> <li>• Private boat moorings</li> <li>• Extensions to existing piers/slipways/jetties</li> </ul>

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| <ul style="list-style-type: none"><li>• Harvesting of seaweed, etc,</li><li>• Storm water discharges</li></ul> |
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An analysis of the current caseload shows that we have 68 Priority 1 foreshore cases on hands; 125 Priority 2 cases on hands; and 56 Priority 3 cases.

### **Proposed changes to foreshore process**

The type of additional reforms under consideration for the foreshore process are:

- integration of the foreshore consent process within the existing planning system;
- ensuring that applications are assessed against an appropriate plan-led and policy background - initially using the building blocks I referred to earlier and in time a full Marine Spatial Plan;
- integration of the foreshore consent process for major strategic projects within the strategic consent process operated by An Bord Pleanála;
- introduction of the requirement for mandatory pre-application consultations with an Bord Pleanála on all aspects of the project [terrestrial/offshore];
- improving turn around time for applications and introduce defined timeline for decisions;
- enhancing confidence in the offshore renewable sector through the introduction of a plan-led policy framework for dealing with such applications. The Offshore Renewable Energy Plan currently being developed by colleagues in DCENR provides an important basis for establishing a plan-led framework for regulating offshore renewable energy activities.
- Strengthened arrangements in development plans for managing development in the coastal zone. At present the Planning Act provides for a discretionary development plan objective in relation to "regulating, restricting and controlling development on the foreshore". It is envisaged that the new legislation would require mandatory objectives for managing all aspects of the coastal zone including both on-land and marine elements within the development plan process. It will use the forward planning process to ensure that at a strategic level the different interacting factors - physical, economic, social and environmental - are dealt with in an integrated way.
- And finally, removal of certain minor activities from the foreshore process and on the basis that they are already dealt with under the relevant local authority bye-laws or licensing regimes for example horse racing, filming, tag rugby or that they will be integrated within another licensing regime and on condition that they obtain that licence, for example, a dumping at sea permit.

It is the Minister's intention to have the Bill published early next year.

### **Current Reform Initiatives:**

**Progressing Current Projects:** The Department is continuing to process certain applications pending the implementation of the more structural reforms outlined above.

**Key pilot projects** that have a public interest dimension are now being supported by progressing applications for licensing. The **Westwave Project** and the **National Wave Energy Test Site** are two such projects that aim to test wave energy deployment in Ireland.

A number of **windfarm applications** that have reached a certain degree of maturity in the assessment process will also be brought to conclusion. The Department will not offer a lease until certain specific conditions are first satisfied by the applicant (Conditions Precedent). These conditions relate to

- the applicant's financial, technical, management, and legal competence to undertake and complete the project,
- Necessary planning permissions and firm offer of grid connection being secured and taken up.

This 'use it or lose it' approach differs to previous leases and is designed to ensure only development-ready projects secure lease entitlements. Other windfarm projects will also be subject to this Conditions Precedent approach but first the technical assessment of their applications will be concluded in the context of the OREDP, when adopted.

### **Conclusion**

Further changes are required. The next big step forward will be the publication of a new Foreshores Bill early next year. DECLG will continue to engage with NOW and individual stakeholders to work through the complex challenges that lie ahead.

**ENDS**