

Profiling Member State consenting processes and reconciling EU legal requirements (WP2 findings)

Anne Marie O'Hagan

Célia Le Lièvre

Ross Culloch

Finlay Bennet

RiC^{ORE}

RISK BASED CONSENTING FOR OFFSHORE RENEWABLES



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- Identification and engagement of stakeholders
- Legal and institutional review of national consenting systems
- Legal feasibility for the implementation of a risk-based approach
- EU habitat, species and technology compatibility



Workshop on marine renewable energy licensing

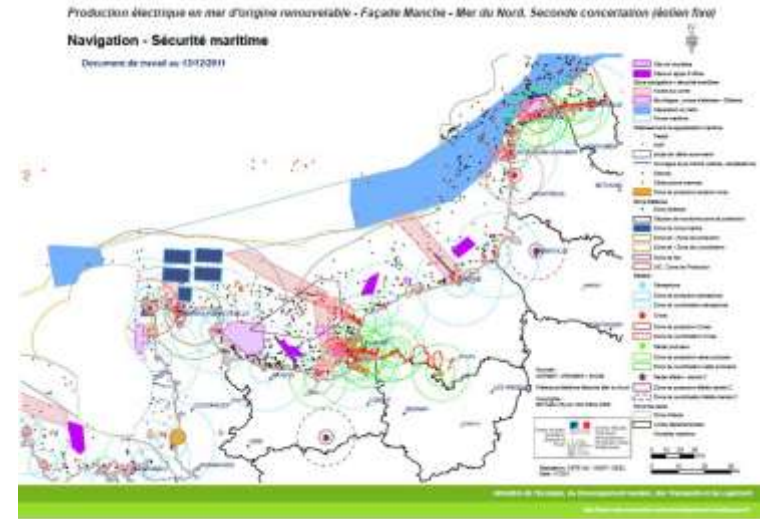
- Determine current national consenting practices, operational experiences and difficulties
- Compare and contrast approaches to implementation of over-arching EU legislation
- Introduce risk-based management approaches using the Survey, Deploy & Monitor (SDM) methodology as an example;
- Discuss the potential legal and regulatory issues
- Identify what is required to enable a risk-based management approach.



- **No dedicated licensing processes**
- **Fragmented consenting procedures**
- **Multiple competent authorities & multiple consents**
- Time to obtain necessary consents
- **Uncertainty on ecological implications of devices**
- Extensive and time-consuming **Environmental Impact Assessment**
- **Absence of tailored EIA monitoring requirements**
- Lack of **guidance on consenting itself** and application processes



- All consenting processes still apply
- Maps generated for SDM might reveal potential issues
- Status of SDM: policy, binding, certainty?
- SDM offers small projects a reasonable possibility that only one year of survey work will be required.
- SDM is suitable for large-scale (mega) projects if progressed in suitably sized phases.
- Funding of pre-consent survey work by competent authority should be further explored.
- SDM could act as a way of transferring knowledge from developers to regulators



National consenting procedures reviewed according to five key aspects

- ✓ **Occupation of maritime space**
- ✓ **Licence to install & operate offshore generating installations**
- ✓ **Environmental assessment and monitoring**
 - ✓ EIA and Appropriate Assessment approvals for offshore works
 - ✓ EIA and AA approvals for onshore works
- ✓ **Terrestrial planning permissions**
- ✓ **Public participation**



Highlight fragmentation / integration

- **Decreto-Lei 38/2015**



New MSP Scheme – Two instruments for implementation of MSP

- **Situation Plan**

Allocate current uses (aquaculture, fisheries, tourism) – set baseline conditions – **sets spatial and temporal distribution of human activities & infrastructure**

- **Allocation Plan**

Allocate new uses not included in the Situational Plan - **subject to formal public consultation and approval by the Council of Ministers.** Automatically integrated in Situation Plan after approval



Uses identified in the Situation Plan/Allocation Plan are subject to:



- **Private use Title – Directorate - General for Natural Resources, Safety and Maritime Services**
- **Licence for electricity generation – Decreto-Lei 215B/2012 - Directorate General of Energy and Geology**
- **Grid connection - Electricidade de Portugal**
- **Environmental Impact Assessment – Required whenever the project is located in Natura 2000 site, national ecological reserve**
- **Outside marine protected areas: favourable advice**
- **Small scale projects: Coordination Committee on Regional Development**
- **Large scale projects (20 turbines): Portuguese Environmental Agency**
- **Terrestrial planning permission - Local Authorities**



- Issues **previously identified** were: lack of dedicated process, lack of clear guidance, multiple authorities and consents
- **Key findings**
 - Existing legislation appears capable of dealing with newer technologies
 - Move towards more integrated approaches
 - One application for land-sea elements
 - One point of contact
 - Electrical, grid connection, terrestrial planning and associated EIAs still appear to operate independently in the majority of countries
 - Need strong inter-departmental/consenting authority communication and operation
 - Timelines rarely have a statutory basis but may have a policy one
 - Little specificity in terms of environmental assessment



Terminology

- A **risk-based approach** is any approach that seeks to inform decision making through an understanding of the scientific uncertainties and associated consequences in terms of likelihood and magnitude of impact.
 - **Adaptive Management**: a structured process that enables learning by doing and adaptation based on what is learned. Adaptive Management is a form of a risk-based approach focused on reducing scientific uncertainties.
 - The **Survey Deploy and Monitor** (SDM) policy implemented by Marine Scotland is an example of a risk-based approach to site characterisation pre-consent and monitoring to reduce scientific uncertainties post-consent. It is a policy that achieves the goals of AM.



Adaptive Management

- Enables managers to **manage** the risk of unacceptable impacts occurring whilst allowing changes in the environment to be monitored
- Requires the regulator to accept a **certain level** of uncertainty regarding the impacts of a proposed development
- Changes ('adaptations') to future management is done on the basis of actual data derived from the monitoring programme
- Focus **must always be** on reducing scientific uncertainty and hence lead to better assessments

Precautionary Principle

- Strong legal basis in EU law
- When scientific uncertainty is **high** and the potential for adverse effects exists, regulators should err on the side of **caution**
- **Does not** actively seek to reduce scientific uncertainty
- **Does not** have a goal of improving decision making over time by reducing the uncertainties
- Can lead to overly-precautionary **assessments** that are unrealistic and not well informed



Adaptive Management and EIA

- EIA is very **rigid**
- Endorses a **single response** model based on predictions about the impacts and leaves little room for adaptation in post-approval stage
- Relies on **historical data** to build a single set of fixed mitigation measures
- Focus of EIA tends to be on **maintaining an initial state or baseline conditions** rather than providing a strategic plan aiming at reducing uncertainties and mitigating environmental impacts
- Need for a **feedback mechanism** within EIA and wider consenting

Adaptive Management and AA

- Habitats Directive is **precautionary**
- If a plan or project is likely to undermine a site's conservation objectives, it must be considered **likely** to have a significant effect on that site.
- Assessment of that risk must be made in the light of the **characteristics and specific environmental conditions of the site** concerned
- “**Best scientific knowledge**” / “no **reasonable scientific doubt**”
- EC guidance has clarified that **inherent scientific uncertainties** need not preclude an assessment of no impact to integrity
- Competent authorities must make a decision on the level of **acceptable risk**



KEY CONCLUSIONS

- AM does not usually have a **statutory basis** but is enshrined in the Marine Strategy Framework Directive
 - It is not defined in MSFD
- A key challenge posed to statutory AM is the **time frames** involved – reducing uncertainty takes time
- Monitoring programmes should provide **valuable** scientific data on the potential ecological impacts of a development on key receptors that will then trigger an adaptation of management actions
- Institutional challenges are recognised as one of the greatest barriers for the implementation of AM
- EC should consider providing **guidance** on how the EIA and Habitats Directives can reflect and enable AM processes
- Consenting authorities in Member States need to **communicate** their ‘risk appetite’



- EIA, Birds and Habitats Directives: strong philosophy of the precautionary principle
- Could result in more mitigation and more compensation than may be necessary owing to the uncertainties
- Risks cannot always be avoided
- The level of risk that is considered acceptable by the decision maker will be based upon the conservation objectives for qualifying interests of sites
- To apply AM in the context of the Nature Directives, the conservation objectives of protected sites must recognise the need for a flexible approach to risk by consenting authorities
- AM and the precautionary principle are not contradictory and may be implemented simultaneously to improve scientific understanding.





Thank you