

Riding the waves – lessons from campaigning on oil and gas

Despite successes in individual campaigns, environmental groups sometimes fail to ensure that change in the behaviour of Government departments is truly embedded. This article describes a successful campaign, the results when changes are not followed up and gives suggested lessons for future campaigns.

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40 years of oil and gas exploration and development

The UK Government has been issuing licences (in a series of 'licensing rounds') to search for oil and gas in UK waters since 1964. These activities have had an adverse and largely undocumented and unrecognised effect on marine ecosystems. The environmental effects associated with exploration activity; construction; production and transport of equipment, materials and products are many.¹

The cumulative activities over the life-time of a block, which commonly extends to decades, are difficult to evaluate and rarely considered. Similarly, consideration is rarely given to impacts on a wider geographical scope where, for example several blocks are adjacent. Neighbouring blocks might, for example, completely bisect the migration routes of species.

With these known impacts, and noting that this development has taken place during four decades of ever-increasing environmental awareness, it might be assumed that environmental protection was fully incorporated at every stage. It also might be assumed that environmental groups would have kept a close eye on such developments. Unfortunately neither was the case. As most of the developments were well offshore, and as the Government Department responsible – the Department of Trade and Industry (DTI – renamed as the Department for Business and Regulatory Reform and now the Department of Energy and Climate Change) – appeared to operate as quietly as possible, the licensing process and therefore most developments, occurred largely outside the public radar.

It was not until the 12th and 14th licensing rounds in the early 1980s, which saw oil and gas exploration moving into inshore waters, often into environmentally sensitive areas, such as Cardigan Bay in Wales, and along the Dorset coast, that the environmental organisations became fully aware of the lack of environmental regulation within the process.

During the 12th round, licences were issued for a company to drill in waters adjacent to Bardsey Island on the northern edge of Cardigan Bay. Bardsey and its

surrounding waters were of known conservation importance, which has since been recognised by its designation as a Special Area of conservation (SAC), meeting the requirements of the EU Habitats and Species Directive. Concern at the possible impacts of this drilling led the newly formed Friends of Cardigan Bay (FoCB) to write to DTI requesting to see the Environmental Impact Assessment for this project, as oil drilling is clearly listed as requiring an EIA within the EU Directive on Assessment. The DTI replied that no assessment was required “*as there were no environmental effects*”. It transpired that the EIA Directive had never been implemented for offshore developments, leading FoCB, with legal support from Friends of the Earth Cymru to take a complaint to Europe regarding non-implementation of the Directive. This led eventually to belated implementation under modifications to the Offshore Petroleum Regulations in 1999.

The realisation that there was a lack of realistic environmental controls on offshore oil and gas developments, and the increasing frequency of licensing rounds moving into known sensitive waters, led a group of concerned Environmental NGOs to set up the ‘Joint Links Oil and Gas Environmental Consortium’ (JLOGEC). Initially brought together by WWF, the Consortium grew to comprise Campaign for the Protection of Rural Wales; Council for British Archaeology Wales; Environmental Investigation Agency; Friends of Cardigan Bay; Friends of the Earth; Friends of the Earth Cymru; Marine Conservation Society; National Trust for Scotland; RSPCA; RSPB; Wildfowl and Wetlands Trust; The Wildlife Trusts; Whale and Dolphin Conservation Society and WWF – UK. Secretariat support was provided by Wales Wildlife Link.

Principles for sustainable development

The initial members of the Consortium held several meetings to develop a position statement, which was then widely circulated for endorsement on creating the wider grouping: The Consortium also commissioned a detailed assessment of the impacts of the offshore oil and gas industry and detailed work on aspects of the position statement. This was published as a series of briefing papers and as a detailed rebuttal to an oil industry publication entitled ‘Protecting the Offshore Environment’ the Consortium published its own report called ‘Polluting the Offshore environment’.² The position paper, briefings and report were widely circulated to Government and Industry.

The position statement, first published in 1995, proposed the following procedures for the licensing of oil and gas exploration in UK waters:

There should be a comprehensive **Assessment of the UK Continental Shelf and all seas and waters within UK jurisdiction**. This should assess all environmental resources, assess the sensitivity of the UK Continental Shelf and identify gaps in available information.

Following the assessment there should be a **Strategic Environmental Assessment (SEA) of the UK Continental Shelf and all seas and waters within UK jurisdiction**.

Carried out by a statutory agency, such as the JNCC, the SEA should address the impacts of proposed licensing rounds, and be fully open to widespread consultation.

The SEA should identify **Sacrosanct, Moratoria and Potential Areas** for oil and gas developments. These are: Sacrosanct Areas – those that are so important to conservation or are highly sensitive and should not be developed for oil and gas or other activities. Moratoria areas – those that should not currently be developed on the grounds of inadequate technology to exploit the area sensitively or on the basis of inadequate information to assess environmental sensitivity. Potential areas – those where development may occur under a strict regulatory regime.

Company Environmental Records must be taken into account during the awarding of licences. There should be detailed **public consultation** on licensing rounds, including more openness on the criteria used to make decisions and there should be an **Environmental Advisory Forum**. This would comprise representatives of relevant Government Departments, local authorities and community representatives, the scientific community, environmental groups, the oil and gas industry and other interested groups.

There should be project-specific **Environmental Impact Assessments (EIA)** for every development, which must be available for public consultation. Licences that are awarded should include a **zero discharge policy** and look at **decommissioning and restoration** of the seabed after the end of the project's life.

The Position Statement contained many principles that are relevant to other sectors involved in offshore development, and stimulated a widespread debate.

"The Consortium's document is important and merits serious study. It expresses the sort of rigorous and tough conditions that taking the environment seriously must imply. It is the sort of thing that comes at the beginning of the far-reaching process of transition to the very different model of economic and social organisation that we know as sustainable development – a concept to which the Government are signed up to."
Cynog Dafis MP. Hansard. 29 February 1996.

In the decade since the position statement was first published many of the Consortium's policies have been adopted by the Government. There have been a series of SEAs, starting in the mid 1990s on an area by area basis to inform licensing rounds around the UKCS. Since 1999 nearly all developments require the production of a project EIA before the final exploration or production licence is granted. The UK Offshore forum fulfils many of the aims of the suggested Environmental Advisory Forum. A DTI consultation on decommissioning has recently taken place and international discharge regulations have been tightened significantly. Finally the DTI moved from denying any environmental effects to setting up an environmental unit within the licensing directorate. To this extent we can see the responses to the JLOGEC principles as a success.



An exploration rig anchored in Carrick Roads in the Fal Estuary, awaiting its next assignment.

Photo: www.glendell.co.uk

A step backwards?

Partly due to the perceived success of the campaign, and partly due to staff changes within the member organisations, JLOGEC more or less ceased to function in 2001. The member organisations rather took their eye off the ball, believing policy to be moving in the right direction, and became involved in the SEA process through their presence on the steering group and by responding to public consultations.

However, by 2005, some groups at least had become concerned that the underlying policies driving energy developments had not fundamentally changed. The Government still appears to believe in the maximum economic exploitation of our oil and gas reserves, despite the obvious lesson that should have been learnt from the 1980s 'dash to gas' whereby our gas reserves were severely depleted within a decade. Within the SEA process significant data gaps had been identified but licensing went ahead nonetheless. Conservation groups highlighted this problem in repeated submissions to SEA consultations but no attempt was made to fill many of these gaps. Where significant gaps arose conservationists maintained that the areas should remain unlicensed, at least for the time being – the 'moratoria' areas identified in the original position statement.

Concern was also raised at the quality of the individual project EIAs. In 2000, The Wildlife Trusts and WWF UK had carried out a review of EIA submitted as part

of the licensing process.³ This determined that there were many inadequacies in the statements, and using an EU review process, that overall, in the sample of 10 EIAs, three could be considered satisfactory. Despite the inadequacies of the statements all projects received consent. Upon publication, DTI promised to review the regulations and to re-assess the quality of EIAs in the future. A new review was finally carried out in 2006, and published in 2007. This found that, while there had been some improvement, still only half (51%) were satisfactory.⁴ Despite this, all of the projects for which EIAs were reviewed had received consent, meaning half had got the go-ahead despite inadequate assessment of environmental effects.

In January 2006, the Government announced the 24th oil and gas licensing round, following SEA 6, which covered the Irish Sea. Despite the SEA cataloguing the significant, and in some areas international, importance of the area for wildlife, especially for birds and cetaceans, the DTI decided that no areas should be off limits for oil drilling and seismic exploration. This takes us firmly back to the situation of the 12th and 14th rounds in the 1980s which started all of our concerns. In fact, the situation now is even worse than then. Under the 14th round the coastal areas were excluded from licensing on environmental grounds, whilst the 24th round contained no exclusions whatsoever, not even for supposedly protected areas such as Special Areas of Conservation (SACs).

If any plan or programme, such as oil licensing, is likely to affect a European protected site – SAC or SPA – an ‘Appropriate Assessment’ (AA) is required under the Habitats and Species Directive. An AA of the 24th round was carried out by the DTI – a rare example of it bowing to the Habitat Regulations. This assessment failed to guarantee the protection of protected sites, and according to the Countryside Council for Wales (one of the Governments Statutory Advisors) it failed to establish *“with sufficient robustness or certainty that the plan will not have an adverse effect on the integrity of any European Site or potential European Sites”*.

Despite this, the Government went ahead with licensing, merely temporarily withholding the blocks within or immediately adjacent to the Moray Firth and Cardigan Bay SACs. No proper assessment of possible effects on designated sites from licensing at a distance was therefore undertaken, nor any assessment of possible cumulative effects. A second Assessment was then undertaken seemingly in an attempt to justify licensing the withheld blocks. This seems to us an abuse of the Assessment process. If the original assessment failed to guarantee protection of the sites then licensing should not take place. If information is available that was not included in the original assessment then that assessment should be re-done as a whole, not piecemeal to justify a decision already taken.

By announcing before the SEA and the AA that they considered no areas off limits to the oil companies, the Government is pre-supposing the outcome of the assessment processes. Re-doing an assessment because it fails to support this position only further undermines our faith in the process, and makes it seem even more of a rubber-stamping exercise. There seems little point in going through the

lengthy process of designating marine protected areas such as SACs, if the designations are being ignored when it comes to offshore energy developments. The decision in the 24th licensing round to offer all areas within SACs to oil companies shows that currently marine designations carry very little weight with decision makers, and therefore offer little or no protection. Moreover, the protection of a feature that an SAC is designated to protect also extends outside of the SAC, something that has not been taken into account as far as we are aware.

The 25th licensing round was announced early in 2008 and brought unprecedentedly vast areas of sea under offer. It is also worth mentioning the confusing and very worrying situation of the UK's bottlenose dolphin SACs. There are three of these (i) in mid-Cardigan Bay; (ii) north Cardigan Bay (Pen Llyn a Sarnau) and (iii) the inner Moray Firth. Following appropriate assessment the first has been excluded from the 24th and 25th licensing rounds (but this may be revisited in future rounds); the second, very surprisingly, was included within the 25th round; and the third (core habitat for a small and isolated population) was subject to a second Appropriate Assessment with an associated public consultation period that ended in March and, at the time of writing the government is considering its fate. More information can be found at www.wdcs.org

Whilst what appears to be an appropriate process for environmental protection seems to have been put in place, such incorrect use has been made of the procedures that 20 years on the situation overall seems little improved. The story of the licensing process is a classic case of process taking precedence over principle. This is echoed in the oil licensing procedures, where environmental factors were put into the process after a long and well-informed campaign. The case for the protection of areas of sea such as Cardigan Bay SAC was made some time ago. The coming of the EU Habitats and Species Directive gave us the means to implement that protection, but the processes created means that the principle of protection will never have the upper hand over development pressures and while environmental issues are factored into the licensing process they appear to carry no weight in the final decision.

The Marine Bill – early signals

Due to concerns over the process several of the original members of the Consortium are re-grouping to begin the fight anew. They are also considering withdrawing from the SEA steering group and offshore forum as spending time on detailed work, only to have all your views ignored does not seem a good use of time. However, most organisation's relevant time is currently being spent on the Marine Bill and licensing issues are not getting the attention they merit. Whilst on the surface this Bill appears to promise the sort of protection that is required, the lack of detail in the Bill at the time of writing is worrying and it appears that the Bill specifically excludes the areas of responsibility pertaining to BERR (i.e. the regulation of oil and gas installations).⁵ It has also been pointed out that the exact degree of protection that new 'conservation zones' will provide is very unclear.⁶ As seen above, BERR is likely to ignore any new protected area designations as it has

with SACs. By ensuring that oil and gas licensing does not come under the newly proposed Marine Management Organisation it is sure to continue to circumvent any new protection measures.

The creation of a new 'Department of Energy and Climate Change' which appears to be taking over oil licensing from BERR was announced as *ECOS* goes to press, and the implications are unclear, but may create a new opportunity for engagement with government, although the Civil Servants running the process could remain the same and perhaps therefore retain the same mindset that has helped to create the problems all along.

Lessons to be learnt

There is no doubt that the original JLOGEC campaign was a success, and displayed a model approach to consortium working. Using minimal staff time in individual organisations, and tapping in to personal expertise and enthusiasms, the campaign identified the problem, came up with a workable solution which was published as a position statement, regularly lobbied Government and achieved a much increased environmental input into the oil and gas licensing process.

By following a relatively informal approach, but with a clear administration provided by Wales Link, the Consortium was able to move forward quickly. Documents and letters were typically drafted by a few individuals, and comment and sign up from other member organisations was rapid. DTI responded quickly to the pressure, moving from ignoring early letters to rapidly moving to meet the Consortium on a regular basis.

Several of the key asks from the Consortium were obtained – EIA, SEA and the Forum – and some pressure was maintained on the DTI to ensure the process was maintained. For example, the first selection of EIAs were analysed and a critical report issued in order to push for improvements in the process.

After this, however, the NGO community rather lost touch with the oil and gas licensing process. There was continued engagement through involvement with the SEA process, but this was not well co-ordinated. Despite the growing unease at the process there was no co-ordinated approach to tackle DTI on its deficiencies. The reasons for this, after the success of the early work of the Consortium are unclear. It is undoubtedly in part due to changes in personnel. The Consortium had relied on the enthusiasm of a few to keep up momentum, and as most of these people moved on the momentum lapsed. It was also partly due to resources – although the Consortium ran on minimal resources changes in funding priorities within organisations, and the aforesaid loss of people who managed to bring budgets with them, meant there was no money to work on this topic or attend meetings.

Perhaps the current situation is also partly due to an irrational trust of government as represented by DTI, noting that we had successfully changed its procedures drastically. Surely that was enough, and we could turn to other

pressing issues. This is probably true for many other campaigns – once a few changes have been made we chalk up a victory and move on. Given our limited resources this is unsurprising but given the example here it is probably a mistake – at least some staff time should be kept on monitoring the effects of policy changes. Are they really achieving our aims or are they, as in the case of this campaign area, failing to make any real change in end results of policy? We might also question the role of DTI/BERR as an environmental regulator given, as often appears to be the case, that they see their primary role as helping the industry and that fact that environmental responsibilities seem to rest more usually with other departments of Government, in particular DEFRA. Perhaps being new, the structure just announced can seek to address this.

If we are really going to achieve a discernible change in Government thinking and ensure environmental protection is deeply embedded at all levels of decision making, concerned representatives of civil society must maintain the momentum of their campaigning. Unless we do this we are really wasting our time.

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