

**National Federation of Fishermen's Organisations
Anglo-Northern Irish Fish Producers' Organisation**

Northern Ireland Marine Bill

**Evidence Submission to the Northern Ireland Assembly Environment
Committee**

27th April 2012

Introduction

The NFFO is the representative body for fishermen in England, Wales and Northern Ireland. Member vessels range from 110 metre pelagic freezer trawlers operating in international waters to small, under 10 metre vessels, beach launched and with limited range. The Federation holds seats on the EC Advisory Committee for Fisheries and Aquaculture, and the North Sea, North West Waters, Pelagic and Long Distance Regional Advisory Councils. The NFFO is also a member of Europeche, the European trade federation for the fishing industry.

The Anglo-North Irish Fish Producers Organisation is one of the two Northern Ireland based fishermen's representative organisations. It is a constituent part of the NFFO and through that affiliation is fully involved in a wide range of issues at a local, national and indeed European level. Most of its member vessels, which range in size from 75 metre pelagic trawlers to under 10 metre inshore potters are dependent upon their Irish Sea for their livelihoods. In addition to the traditional roles of a fish producer organisation and representational body, the organisation has developed a successful fish auctioneering business, which has become the largest such body in Northern Ireland. Therefore, both its members and the organisation itself are very susceptible to changes to fisheries management around Northern Ireland's coast, as well as throughout the Irish Sea."

In terms of interacting with other users of the sea, our organisations take a pragmatic view and are not opposed to measures that will safeguard and enhance the economic viability of the fishing industry, which includes the fish/shellfish stocks on which fishermen depend for a living.

This evidence submission addresses Parts 2 and 3 of the Bill as introduced to the Assembly and proposes amendments to following clauses in the Bill and one additional clause:

Part 2: Marine Planning

- 1. Clause 2: Marine plans for Northern Ireland inshore region [page 3]**
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Part 3: Marine Protection

- 4. Clause 12: Grounds for designation of MCZs: Conservation Objectives within Conservation Orders: (2)(b) [page 5]**
- 5. Clause 12: Grounds for the designation of MCZs: Clause 12, subsection (7) and associated Explanatory and Financial Memorandum: Trade-offs between humanistic and ecological considerations [page 6]**
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Part 2 Marine Planning

Part 2 of the Northern Ireland Marine Bill concerns marine planning. This is an area which has the potential to affect the fishing industry in many ways, not least in so far as it may govern the continued right of access to fishing grounds. There are, therefore, a number of safeguards we would like to see introduced into the Bill.

1. Clause 2: Marine plans for Northern Ireland inshore region

We consider that the default position of a marine plan should give primacy to existing activities unless relevant considerations should intervene. This could be achieved by inserting the following subsection after 2 (5) (b) (in bold and italicised):

(5) Unless relevant considerations indicate otherwise, a marine plan must be in conformity –

.....

(c) with existing activities.

2. Clause 6: Decisions affected by a marine plan

Inevitably, there will be conflicts among different users, but as the legislation stands there is no provision for conflict resolution: difficulties are simply resolved by diktat.

In clause 6, subsection (2), it is therefore suggested that the following words should be inserted (in bold and italicised):

(2) If a public authority takes an authorisation or enforcement decision otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons ***and must consult with affected parties prior to taking the authorisation or decision unless inexorable circumstances prevent this.***

3. Clause 8: Validity of a marine plan

One of the problems facing marine planners is that, contrary to the terrestrial environment, the marine environment is dynamic so that the baseline is constantly evolving as our knowledge increases. Whilst there is a provision for constant review within the legislation at the Departmental level, this provision is not necessarily sufficient.

It would therefore seem advisable to insert an amendment into the subsection concerning the grounds for challenging the validity of a marine plan (identified in bold and italicised):

(4) A person aggrieved by a relevant document may make an application to the High Court on any of the following grounds –

- (a) that the document is not within the appropriate powers.
- (b) that a procedural requirement has not been complied with.
- (c) that there is significant new evidence.***

Part 3 Marine Protection

The designation of marine conservation zones has the potential to affect the fishing industry and fisheries dependent coastal communities through the loss of access to fishing grounds. Furthermore, where fishing remains viable the designations have the potential to result in the displacement of fishing activity to other areas that has negative repercussions for conservation. The Northern Irish industry is highly dependent upon the nephrops (Dublin Bay Prawn) fisheries of the Irish Sea which are spatially limited and are already threatened by the recommendations for proposed MCZs under the 2009 Marine and Coastal Access Act, as well as wind farm installations.

4. Clause 12: Grounds for designation of MCZs: Conservation Objectives within Conservation Orders: (2)(b)

Orders under Clause 12 require that conservation objectives are stated when making an order under Clause 11.

Experience in the application of the 2009 Marine and Coastal Access Act is demonstrating the lack of flexibility this provides, when under time pressures to designate there is often a dearth of evidence upon which to justify the setting of conservation objectives. Furthermore, designations under the Habitats Directive do not require the formal setting of conservation objectives when sites are designated.

We consider that the legislation should be drafted to allow the flexibility to define conservation objectives when sufficient evidence is available to do so. In order to achieve this, we offer the following amendment to clause 12, subsection (2) (b) (in bold and italicised):

(2) The order must state-

....

(b) The conservation objectives ***or draft conservation objectives*** for the MCZ.

We also suggest the additional subsection is inserted after 12 (2) (b):

(c) Where in 12 (2) (b) a draft conservation objective has been defined, the department must conduct a relevant assessment in order to justify the conservation objective prior to making an order amendment.

5. Clause 12: Grounds for the designation of MCZs: Subsection (7) and associated Explanatory and Financial Memorandum: Trade-offs between humanistic and ecological considerations

The current approach to selecting areas for MCZs presumes there is a simple trade off between ecological and humanistic concerns, in the form of social and economic considerations. This approach is identified by clause 12, subsection (7), covering social and economic considerations, and elaborated by the accompanying note in the Explanatory and Financial Memorandum (59, p8). This states that:

“where an area contains features that are rare, threatened or declining, or forms a biodiversity hotspot, greater weight is likely to be attached to ecological considerations. Where there is a choice of alternative areas which are equally suitable on ecological grounds, socio-economic factors could be more significant in deciding which areas may be designated as an MCZ.”

This approach, however, is over simplistic. In particular, it does not consider what happens to human activities outside of the designated site as a consequence of the designation. Activities that occur within the area of a designation, but which are subsequently prohibited or limited, will relocate if they remain viable and the relocation will result in ecological effects beyond the area and at a wider ecosystem scale.

The significance of these effects must therefore be evaluated alongside other considerations in deciding whether or not to designate an MCZ in a particular location. Without doing so there is considerable risk of displacing fishing activity from the most productive areas for fisheries, where habitat may already be modified by those fisheries, to areas that:

- have hitherto not been subject to significant levels of fishing activity;
- are in a more pristine state;
- are more vulnerable to impact; and/or,
- require additional fishing effort to attain equivalent catches.

All of these outcomes effectively increase ecological impact per unit fishing effort.

This issue is also critical to:

- the attainment of the condition laid out in section 18, sub-section (3) (a) “that the network contributes to the conservation or improvement of the marine environment in the UK marine area”;
- the application of the European Marine Strategy Framework Directive, where there could be a risk as a result of this legislation of causing displacement from MCZs that actually undermines the attainment of biodiversity targets for Good Environmental Status (GES), the principle

aim of the Directive, particularly by affecting the attainment of the seabed integrity descriptor of GES.

We believe the potential risk of such negative conservation outcomes occurring could be addressed with the addition of the following sub-section after sub-section 12(6):

8 (7) In considering whether it is desirable to designate an area as an MCZ, the Department shall have regard to the ecological consequences resulting from the displacement of other marine uses beyond the area due to their prohibition or restriction within the area.

This approach would have the added advantage of strengthening the basis of the legislation to develop an MCZ network that achieves synergies between human uses of the marine environment on the one hand, and conservation on the other, and so optimises locations to achieve win-win outcomes for both conservation and socio-economic considerations. These issues are especially critical given the size of the Irish Sea.

6. New clause: Duty to assess, manage and mitigate impacts upon existing activities resulting from the designation of Marine Conservation Zones (MCZs)

Depending upon the treatment of the displacement of other marine uses in the selection of MCZ sites, the designation and subsequent management regime associated with MCZs will incur significant costs to existing activities which will vary according to the location of each designation. Fishing activity, in particular, will incur increased costs resulting from displacement or in adapting to alternative forms of fishing.

It is possible that fishing activity may no longer remain viable at all in some locations, livelihoods will be lost, and supply chains and port services impacted.

Furthermore, important rights to fish will also be surrendered.

It cannot be right or fair that those impacted should be expected to bear these losses without any intervention from government. The Bill in its current form, however, places no obligation on government to assess or manage these resulting impacts and loss of rights in any way.

We consider, therefore, that a clause should be introduced that places a duty on the Department to assess, manage and mitigate such effects. We consider that the Scottish Marine Act 2010 offers a sound basis for such a clause (Marine (Scotland) Act, Section 91), which the following suggested clause is based upon:

(1) Where an activity is restricted or prohibited under a marine conservation order, the Department must assess—

(a) the impact or potential impact of the restriction or prohibition within the area protected by the order ("the protected area"), and

(b) where the restriction or prohibition will cause displacement of the activity to another part of Northern Ireland inshore region, the impact or potential impact of that displacement.

(2) The assessment must include an assessment of the extent to which the restriction or prohibition of the activity has had and may have an impact on—

(a) economic interests,

(b) social interests,

(c) the environment within the protected area,

(d) the environment elsewhere in the marine area as a result of the activity being displaced.

(3) Where, following an assessment, the Department identifies an adverse impact under subsection (2), it must take such steps as it considers reasonable to minimise and manage the impact as far as is practicable.

7. Clause 14: Consultation before designation

We consider that before an order is made under clause 11 that other relevant departments whose functions are affected or whose policies are connected to the sustainable development of the marine area should be consulted.

We therefore offer the following additional subsection to be inserted after clause 14, subsection (4) (a) (in bold and italicised):

(4) (a) The Department must consult-

....

(b) the relevant Northern Ireland Departments.

[change present subsection (4) (b) to (c)]

8. Clause 17: Review of Orders

At present there is no specific provision enabling the Department to amend or revoke an order. This appears to be at variance to both the UK and Scottish Marine Acts.

In addition, we consider that there should be an obligation to review an order when significant new evidence is made available that would cause the order to no longer remain appropriate without amendment or removal, for example to change a conservation objective in light of new information indicating the condition of marine habitat. We suggest clause 17 should be amended as follows:

17.-(1) An order under clause 11 may be amended or revoked by a further order.

(2)The Department must review any order when it receives significant new evidence that may be expected to affect the basis for the provisions of the order.

[change present clause 17 to 17 (3)]

9. Clause 24: Byelaws for the protection of MCZ's

We believe that, for the same reasons as those outlined in 5 above, there needs to be safeguards in the consideration of any byelaws for the protection of MCZ's so that social, economic and the undesirable ecological impacts of displacement of activities are anticipated and effectively managed.

Therefore, we consider that a new subsection should be added to Clause 24 by inserting after 24 (4):

(5) In furthering the conservation objectives stated in an MCZ, byelaws under this section shall have regard to any social, economic or ecological consequences of the displacement of marine activities from the area where the byelaw has effect.

[Change current subsections 5-9 to 6-10].

NFFO and ANIFPO
27th April 2012

A handwritten signature in black ink, appearing to read 'Dale Rodmell'.

Dale Rodmell
Assistant Chief Executive
NFFO

A handwritten signature in black ink, appearing to read 'Alan McCulla'.

Alan McCulla
Chief Executive
ANIFPO