



Northern Ireland  
Assembly

Committee for the Environment

# OFFICIAL REPORT (Hansard)

Marine Bill: DOE Briefing

8 November 2012

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Ms Anna Lo (Chairperson)  
Mr Simon Hamilton (Deputy Chairperson)  
Mr Cathal Boylan  
Mr Alastair Ross  
Mr Peter Weir

**Witnesses:**

Mr Ken Bradley	Department of the Environment
Mr Joe Breen	Department of the Environment
Mr Damian Campbell	Department of the Environment

**The Chairperson:** I welcome Damian Campbell. Are you the director of the new marine division?

**Mr Damian Campbell (Department of the Environment):** I am, yes.

**The Chairperson:** You are very welcome, and congratulations.

**Mr D Campbell:** Thank you very much.

**The Chairperson:** Joe Breen is also here. Hello, Joe. It is good to see you again.

**Mr Joe Breen (Department of the Environment):** Good morning.

**The Chairperson:** We also have Ken Bradley, whom we know well, from environmental policy division. You have five or 10 minutes for your presentation.

**Mr Ken Bradley (Department of the Environment):** I understand that the Anglo-North Irish Fish Producers Organisation (ANIFPO) sent you a paper on displacement. Although I am not aware of its contents, I am sure that the organisation's stance does not differ much from that in the scrutiny process on the Marine Bill. ANIFPO is concerned that, with it potentially having a big say in the marine environment, renewable energy might displace some fishing activity. It sees marine conservation zones (MCZs) as further potential displacement and is concerned that there will be the same number of fishermen in a smaller pond.

We want to give assurances to ANIFPO, to as large a degree as we can, and to the Committee that, as far as we are concerned, the MCZ designation process does not contain any major threat to the fishing industry. Our potential MCZs will be roughly in and around existing special areas of

conservation (SACs), where, as you know, restrictions are already in place; for example, in Strangford lough, which will be our first MCZ. Therefore, there will be no further fishing restrictions on Strangford lough. It does not follow suit that, just because we designate an MCZ, fishing practices will be curtailed.

The fishing industry is obviously very important, and we will fully engage it in the process from the very outset. Joe will give the Committee a bit more detail on the practicalities of designation. Needless to say, any MCZ that we designate will not suffer from fishing activities, particularly dredging or trawling. If an area has been dredged or trawled, there is probably very little point in designating it for nature conservation. A large number of the sites that are already SACs are perhaps inappropriate for fishing, either because at those sites there are no fish or because they do not lend themselves to fishing owing to the presence of large boulders and such things. Therefore, as far as the Department is concerned, displacement is not a major factor.

I know that ANIFPO referred to a section in our Scottish colleagues' legislation that says Marine Scotland will consider displacement. However, bear in mind that Marine Scotland is a joined-up directorate.

In practical terms, the way in which the process will work in Northern Ireland is that, once we have consulted and taken into account the socio-economic factors, we will designate an MCZ. If certain types of fishing activity, for example, are then curtailed in that area, we will look to our Department of Agriculture and Rural Development (DARD) colleagues, who license commercial fishing activity, to put those restrictions in place, either by amending fishing licences or by putting in place new legislation. That is what happened recently for Strangford lough. If there is any displacement of fishing activity, it will be for our DARD fisheries colleagues to consider providing compensation or decommissioning boats. That is a difference between our set-up and that of our colleagues in Scotland.

As I said, we do not envisage any major displacement from our initial raft of MCZs. Joe can provide slightly more detail on that.

**Mr Breen:** I saw in the briefing note that fisherman are concerned that we already know where the MCZs will be. I can assure you that we do not. We have only started the process of gathering and looking at the underlying data that will underpin the selection of MCZs. We cannot really proceed with that selection until the Marine Bill comes into law, which hopefully will be early next year. We will then start to apply models, which is a combination of what happened in England and Wales and in Scotland. There has been an accusation that we know where the MCZs will be and that we have not been consulting with anyone. We have never been secretive about this. We have had pre-consultations, in the sense that fisherman have invited us to various meetings over recent months.

I have been asked where the MCZs are likely to be. Again, without going through the full process and applying the criteria, which will be agreed when we set out our designation criteria, and those will be consulted on early in the new year, all that I can say is that the majority of features and species that we will look to protect — we draw those from our priority species list or list of species of conservation concern — will be within the existing SAC network. There are a couple of other national species that are not protected by the habitats and species directive, such as the common skate and the quahog, which is a type of clam that lives to around 450 years old. There are a couple of sites for those species that are not within SACs, so we will certainly have to consider those as potential MCZs.

I said to the fishing representatives that we could be looking at Ballycastle Bay, between Rathlin and Ballycastle, and just to the east of Red Bay for common skate, and an area off the mouth of Belfast lough for quahogs. Those are a long-living species that live well buried in the mud. I cannot see us putting on any restrictions on that site — if it becomes a site — because it has been there for hundreds of years and is in a trawling area. Therefore, I really do not think that there is anything to fear from that. Again, I know the area well where common skate are caught by charter anglers and members of public, and no trawling goes on there.

It is a question of, once this goes out to consultation, we will lay out what the species are, why they need protected and how they fit in with the criteria. As Ken said, we do consider the socio-economics. When we design the network, it has to be what is called an ecologically coherent network. The guidance for that comes from the Oslo and Paris (OSPAR) Commission. We are working to what the rest of Europe is working to. There are criteria on representivity and spatial coverage. That would go into the wider UK coherent network. If we find a site that is particularly good for the species, and if it is an area of high socio-economic value, we will look for another area. If there were no other area, we

would have to have a conversation to say that that was the only area that fits the criteria. There will be a full consultation.

I advise you that, although the fishermen are probably right to be concerned, we have not started the process. They may be worried because they see this as having already started across the water several years ago. Our legislation is following on from that, so we have not got into that process yet.

**Mr K Bradley:** Bear in mind, as Joe said, that this is part of an overall UK commitment under the marine strategy framework directive for an ecologically coherent network of marine protected areas (MPAs). It is UK-wide, and Northern Ireland waters represent only 3% of that. As Joe said, we look at a feature as a national asset but also in the context of the UK network.

**The Chairperson:** Thank you for your presentation. DARD previously drew our attention to the fact that, if the area for prawn fishing were reduced as a result of an MCZ designation, the EU would reduce the quota. That is worrying fishermen. How do you respond to that?

**Mr Breen:** The fishermen have raised that with us. They see that England has gone ahead and published where it intends its MCZs to be, and those are located where the Northern Ireland fishing fleet fishes, particularly just off the Solway Firth and in the eastern part of the Irish Sea. The features being protected there, which nephrops fall into, are deep water muds. Deep water muds are not European features but national features. The fishermen have raised genuine concerns about the area where the First Flight Wind wind farm is going. It will take up quite a large area off Newcastle. DARD has evidence to show that that is a very intensively fished area for nephrops. The fishermen are asking us whether, because it is to be the site of a wind farm, the area will be suitable as an MCZ for deep water muds if it is going to be a no-go area for trawling for nephrops. Moreover, if that is the case, would that take the pressure off some of the English MCZs perhaps not to be designated, because the coherence of the network could be met by us in Northern Ireland designating that area for deep water mud? It is a valid argument.

That falls into what has been referred to in other legislation as co-location. You would get the benefit of the wind farm. It has not been agreed yet what any restrictions would be, but, if there were a possibility that the feature was within that site — we have yet to ascertain that, but we suspect that it is because nephrops are being fished there — would it be beneficial for us to make the area an MCZ? We could bring that proposal to the UK and say that, with this site and one or two others, we have a coherence, and there is no need for the third site. Therefore, no restrictions on the industry would be necessary.

**The Chairperson:** You are looking at the wider picture.

**Mr K Bradley:** That is right. I realise that it was back in May when DARD officials gave the Committee a presentation. Prawns are the mainstay of the fishermen, and the habitat of prawns is mud. The mud habitat is now going to be one of several habitats that we will be looking at for MCZs.

**The Chairperson:** The Marine (Scotland) Act 2010 has a section on displacement. Why have we not got that in our Bill?

**Mr K Bradley:** To be clear, the section on displacement is only to assess when Marine Scotland puts in what it calls a marine conservation order. In Northern Ireland terms, that is a regulation and is the responsibility of DARD fisheries. In other words, when it issues a restriction or a legal instrument to curtail fishing, Marine Scotland, as one entity, looks at the economic impact on fishing and will make an assessment on compensation or look at another MCZ.

**The Chairperson:** Through regulations?

**Mr K Bradley:** Yes. Section 91 of the Scottish legislation is purely on marine conservation orders. Going back a step or two in the designation process, we fully take into account that activity.

**The Chairperson:** Would it not be better to insert a clause on displacement in the first place?

**Mr K Bradley:** Commercial fishing is a DARD responsibility. The Department of the Environment (DOE) cannot compensate fishermen for displacement of commercial fishing activity.

**The Chairperson:** It is not simply about compensation. There are ecological issues, too.

**Mr K Bradley:** I fully take your point. The designation process will fully take that into account. One of the amendments that the Committee asked us to make, and to which we agreed, was to make provision that the Department "shall" take account of socio-economics. Therefore, the Department is obliged to do that and to demonstrate how it took socio-economics into account, and the fishermen's fears should be negated at that stage. As Joe said, if there is a wind farm — perhaps that could be an MCZ — that meets the overall UK commitment or if there is another site elsewhere, the only time that it will be a difficulty is if we find some unique species in Northern Ireland waters that is not anywhere else. If that unique species is there, fishing activity will not happen there and that feature would potentially not be there. Therefore, we can work very closely with the fishing industry and negate its concerns through this process, which is very open and transparent.

**The Chairperson:** We have a lot of unique species in Northern Ireland. Modiolus in Strangford lough are unique to us, is it not?

**Mr Breen:** That is one of the reasons that the special areas of conservation are where they are. The original surveys happened back in the 1980s at those sites. I go back to what I said, which was that the majority of the national species that we need to protect will fall within the current SAC network, and only a couple of small additional sites will be outside that network. The MCZs on nationally protected and European protected sites, along with fishery conservation measures, will contribute to the overall network as an ecologically coherent network.

**Mr Boylan:** Welcome, Ken, and good luck in your new post. I have a few issues. Strangford is a bad example to use, because people felt that they had to go so far down a route to try to get the area protection, and there are now genuine concerns about displacement. Correct me if I am wrong, but the designation of an MCZ could include a shoreline as well. Is that right?

**Mr K Bradley:** Yes.

**Mr Boylan:** That could mean any activity that will be carried out. Council activity or recreational activity could be displaced from that area.

**Mr K Bradley:** Only if it were potentially detrimental to the feature.

**Mr Boylan:** Yes, I understand 100%. It could be an oil spill, damp or anything else. We need to tease out those kinds of issues. The Chair mentioned the fishermen, who have been up a couple of times, and I have some concerns about some issues. For example, we do not want to get to a position in Strangford in which somebody — I will go on to provide research in a minute — identifies something, and we have a panic to designate something for the protection of it. That is not the way it should be; it should be evidence based.

I want to move on to the European element. Obviously, there are European directives on what we are supposed to do, and we are bringing forward marine legislation to try to address some of that. As Joe mentioned, we are naturally protecting species that do not fit into European directives. Is that correct?

**Mr Breen:** That is correct.

**Mr Boylan:** That is the kind of thing that we need a proper evidence base on, and the whole idea of designating an MCZ is our own evidence. The evidence base in relation to Strangford lough is a key point for me. Where is the Department in terms of getting independent evidence? I am sure that the universities are conducting some research at the minute, through a sponsor Department, or whatever. How do we propose to do that?

**Mr Breen:** As you know, Strangford lough, in particular, has been studied for many years. We have been collating as much of the evidence as possible into our database to underpin our decisions for making the MCZ. That evidence is a mixture of things. It is not just stuff that we collect ourselves; the universities have been collecting as well. We have also commissioned the university for several projects. The original one, the Strangford lough ecological change investigation, was carried out around 2003. That was the evidence that led to the initial ban on mobile gear. That was a collaboration between the Agri-Food and Biosciences Institute (AFBI), Queen's University and the Ulster Museum. The Ulster Museum and Queen's University are certainly independent from us, as is

AFBI. We gather our own data. We have a very highly qualified team of marine biologists in the Department, but we are working with everyone. We try to make sure that as much of the evidence as possible is peer reviewed, so it is bona fide scientific evidence.

**Mr Boylan:** I do not mind the research and trying to protect stuff; that is one element of it. However, there is an element of activity out there. There is a perception — and perhaps rightly so; I have not seen the evidence — that trawling over the years has done a serious amount of damage, and we have seen some of that. However, that should not be about all of it. There are areas that have not been touched, and that is where the fishermen are coming from. DARD is responsible for fisheries, and new European regulations have tied them in to a certain area. That is the kind of thing we need to do. We need to ensure that what we put in place gives those people an opportunity. They have an important role through the evidence that they have gathered down through the years. That is the key element for me.

If we said that we would not put in a clause on displacement, how would we address the issue? Say we designate an MCZ. How would we address the activities that are displaced on the periphery of that? How do we work that, in terms of protection or giving people an opportunity? There is definitely going to be displacement if you designate something, no matter what the activity is going to be. You are moving it from one to the other.

**Mr K Bradley:** At this moment in time, Cathal, we cannot say that there definitely will be displacement. We do not know that yet.

**Mr Boylan:** Ken, there is bound to be; there has to be displacement.

**Mr Weir:** The issue is the extent of it, whether it will be very minimal or wider. Logically, there has to be some sort of displacement.

**Mr Breen:** I can give you some reassurance on that. There have been absolutely no restrictions on any fishing activity or any activity within the Skerries and Causeway special area of conservation (SAC), which is designated for reef and sandbank. That is because we currently determine that the levels of activity that are happening within those SACs are not detrimental to any of the features.

When I had to go round the country and give talks to all the groups — the lobster groups, the scallop groups, the fishermen, the Royal Yachting Association (RYA) — they always said that we were going to put in restrictions. I said that that was not necessarily the case. I gave the example of Skerries, where, at the minute, the level of pot fishing is sustainable. A very large vivier pot boat from Scotland or Donegal could come in and suddenly set 3,000 or 4,000 pots on top of the Skerries. That does not happen at the minute, but if that was to happen, that level of activity might start to impinge on and damage the features. That is when you would go to DARD, as the fisheries regulator, and say that it is an activity which, within the SAC, should be deemed as a plan or project, and, therefore, be subject to an article 6 habitat regulatory assessment. So, it is not automatic that because a site is designated, anything will be displaced or changed. It may be the case in certain instances, but not always.

**Mr K Bradley:** The Skerries are also a potential MCZ.

**Mr Breen:** Parts of it, yes.

So, it does not happen. You said that Strangford is a bad example. Everything happened in Strangford. People came back to me and said, "How come you are trying to restrict pot fishing on Strangford lough?" I say that it is because Strangford lough is a damaged site. The level of pot fishing there is not akin to what happens in some other areas, such as the Maidens, the Skerries and Dundrum Bay.

**Mr Boylan:** Joe, there could be a lot of damage. We are waiting on evidence to be gathered. There could be damage that we have not found yet.

**Mr Breen:** There could be. However, we have done extensive surveys on all of the SACs. We did that before we designated them. Not only did we survey them, but we surveyed outside the SACs. We have been doing that intensive research for at least the past five years.

**Mr Boylan:** OK. I have a final point, Chair. We could talk about this all day — that is for sure. It is a good subject today. However, the thing is, why is there a perception in the fishing industry that if you have evidence — you say that a certain amount of evidence has been gathered already — you have an idea of what will be designated and what will not?

**Mr Breen:** The perception about what we are going to designate exists because I have told fishermen. They have asked me and I have given them an honest answer. I cannot tell you because we have not run through the models yet, but, in my opinion, it is likely to be those areas because they are the best ones in the case of quahogs, the Arctic clams, off Belfast lough, and in the case of skate.

We commissioned AFBI. It did a major survey on elasmobranchs, which are all sharks and skate. It has shown us where the nursery areas and hotspots are. AFBI gathered data from everybody when it compiled that report. It has its own scientific data. It also consulted all of the fishing groups and the charter anglers. It asked them for their data. Those data were in the form of catches; information on size, position and date. So that evidence is there.

**Mr Boylan:** Right, Joe. Chair, I cannot resist this. *[Laughter.]* The thing is; that is grand. You should then have an idea if you are to designate a certain area, right? Because you have certain evidence. How long would you need to designate that area for? My only concern is that although we are looking at what we want to designate and protect ourselves — and the species that are unique to those waters — what happens if, in two years' time, a European directive comes down for some other reason? Do you understand? You will find that you have designated areas because of what we are trying to protect. Then, you will have separate designations that affect different industries and activities.

**Mr Breen:** This is where the fishermen, and everyone, are confused. It is the difference between a special area of conservation and a marine conservation zone. When we went through that process, we probably did it the wrong way round. MCZs should have been designated first, and the best examples would then have been made European sites. However, when special areas of conservation are designated under the habitats directive, we can consider scientific evidence only when we design the boundary. Once the boundary is set, it is fixed. That is the way that it is. SAC boundaries are not modified. However, under the Marine Bill and marine conservation zones, which are national sites, boundaries can be moved. They can be expanded or reduced. In fact, MCZs could, for whatever reason, be removed. They are not fixed and static in the way that SACs are.

**Mr K Bradley:** That is right. And any restriction can be flexible as well. It might only be during the nursery period —

**Mr Breen:** It can be time-limited through the year.

**Mr K Bradley:** Therefore, if, due to climate change or whatever, a MCZ is no longer tenable, we would move to de-designate it. As Joe said, the problem with European sites is that you cannot do that. You have to live with what you designate for ever. You can change the boundary only if you enlarge it. You cannot reduce the boundary of an SAC. That is why we are in the realms of restoration in Strangford lough.

**Mr Boylan:** I have more, but I will leave it at that. *[Laughter.]*

**The Chairperson:** OK. Has anyone else got a question? No.

I hear what you are saying in that, at present, you are not anticipating restrictions. There are other flexible approaches that you can take in order to avoid restrictions. However, legislation can last for decades. How can you be so sure that there will not be displacement? Would it not be better to have a clause in the Bill now to deal with displacement and to safeguard whatever changes might happen in future? The marine task force and the fishing industry are quite concerned about this.

**Mr K Bradley:** Again, it goes back to the Department's responsibilities. DOE has no powers on displacement for fishing activity. In DEFRA's joined-up MMO, it did not put in any powers to look at displacement. Marine Scotland did, but only to look at Scotland's marine conservation orders, which are basically by-laws. It put in a by-law to restrict a vessel or to stop anchoring and, therefore, did an assessment of who was going to lose out and be displaced as a result and made an assessment of what compensation should be put in place. DOE can put in by-laws, but only for unregulated activity. Strangford lough is a good example of that. Such activity includes anchoring, mooring and diving. If

someone says "I dive there, stop me from diving", the Department can look and see what it can do. For instance, the RYA moors there or puts racing marks down there. The Department might ask it to put them somewhere else and see whether the marks that have been put down are detrimental to the site. If they are not, we can amend the by-law or give it a licence. There is a lot of flexibility in that. DOE activities in the marine environment are quite limited. We cannot legislate for displacement, fishing, wind farms or any other regulated activity.

**Mr Weir:** I have listened to what you have said, and I appreciate that, to some extent, you are highlighting a certain level of restrictions in what you see as part of DOE's remit. Therefore, there is an element to which you feel that the Department's hands are reasonably tied. Maybe you do not want to comment on this, but, whereas it is clear that there may be a restriction on the Department introducing such an amendment or making for such an allowance, what would be the Department's attitude if the Committee were to table an amendment of that nature? To clarify, is it that you do not feel that you are in a position to put forward anything on displacement — you may feel that it is not necessary anyway — or are you hostile to anything at all appearing in the legislation on displacement?

**Mr K Bradley:** There only is the one model of legislation for that, and that is in Scotland. Its legislation looks at displacement where a by-law has been issued to restrict a certain type of activity.

**Mr Weir:** I appreciate that, but that is not entirely answering the question. To be fair, there has been a certain level of competing interest between the fishing industry and those more associated with marine conservation. The Committee has seen that level of tension. Without prejudging this issue, when you see a situation where you get something which, broadly speaking, the fishing industry and the marine conservation folk are content with, it seems to be a reasonable position to take. If there was a situation which, from an amendment point of view — and I appreciate what has been said about what has been done elsewhere. If the Committee were minded to move in the direction of tabling an amendment to make some allowance for displacement in the legislation, would the Department have an open mind on that, or would it be utterly hostile to that?

**Mr K Bradley:** Peter, it would depend on what the amendment required the Department to do. Displacement equals compensation in some quarters, and, obviously, the Department would not want to go there, particularly with activity that is regulated by another Department. There are mechanisms for those Departments to look at that, such as DETI with wind farms. Primarily, the developers themselves would look at the compensation elements. DARD regulates fishing activity and aquaculture. DRD regulates ports, and things like that. We would need to see the clause as drafted before taking a stance on it. Once we have seen the wording, we could take a view. Perhaps, that would be a compromise. Neither the Department nor the Minister was minded to take forward any such clause during the Consideration Stage, but if the Committee wants to do so, we will look at it and decide whether to support it.

**Mr Boylan:** It is very interesting, and Peter made a good point. You keep going back, Ken, to saying that "Fisheries is DARD", and everything else, and that there are responsibilities and roles of every other Department. On the issue of displacement, if you designate a certain area, at the start of that process, everybody needs to be included and their roles and responsibilities need to be recognised. However, the problem I have is that, ultimately, it will be DOE that says, "There is a certain amount of damage being done. That is it. We need to designate this area for conservation." If I am a fisherman, I can only go to DARD, because DARD sets the rules. If we do not bring anything forward on displacement, what protections, rights or challenges do fishermen have? What is in the Bill that will say that they will be permitted? You said that designation may not stop all activities, they may be able to do things, but what is in the Bill to say that someone can continue to do this, that or the other?

**Mr K Bradley:** There is slight confusion there, Cathal. The Department would not designate a site because it has been trashed. We would only designate a site if it had good ecological status or it was in good condition. By default, if a site is in good condition, only a certain level of fishing activity happens there, or no fishing activity, or any other activity which would be detrimental to the site.

**Mr Boylan:** That is why I keep asking you about decisions being evidence based and why areas are going to be designated. That has to be inclusive of everybody.

**Mr K Bradley:** Absolutely.



**Mr Boylan:** How do you give a voice to the minority groups that have an interest due to their activities? Does the designation override everything?

**Mr Breen:** When we designate, we have to set out the conservation objectives. When you are setting out the conservation objectives, you have to look at activities and identify those activities that may or may not impact on the site. You almost do a matrix of risk, with the very high risk activities being made red. Then, you have to introduce, within a scheme of management, measures for how you are going to manage them. That means that, if there is a fishing issue, we would have to go to DARD, as the fishing regulator, and say, "These are the activities that could damage, or are damaging, these features within this boundary."

**Mr K Bradley:** DARD could turn around and say, "No".

When DARD officials came to the Committee in May, they presented a map showing roughly where their areas of fishing activity were for nephrops. Again, that information is available to us. It is part of the marine planning process. We know where fishing happens, we know where renewables are and we know where the pipelines are. So, the MCZs will be where they are. That will take account of the circumstances in 2013 or 2014, when it comes to designation. If fishing activity of any degree happens there, it is either not having any detrimental effect or it is sustainable. Therefore, the MCZ and fishing activity should not be at loggerheads. For instance, if we were doing MCZs today and Strangford lough was not designated, would we go to Strangford Lough to designate? Probably not, because of its condition. If we did, we would only designate wee bits of it. We would not designate the whole lough because of the condition.

**Mr Boylan:** You have answered the question, Ken. There are no problems then. You are saying that you know exactly what the activities are and what is there, and you are looking at 2014 or 2015 to designate.

**Mr K Bradley:** Our first MCZ will obviously be Strangford lough, because that is the only nature reserve. That will be our first priority. The other MCZs will be designated after that.

**The Chairperson:** Will the whole of Strangford lough be designated?

**Mr K Bradley:** Yes, the whole of Strangford lough is a marine nature reserve, so the whole lough will have to be an MCZ.

**The Chairperson:** Thank you very much, gentlemen.

**Mr K Bradley:** Thank you, Chair.