NORTHERN IRELAND MARINE TASK FORCE SUBMISSION TO THE ENVIRONMENT COMMITTEE- NORTHERN IRELAND MARINE BILL- APRIL 2012

The vision of the Northern Ireland Marine Task Force is to secure healthy, productive, resilient seas that can sustain thriving coastal communities for current and future generations.

The Northern Ireland Marine Task Force (NIMTF) *is a coalition of eight environmental non-governmental organisations –it includes RSPB, Ulster Wildlife Trust, Wildfowl and Wetlands Trust, WWF Northern Ireland, National Trust, Friends of the Earth, Irish Whale and Dolphin Group, and Northern Ireland Environment Link. The NIMTF has the support of approximately 100,000 local people.*

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Executive Summary

This document outlines the Northern Ireland Marine Task Force's (NIMTF) key areas of concern in relation to the Northern Ireland Marine Bill. The NIMTF is pleased that marine legislation has entered the Committee stage of the legislative process, and we recognise the important opportunity to make the Bill as strong and effective as possible. There are certain aspects of the Bill that need strengthening and the NIMTF has provided detailed discussion around key areas of concern and suggested amendments on a clause by clause basis.

The key areas of concern centre are:

- **The over-arching purpose of the Bill.**
  The NI Marine Bill requires, but currently lacks, an articulated overarching purpose. It would be greatly strengthened if it included a commitment to the sustainable development and protection of the NI marine area as this would inform and guide the interpretation and implementation of the remainder of the Act.
- **The designation of Marine Conservation Zones (MCZs) and the ecologically network of sites.**
  The Bill needs to ensure that a local, ecologically coherent network of MCZs is designated to improve both the Northern Ireland inshore waters and the UK Marine Area. This should include highly protected areas.

- **Need for integration and synchronisation of the MCZ and MSP processes**
  The NIMTF believes that it is essential that the MSP timetable and the MCZ designation programme are synchronized. We would urge that these two separate processes be brought together to ensure that this happens.

- **Practical implementation of the Bill under the current management structure**
  The Bill does not directly address this issue, although the functions of the Bill raise the issue of how the practical inter-departmental responsibilities will be managed. The existing governance model- of marine responsibilities scattered across many departments with no clear lead or cohesion - needs to be overhauled. It is the NIMTF position that a single unitary authority such as a NI Marine Management Organisation (NIMMO) would be the most environmentally efficient and economically coherent option to adopt, as recommended in the McCusker Report [1]

Introduction

Northern Ireland's seas- the need for protection

Northern Ireland's seas contain a rich biodiversity and a wide variety of habitats. There are iconic species such as the basking shark and harbour porpoise, sponge gardens and valuable fish and shellfish species and spectacular habitats such as sea caves. It is vitally important that we protect our seas so that these species and habitats can continue to exist. The seas are also important to the community of Northern Ireland; this includes for socio-economic purposes, such as jobs and resources, and for cultural, spiritual and health reasons. We receive numerous benefits from having healthy seas.

However, both globally and locally the seas face direct threats from human activities. Our seas are becoming increasingly crowded with human activities, some of which are conflicting with each other or damaging to the natural environment. Threats such as over-fishing, destructive fishing practices, mismanaged development, poor governance, pollution (physical and noise) have contributed to

[1] McCusker, T. (2009) *Report into the economic implications of a Marine Management Organisation in Northern Ireland* Northern Ireland Marine Task Force available at http://www.nimtf.org/media/uploads/McCusker%20%282009%29%20NI%20Marine%20Management%20Economic%20Implications%20report.pdf

depleted populations of marine species, loss of biodiversity, destruction and degradation of habitats. In Northern Ireland our seas are in a unique geographic position, with warmer waters from the south converging with colder Arctic seas. This means that the marine environment allows for a variety of species, including those usually found in both warmer and colder waters, and some, which are only found around Northern Ireland. Because of this delicate balance, the seas around Northern Ireland are thought to be particularly at risk from climate change (sea temperature change and changes in global currents).[2] This will also affect the community through potentially increased storm action and coastal squeeze as sea level rises.

From a human perspective the degradation and mismanagement of our seas is ultimately leading to a reduction in the benefits we, as humans, get from our seas. This includes the loss of revenue for fisheries.[3] In comparison, well-managed, well-planned and well-protected seas can offer economic opportunities in relation to sustainable fisheries, renewable energy and eco-tourism.[4]

There are 42 fish, invertebrate, reptile and mammal species listed on OSPAR's (Oslo-Paris Convention for the protection of the environment of the North-East Atlantic) threatened species list, and at least 18 of these occur in Northern Ireland. Locally, there are 121 species listed on Northern Ireland's Priority Species list (requiring conservation action), which spend at least part of their life in the seas around Northern Ireland. Our seas are therefore in desperate need of effective protection measures, and proper planning of human activities.

Marine spatial planning offers Northern Ireland, the UK and other countries around the world the opportunity to strategically plan the human activities in the sea.[5] It should balance environmental, social and economic requirements for the sea and allow joined-up decision making on how we use (and where we conserve) our seas.

Marine protected areas are considered- globally- to be a highly effective and necessary tool in conserving habitats and species from harmful human activities. In the case of highly protected 'no-take zones', the rapid conservation benefits can also lead to certain species spilling over from the protected area to the area outside, which can benefit fisheries through increased catches at the MPA boundaries. The NIMTF has prepared a detailed briefing on case studies around the world demonstrating this phenomenon and the socio-economic benefits provided in these circumstances.

Northern Ireland currently has some marine protected areas, designated through existing EU legislation (Natura 2000 sites). There are currently seven Special Areas of Protection (SPAs) for birds and six Special Areas of Conservation (SACs) for habitats and species of EU importance. There are also Ramsar sites and Areas of Special Scientific Interest (ASSI). While these MPAs are important, they cannot be used for habitats or species, which only qualify as nationally important for protection. There is therefore the need for additional protected areas to fulfil the UK's commitment

[2] DEFRA *A climate change risk assessment for Northern Ireland*. (2012). http://www.climatenorthernireland.org.uk/resources/climate_change_risk_assessment_ni_2012.pdf

[3] Crilly, R. & Esteban, 2012, A. *Jobs Lost At Sea- Overfishing and the jobs that never were*. (New Economics Foundation- London, UK). Available at http://www.neweconomics.org/node/1968

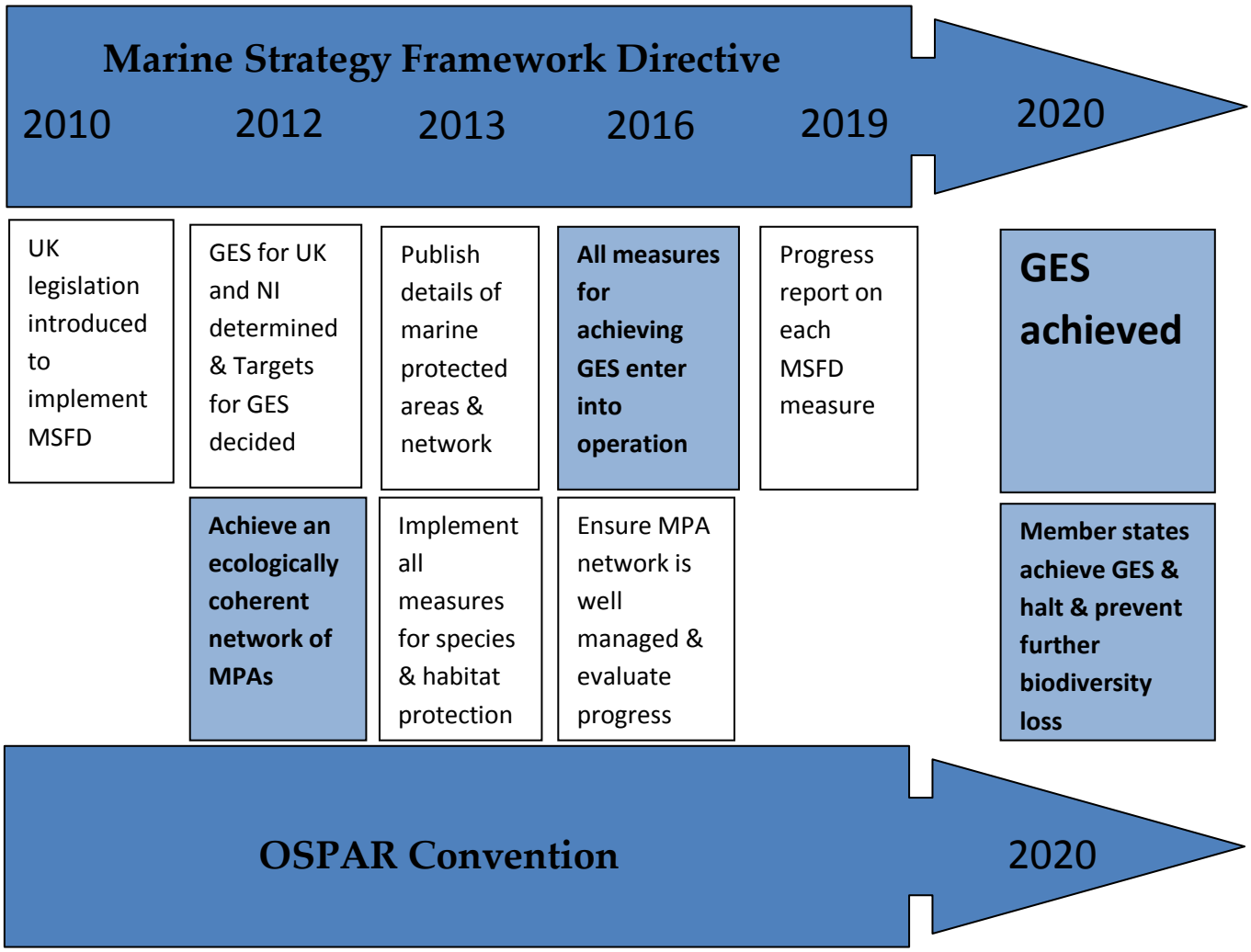
[4] See NIMTF detailed briefings on benefits of sustainably managed seas

[5] UNESCO- Marine Spatial Planning website, http://www.unesco-ioc-marinesp.be/

to achieve healthy, safe, productive and biologically diverse oceans and seas and an ecologically coherent network of sites.

International and EU drivers of the Marine Bill

The Northern Ireland Marine Bill is being driven by a combination of International, European and UK commitments to achieve two key targets. The OSPAR[6] Convention calls for the achievement of 'healthy, safe, productive and biologically diverse oceans and seas'. To achieve this, member states must create an ecologically coherent network of Marine Protected Areas by 2012 that will be well managed by 2016. This vision is now UK wide policy. Secondly, the European Marine Strategy Framework Directive (MSFD)[7], which is legally binding on all Member States, commits us to achieving 'Good Environmental Status' (GES) in our seas by 2020. **To fail this deadline would mean the risk of EU infraction proceedings**. Key deadlines under MSFD include the publishing of details of the Marine Protected Area (MPA) network in 2013 and the full operation of all measures (including MPAs) is required by 2016 as all EU states signed up to the MSFD works towards the ultimate date of GES by 2020.



[6] Oslo Paris Convention on the protection of the environment of the North-East Atlantic

[7] EU Commission, Marine Strategy Framework Directive http://ec.europa.eu/environment/marine/good-environmental-status/index_en.htm

[8] Adapted from Roth and Higgin, Scottish Marine Institute, 'A timeline for the implementation of the Marine Strategy Framework Directive', available at www.knowseas.com

The NI Marine Bill is the most important marine legislation in our history and represents our primary mechanism for contributing to these legally binding requirements. To achieve these outcomes the NI Marine Bill must be effective legislation, allowing for adequate and effective legal powers, good management by Government, adequate expertise, financial capacity and enforcement powers to ensure that human activity can occur sustainably without compromising good environmental status.

Summary of main issues of concern with the NI Marine Bill

It is important that the Bill is made as effective as possible. The NIMTF is concerned that the Bill in its current form has some weaknesses, and does not provide a sufficiently robust framework to secure best practice in marine legislation. Based upon this analysis the NIMTF has suggested amendments to strengthen clauses, which could, without amendment, hamper best practice, lead to legal uncertainty and dispute, or failure to achieve GES by 2020.

There are four particular areas of concern, which have been identified by the NIMTF. Firstly, the Bill lacks an over-arching purpose to further sustainable development, in contrast for example to the Scottish Marine Act (2009). Scotland requires sustainable development of the marine area and consideration of climate change in the implementation of the Act. The NI Marine Bill is being introduced to fulfill very specific goals and it would benefit from following the Scottish example. The current lack of overarching purpose could weaken the ability to provide cohesive, integrated and effective legislation whose success can be monitored.

Secondly, the Bill provides the legal framework for creating a network of marine protected areas to improve **the UK Marine Area**. It does not have a requirement specifically for the improvement of the Northern Ireland Inshore region. Our Bill needs to be explicit in addressing the need to create a network of MPAs for the improvement and protection of the local Northern Ireland Inshore region **as well as** the wider UK Marine Area.

In addition, the Scottish, English and Welsh administrations are all including highly protected areas as part of their network. If Northern Ireland included a specific clause within the Bill for the designation of highly protected MCZ's this would facilitate the creation of specific legal status for such areas and the designation process.

Thirdly, there are indications that the Department-led Marine Spatial Planning process and the designation of the network of conservation zones are going to occur out of sync with each other. Ideally, the MCZ designation process should occur as a nested part of the marine spatial planning process. The NIMTF would urge that these two separate processes and teams be brought together within the Department to ensure that this happens. Determining the future sustainable use of the seas through Marine Plans requires the simultaneous designation of conservation zones.

Lastly, the inter-departmental aspects of the Bill, including compliance of public authorities, and enforcement of byelaws for MCZ protection lead the NIMTF to question whether the current marine governance structure is capable of effectively dealing with the practical implementation of the Bill. The NIMTF maintains its position that a NI Marine Management Organisation would be an effective mechanism for delivering the NI Marine Bill and achieving the aims of GES by 2020. In the absence of such an organization, the NIMTF would like clarification of how the practical aspects of the Bill will be effectively implemented.

Key areas of concern

The overarching purpose of the Bill

The Northern Ireland Marine Bill is legislation which is driven by international, regional and national agreements to achieve sustainable development through an ecosystem approach to marine spatial planning and to prevent loss of biodiversity through marine protection measures which form an ecologically coherent network. The UK's vision mirrors that of the Marine Strategy Framework Directive and the OSPAR convention to achieve 'clean, healthy, safe, productive and biologically diverse oceans and seas'.[9] Despite the drivers and high-level policies behind the NI Marine Bill, there is no incorporation within the legislation of the overarching principles or purpose for the Marine Bill. This is a shortcoming at the heart of the Bill and one that has been successfully addressed elsewhere. In Australia's Environment Protection and Biodiversity Conservation Act 1999, the legislation identifies the conservation and social objectives of the Act, defines the principles of ecologically sustainable development and the application of the precautionary principle.[10] This has proven effective for transparency of decision-making and for accountability, as it ensures that legislation is focused on delivering the fundamental policies behind it. Closer to home we note that this same approach has been adopted in Part 2 of Scotland's Marine Act 2010, setting out the general duties of the Act. These include the achievement of sustainable development and protection and enhancement of the marine area, and that decisions or actions taken under the Act must be calculated to mitigate and adapt to climate change where possible. It is vital that we introduce conservation and planning legislation that takes into account and acts upon the likely changes which will occur through climate change on species, habitats, ecosystems and marine resource use. [11]

The inclusion of an overarching purpose for the NI Marine Bill would provide a long-sighted vision for the future of our seas and the way that the processes (MSP and MCZ) implemented will achieve the desired policy outcomes of clean, healthy, safe and productive and biologically diverse oceans and seas. This vision would provide further clarity for work within the DoE, which appears to be preparing to carry out MSP and MCZ as separate and isolated processes. The vision would also clarify the Bill's purpose to the wider community, as well as non DoE public authorities. Our suggested amendments to Part 1 are outlined below, and are modelled on the Scottish Marine Act.

The designation of Marine Conservation Zones and an ecologically coherent network of sites

Under the OSPAR convention, the World Summit on Sustainable Development and Convention on Biological Diversity, the UK has committed to achieving an ecologically coherent network of marine conservation sites across the UK marine area. This is now UK-wide policy, and is part of the joint Marine Policy Statement. Statutory guidance on designing an ecologically coherent network has been developed by the Joint Nature Conservation Committee for the English inshore area and in Scotland.[12] Each of the administrations is designing their **locally ecologically coherent network**, which links up with other marine protected areas (eg. SPAs and SACs) to achieve ecological coherence across regional (UK) and international scales. These are in compliance with the legislative

[9] DEFRA (2002) 'Safe-guarding our seas-A Strategy for the Conservation and Sustainable Development of our Marine Environment' http://www.defra.gov.uk/publications/files/pb6187-marine-stewardship-020425.pdf

[10] EPBC Act http://www.austlii.edu.au/au/legis/cth/consol_act/epabca1999588/

[11] DEFRA, (2012) *A climate change risk assessment for Northern Ireland*. http://www.climatenorthernireland.org.uk/resources/climate_change_risk_assessment_ni_2012.pdf

[12] Natural England & Joint Nature Conservation Committee *MCZ Project Ecological Network Guidance*. (2010).at http://jncc.defra.gov.uk/pdf/100608_ENG_v10.pdf

requirements (OSPAR network and MSFD). To achieve ecological coherence from local to UK to EU scale the network must include sites which are representative of major habitat types and a range of nationally important species.

Comments made recently by DoE Officials indicate that the Department may believe that ecological coherence can be achieved at UK wide level, regardless of the existence of a Northern Ireland local network. Clause 18 (3) within the Bill stipulates that the conditions for network creation are that the network contributes to conservation or improvement in ***the UK marine area***, as opposed to the Northern Ireland inshore region. In short, this overly broad interpretation of the requirement could prove to be a weakness in the ability of the legislation to achieve ecological coherence across local to regional (UK scales). Although the term 'UK marine area' is also used in Scotland's Marine Act, all UK administrations are working towards a network of sites that meet the broad UK goal whilst at the same time addressing their local/regional needs. It would be preferable, to amend the clause so that conservation and improvement was required for both the Northern Ireland Inshore waters and the wider UK Marine Area. This will ensure that the Department will develop and follow guidance for creating a locally ecologically coherent network which will fit within the network being designated by England, Scotland and Wales. In addition, the NIMTF would recommend that clauses be added to mirror the Scottish legislation in relation to MCZ designation. The Department should consider the potential MCZ in relation to its role in the ecologically coherent network, and its potential for climate change mitigation and adaptation.

The inshore MCZ process is being carried out in England, Scotland and Wales using different approaches as laid out in the table below. The Scottish Government's top-down approach appears to have appealed to a wide variety of stakeholders.

Comparison of MCZ designation process England, Scotland, Wales

Admin.	Approach	Current Status	Ecological coherence in local inshore seas?	Highly protected MPAs considered for designation?	Additional issues
England	Bottom-up stakeholder led regional projects	127 sites suggested across the regional MCZ projects. Currently there is a review of best available evidence behind stakeholder decisions on sites	Yes (see here)	Yes, Natural England's advice includes ' There should be at least one highly protected 'reference area' for each broad-scale habitat and FOCI within each regional MCZ project.[13]	Some concerns raised over the lack of explicit legal clauses permitting highly protected zone designation in the UK MCAA.
Scotland	Top down, Marine Scotland (integrated Gov		Yes(see here)[14]	Yes,	Consultation on marine protected areas currently

[13] JNCC and Natural England, Marine Conservation Zone Project Identifying Marine Conservation Zones available at http://www.naturalengland.org.uk/Images/identifyingMCZs_tcm6-21967.pdf

[14] Marine Scotland, (2011) Marine Protected Areas in Scotland's Seas. (2011).

	Department) led.				underway and this process appears to have been well received by stakeholders
Wales	Top-down Government led approach		Yes (see here)	Yes, all MCZs to be designated will be highly protected as outlined by the detailed guidance document.	Highly protected MCZs are seen as an effective method for achieving an ecologically coherent network at Welsh inshore level and within UK wider network

What is clear is that each of the administrations is attempting to contribute to ecological coherence of the broader UK marine area network at their local scale, and that highly protected marine protected areas are viewed as an integral part of this. It would facilitate the future MCZ designation process if a clause were included requiring that highly protected areas should be included within the MCZ network. This would clarify the legal capacity of the Department to designate highly protected areas and avoid the current issues occurring in England regarding this issue.

The NIMTF would also be supportive of Scotland's approach to designate 'Research and Demonstration Marine Protected Areas' for the demonstration or research of sustainable marine management or exploitation. There have been numerous proposals for establishing projects within these types of zones, including areas for maximising sea angling and tourism, voluntary No-take zones, and renewable energy projects. In addition the NIMTF suggests that it would be beneficial for Northern Ireland to follow the Scottish example on specifically designating MCZs for historical features. Wrecks and archaeological features are important cultural assets, and have the potential for tourism. These area can be damaged by harmful human activity and require protection.

Need for integration and synchronisation of the MCZ and MSP processes

It has been standard practice across the UK to provide separate sections within marine legislation to deal with marine spatial planning and marine conservation zone designation. While this is appropriate, it is very important that the two processes are not carried out in isolation from each other. DoE is the Department responsible for both functions, however there have been indications that the processes (once enacted and commenced) will occur across different timeframes and out of sync, and of even greater concern without **sufficient intra-departmental liaison and cooperation**. Marine spatial planning is the strategic planning of future activity in our seas through balancing environmental, social and economic needs. The MCZ process in the NI Marine Bill is currently based upon conservation requirements (established on a scientific basis), although socio-economic arguments will be considered and may influence the location of the sites. This will essentially duplicate the process of marine spatial planning. There is also a concern that failure to integrate the MSP and MCZ process could lead to delays in implementing MCZs where clashes arise with MSP polices. This could lead to legal challenges against the designation of MCZs.

Australia's Great Barrier Reef Marine Park Authority, is considered one of the most effective examples of marine spatial planning. Multiple human uses and environmental conservation requirements have been balanced by the marine spatial planning team and areas were zoned accordingly (eg for fishing, for tourism, for nature conservation). This entire process involved a

planning team, which included those designating marine protected areas, as opposed to two isolated processes working out of sync. [15]

DoE has made public commitments to have completed marine spatial planning by 2014, whilst officials have suggested that MCZ designation will occur up to 2018. If this timeline is carried out, then marine spatial planning will occur without informed decision making on MCZs. This could lead to unnecessary environmental damage, and potential loss of revenue through investment uncertainty. These conflicting dates are also important as Northern Ireland must meet key dates under its European and International agreements, or possibly risk infraction proceedings. It would be preferable if the Bill contained specific time frames over which these two processes need to be carried out, and an explicit requirement for integration between MCZs and MSP.

Practical implementation of the Bill under the current management structure

The NI Marine Bill does not address the critical issue of marine governance. There are currently five Departments with major responsibility for some aspect of our marine environment. These are the DoE, DARD, DRD, DETI, and DCAL. The Bill introduces three separate functions which each involve high levels of liaison between DoE, other NI departments and additional public authorities. DoE must consult with other Departments before withdrawing a marine spatial plan, however there is no governance structure put in place for transparent decision making over what is contained within the plan document. It is unclear how involved key departments such as the Department of Agriculture will be in the MSP and MCZ process. Additionally, there is no mechanism for monitoring or enforcement by DoE of compliance by public authorities (including other departments). Public Authorities are required to take into account both the marine plan and the risk to hindering the conservation objectives of an MCZ in authorising any activities. However, if the public authority takes a decision that is not in accordance with a plan, they are only required to state their reasons to DoE. Likewise, if a decision is taken to allow an activity which damages an MCZ then the authority is only required to provide written reasons for granting permission. These requirements are not strong enough to ensure that public authorities comply with the Marine Bill. In the absence of a MMO, it is unclear how DoE can ensure that the many and varied public authorities making decisions on access, licensing and developments will comply with the requirements of the Bill. The NIMTF has identified clauses which are examples of how the practical implementation of the Bill may be affected by a lack of cohesive governance.

The DoE has suggested the Inter-Departmental Working Marine Group (IWMG) as an alternative forum for marine governance and cross Departmental co-ordination. The NIMTF would like much greater detail on the composition of this group, its terms of reference, authority and legal status. If this is indeed the framework under which inter-departmental decision- making will occur, it needs to be transparent and accountable with published membership, terms of reference and published minutes of meetings. The NIMTF maintains that a Northern Ireland MMO would be the most effective means (financially and practically) to provide expertise and leadership on all aspects of marine management. This is discussed in the 2009 report by McCusker.

[15] Great Barrier Reef Marine Park Authority website http://www.gbrmpa.gov.au/about-the-reef/how-the-reefs-managed

NIMTF suggested amendments

The following section is a clause by clause analysis of the Bill and provides detailed comment and suggested amendments. **The NIMTF wants the Bill to succeed**. We believe that if these suggestions were to be adopted, then the NI Marine Bill will be greatly improved both for our marine environment and for the sustainable use of our seas.

Subject Matter	PROVISION NUMBER	COMMENTS & Suggested Amendments
PART 1		**Amendments written in *red italics***
Overarching purpose of the Bill	General point	The draft Marine Bill (the "Bill") fails to identify an over-arching aim/general duty against which the provisions and actions taken under the Bill can be assessed. The Marine (Scotland) Act 2010 (the "Scotland Act") gives a clear precedent of adopting such standards and these relate to the achievement of sustainable development and also to mitigating climate change. We recommend that Part 1 of the Bill is extended to include the following provisions (which, incidentally, will help ensure that the Bill is EU and UK climate law compliant): *(2) Sustainable development and protection and enhancement of the health of the Northern Ireland inshore region area* *In exercising any function that affects the Northern Ireland inshore region area under this Act—* *(a)the Department, and* *(b)public authorities* *must act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function.* *(3) Mitigation of and adaptation to climate change* *In exercising any function that affects the Northern Ireland inshore region area under this Act, the Climate Change Act 2008 or any other enactment—* *(a) the Department, and* *(b) public authorities,* *must act in the way best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned.*
Extent of NI Inshore Area	s1(5)	We note that the boundaries of the NI Inshore Area are to be determined by an Order in Council. It is important to clarify exactly where the boundary lies. This is particularly important in relation to the extent to which the Bill will apply to Carlingford Lough and Lough Foyle. It would be nonsensical for the Bill not to apply up to the mean high water spring tide mark on both sides of the Lough. The current Memorandum of Understanding released in 2011 on the marine

		boundaries (for renewable energy developments) between NI and the Republic of Ireland do not extend into the Loughs. [16]
PART 2 – MARINE PLANS		
Requirement to produce Marine Plans	s2(1)	Section 2 (1) is drafted so that marine planning is a discretion undermining the purpose of the Bill. Section 2(2) requires that the Department must "seek to ensure" that every part of the NI inshore region is covered by a marine plan where those areas are covered by a marine policy statement. However, the language "seek to ensure" is still not an absolute requirement. **The Scotland Act makes marine planning compulsory and is therefore more robust. We recommended that Section 2(1) is amended so that it reads as follows;** *2(1) the Department must prepare a marine plan for an area (a "marine plan area") consisting of the whole or any part of the Northern Ireland inshore region.* **This provides a greater level of certainty that marine plans covering all of the NI inshore waters will be brought into effect.**
Marine Plan to be in conformity with MPS	s2(5)	This clause outlines the requirement for marine plans to be in conformity with any MPS or marine plan covering all of NI waters "unless relevant considerations indicate otherwise" This is a broad "get out" qualification that may allow departure from the Marine Policy Statement. The scope of "relevant considerations" needs to be clarified. Presumably it carries similar meaning to "material considerations" as used in terrestrial planning policy and statute but lack of clarity on this issue may well lead to uncertainty and potentially, litigation. A requirement for guidance on this matter should be included: (5A) *The relevant policy authorities must produce guidance regarding relevant considerations including providing examples of considerations that would allow marine plans not to be in conformity with the marine policy statement under s2(5) or decisions under section 6(1)*
Withdrawal of Marine Plan	s4	A plan may be withdrawn with ease as the duty on the Department is merely to provide notification to parties other than the other relevant NI Departments. There is no provision for appeal or even a formal mechanism for making representations objecting to the withdrawal of a plan. It may be the intention that a plan is only withdrawn where a replacement has been drawn up (for example covering a wider area, or multiple plans replacing a single plan). However, the legislation as it stands does not require a replacement to fill the void left by a unilaterally withdrawn plan. **The legislation should be amended to**

[16] Memorandum of Understanding between UK Government and Republic of Ireland , 2011, http://www.nio.gov.uk/mou_offshore_renewable_energy.pdf

		only allow for withdrawal where a replacement has been published (i.e. the new marine plan effectively revokes the former). *(5) The marine plan shall only be withdrawn where an existing plan has been adopted in relation to the area to which the withdrawn plan applies.* **It would be preferable for the withdrawal of a plan only to be justified following wide consultation and under specific circumstances such as manifest error or availability of a replacement plan.**
Review of Marine Plans	s5	Section 5 relates to the duty to keep matters under review, these include many matters which are conflicting and difficult to balance for example environmental/cultural/economic interests. For the sake of clarity and ease of implantation, Section 5 should be made subject to the overarching aims referred to in the new provisions set out in our suggested amendment (above); namely sustainable development and climate change; accordingly, we suggest the following words be inserted at the beginning of Section 5(1): *"Subject always to the general duties set out at Part 1 (6) and (7)….."* **A time period for review should also be included – for example, every 5 years; otherwise a general duty to review provides no certainty as to when emerging issues may be dealt with in a revision of the plan. A five year period also provides sufficient certainty to rely upon the content of the Plan.**
Relevance of Marine Plans to decision-making	s6(1)	Requires a public authority to take any authorisation or enforcement decision in accordance with any appropriate marine plan "unless relevant considerations indicate otherwise". See comments on s2(5) above in relation to clarification on the scope and meaning of "relevant considerations"
Requirement to have regard to Marine Plans	s6(3)	A public authority "must have regard" to any appropriate marine plan in taking any decision which may affect the NI inshore region but is not an enforcement or authorisation decision. This is to be welcomed insofar as it requires public authorities to have regard to marine plans in other decisions but lacks clarity on what "must have regard" entails – this suggests that the authority is not required to comply with the marine plan and there is no requirement for the authority to justify any act which may depart from the requirements of the marine plan. We would propose the following addition reflecting the requirements of s6(2); *6(3A) if a public authority takes a decision falling under section 6(3) otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons* Presumably this provision applies to decisions made under the Planning (NI) Order 1991 and its eventual replacement. In such circumstances, for example the development of major port infrastructure, any terrestrial policies may substantially override the

		relevant marine plan.
Challenges to validity of Marine Plans	s8 s9	**Section 8 "Validity of Marine Plan"; this Section means that the marine plan can only be challenged on narrow grounds and in a narrow timeframe**. We have significant concerns over the limitations on challenges to a plan imposed by s8, both in terms of the potential grounds of challenge and the available timeframe. Grounds of challenge are restricted to the document not being within "appropriate powers" or a "procedural requirement" not being complied with. Given the shortcomings of the procedural requirements (as to which, see above) the grounds of a challenge would be extremely limited. These provisions are clearly intended to circumvent the judicial review procedure and exclude any challenge on the basis of *Wednesbury* unreasonableness, or for that matter, failure to take into account material considerations, both of which are important elements of judicial review challenges. The time limit of 6 weeks is also unduly restrictive. Whilst this mirrors English planning law in relation to certain decisions of the Secretary of State, given the potential complexity and nature of marine plans, six weeks is a very short period within which a challenge may be brought – particularly, for example for an NGO or other special interest group which may have limited resources to mount a timely challenge, should that be necessary. Taken in conjunction with the provisions of Section 9 which require that those who bring a challenge to the validity of the marine plan need to show that their "interests" have been "substantially prejudiced", means that the range of people who can bring an application is also very narrow. NGOs and other interested but not prejudiced parties could be excluded since an NGO or similar as a body may not itself be substantially prejudiced. This provision is in stark contrast to the requirement to demonstrate "sufficient interest" within a judicial review challenge, which has been established as a relatively low bar. We believe that the provisions of these two Sections are unduly restrictive and also prevent access to environmental justice as provided for under the Aarhus Convention. In particular, we would question whether this provision complies with the requirements of Article 9 of the Aarhus Convention on access to justice in environmental matters. A further layer of complexity and uncertainty arises due to the fact that Marine Plans must be subject to Strategic Environmental Assessment (SEA). This process does not form part of the marine plan development and approval procedure set out within the Marine Bill, as it is subject to separate regulations (namely, the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004). A situation could arise therefore in which a Marine Plan is challenged on the basis of perceived defects in the SEA and this must be brought under "standard" judicial review principles as it falls

		outside the scope of the provisions of s8 and yet a challenge to a marine plan on SEA grounds could not be excluded. This raises the questions of how a "dual" challenge might be brought (i.e. on the grounds allowed under s8 and s9 and in relation to the SEA) and the timescales within which such challenge might be brought. This creates a potentially illogical outcome. Section 8 and 9 should be deleted in their entirety and the validity of marine plans should be challengeable under the established judicial review procedures, timeframes and grounds.
PART 3 – MARINE CONSERVATION ZONES		
Designation of MCZs	s11(1)	Part 3, Marine Protection; under Section 11 (1) the Department only has a discretion as to whether it will designate any area of sea as a marine conservation zone albeit this is subject to the qualified duty to designate under s18 (see below). We consider that the interaction between s11, s12 and s18 is unclear and the Department should be subject to a more definite duty to designate MCZs. For marine protection to have any value, this should not be discretionary, not least because there are nationally designated sites which should be designated mandatorily. We recommend that Section 11 (1) is amended as follows: *11 (1) the Department must designate areas of sea falling within the Northern Ireland inshore region as marine conservation zones ("an MCZ") where there are grounds to do so under Section 12 and to meet the objectives set out under section 18.*
MCZs	s12(1)	Marine Conservation zones should also have the capacity to include areas of archaeological importance as per the Scotland Act. **s12(1) should be amended accordingly;** *(d) features of historic or archaeological importance* We would also recommend that the Scottish example of 'Research and Demonstration Marine Protected Areas' be followed. **We appreciate that introducing protected areas for Research and Development does not fit within the concept of MCZ. However we consider that further provisions should be inserted to allow for the designation of Research and Demonstration Areas or Marine Plans must provide for the identification of such areas.**
Grounds for designation of MCZs	s12(1)	For the reasons set out above, this should be amended to read; *12(1) The Department must make an order under section 11 designating an area as an MCZ where it is necessary and expedient to do so, having regard to the objectives set out under section 18 and for the purpose of conserving…*
Grounds for designation of MCZs	s12(7)	*Replace the current s12 (7) as s12(9) and* insert a new s12(7) as follows: *12(7) Before designating an area as an MCZ, the Department must have regard to the extent to which the designation of the area would*

		contribute towards the development of a network of conservation sites (namely a network referred to in section 18(2)). **This would reflect the wording of the Scottish Act, and allow for MCZ designation to fulfil international targets for an ecologically coherent network.**
Grounds for designation of MCZs	s12(8)	*Rename the existing clause in the bill s12(10) and replace this with s12(8) In considering whether to designate an area, the Department must have regard to the extent to which doing so will contribute to the mitigation of climate change* **This would reflect the wording of the Scottish Act, and allow for MCZs to fulfil the overarching purpose of the Bill to further climate change mitigation and adaptation**
Grounds for designation of MCZs	s12(9)	*[s12(7) in current version of Bill] amend as follows:* *12(9) In considering whether it is desirable to designate an area as an MCZ, the Department may have regard to any economic or social consequences of doing so. In the event that an area is not designated as an MCZ, or the boundaries of the MCZ changes on account of economic or social consequences, such changes must be fully justified by the Department in writing in light of the resulting environmental consequences.* As mentioned above, the prevailing general duty on the Department under this legislation should be as per the Scotland Act - i.e. to act in the way best calculated to further the achievement of sustainable development and to help adapt to and mitigate the effects of climate change, and again these general duties should be expressly incorporated. This works in the favour of all concerned as the concept of sustainable development comprises three pillars, environmental, economic and social. Section 12 (9) (formerly s12(7)) refers to taking into account economic and social consequences of designation but, inexplicably, makes no reference to the environmental consequences. Section 12(9) should make express reference to the consideration of environmental consequences. As an alternative, it may be acceptable to allow economic and social considerations to take precedence where the overall objectives of designating MCZs within the NI Inshore Region are not hindered. Section 12(9) could therefore read; s12 (9) In considering whether it is desirable to designate an area as an MCZ, the Department may have regard to any economic or social consequences of doing so provided that such considerations apply only to representative sites in which the feature or features are not rare or threatened and where doing so does not prevent compliance with the requirements of section 18
Grounds for designation of MCZs	s12(11)	**In addition, a further sub-section 12(11) needs to be inserted to ensure designation criteria are clear this would mirror the Scotland Act provisions:** *12 (11) The Department must—* *(a)prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a MCZ, and* *(b) have regard to such guidance in exercising their functions under*

		section 11.
Consultation on MCZs	s14(3)	Section 14 (3) (a) places a duty on the Department to publish its proposal to make an order in such a manner that it brings it to the attention of those it thinks likely to be affected by making the order. In the Scotland Act the equivalent provision is wider so that the duty extends to those who are "likely to be interested in or affected by the making of the order". Accordingly, to avoid NGOs and other such interested persons from being excluded from such knowledge we recommend mirroring the Scotland Act and would amend the Section as follows: *14 (3) (a) be published in such a manner as the Department reasonably considers is most likely to bring the proposal to the attention of any persons who are likely to be interested in or affected by the making of the order* **We also consider that clear timeframes for consultation should be set out. For example under s28 of the Environment (NI) Order 2002, a period of three months is specified for responses to draft ASSI declarations. This would be a reasonable period of time within which interested parties may respond.**
Publication of orders	s15(3)	Section 15 (3) (a) should also be amended as above in section 14(3)
Designation of MCZs	s18	The Department is under a duty to designate Marine Conservation Zones (MCZs), but this duty is subject to significant qualifications which dilute the general duty. The requirement under s18(2) and (3) is that any MCZ taken in combination with MCZs designated under the Scottish Act and 2009 Act "form a network" contributing to conservation in the UK marine area as opposed to the NI inshore region. This could prove to be a weakness in the ability of the legislation to achieve ecological coherence across local (NI) to regional (UK) scales. In combination to the strengthening of s11, references in s18(3) to "UK Marine Area" should be amended to *"the Northern Ireland inshore region in combination with the other areas forming the UK Marine Area* s18 also makes no reference to the provision of highly protected sites. We consider that this is a major omission and s18(3) must also include the following: *(d) that the network includes highly protected sites* Whilst the Bill as it stands could include a flexible level of protection that includes the concept of highly protected sites, without an express reference (and duty) to designate such sites there is a significant risk that such sites may not be secured in a timely fashion if at all.

Duties of public authorities regarding MCZs	s20	Section 20 is replete with references to functions and/or acts "capable of affecting (other than insignificantly)" which terminology is vague and untested in the courts. Similarly the reference in s20(5) to "a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ" is entirely new wording with regard to the legal interpretation of environmental impacts. This uncertainty is likely lead to substantial delay and litigation, perhaps to ECJ level, which is not desirable in today's economic climate and in the interests of better regulation. In our view it is also avoidable given similar concepts have been developed in case law over the past 15+ years under, for example, the Habitats Directive and the Environmental Impact Assessment Directives. For example, under the Habitats Directive, the meaning of "adverse impacts upon the integrity of…" has received substantial and detailed analysis both in the UK and EU courts. Similarly under the Environmental Impact Assessment Directive the meaning of "likely significant effects" has been subject to detailed interpretation. Introducing novel concepts relating to environmental effects and their assessment will create substantial difficulties for all parties. Of further significant concern is the fact that in circumstances where a public authority considers that an act that it intends to carry out under s20 will negatively impact upon an MCZ, its only duty is to notify the Department and wait at most for 28 days for "advice" from the Department. There is no absolute bar upon the public authority undertaking a potentially damaging act. Furthermore, there is no substantive sanction in such circumstances (see s23 below). Accordingly, we would suggest the following amendments: *(4) Subject to subsection (6), subsection (5) applies in any case where a public authority (other than the Department) intends to do an act which is likely to have significant effects on –* *(a) the protected features of an MCZ;* *(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent* *(5) If the authority believes that there is or may be a significant risk of the act having an adverse effect on the integrity of the MCZ the authority must notify the Department of that fact.* *…* *(7) Where the authority has given notification under subsection (5) it must wait until the expiry of the period of 28 days beginning with the date of the notification before deciding whether to do the act and then only in accordance with subsection 11.* *(11) In carrying out its duties under this section a public authority must act in accordance with any advice or guidance given by the Department under section 22.* **[NB: Environment Order in relation to ASSIs refers to public authorities having to consider whether authorised acts are "likely to damage" the protected features. This might be suitable alternative wording although there is less of a body of case law on the meaning of "likely to damage", but it is an established term that is probably**

		better understood: *A public body shall give notice to the Department before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological, physiographical or other features by reason of which an ASSI is of special scientific interest.]*
Decisions relating to MCZs	s21	Section 21 - replace the uncertain wording in this Section "no significant risk of the act hindering the achievement of" and "capable of affecting (other than insignificantly)" with the wording suggested above in Section 20.
Decisions relating to MCZs	s21(7)	Section 21(7), the protection afforded to the MCZ may be significantly diluted if the applicant can satisfy the authority that three criteria can be met, namely that there is no other means of proceeding with the act; the benefit to the public clearly outweighs the risk of damage to the environment; and, compensatory measures will be put in place. The first two of these criteria in some respects mirror the IROPI principles of the Habitats Directive (which impose significant protections on EU designated sites), but the provision for compensatory measures in the terms set out within this section are of serious concern. These compensatory measures do not apply a precautionary principle. The provisions are without sanction, have no enforcement provisions and no assessment criteria are provided for what "equivalent environmental benefit" is, in the context of an MCZ. If this provision is to remain the Department must provide detailed guidance. Furthermore, given that the applicant could easily be the authority it is applying to, the test is flawed from the outset. Whilst Section 21 (9) provides that if the authority can grant the authorisation subject to conditions, it must, a gap still remains. We recommend that rather than satisfying the public authority under Section 21(7), where the risk to the conservation of the MCZ is so great that if Section 21(6) cannot be satisfied then the Department must confirm that it is satisfied that the measures under Section 21(7) have been met – the hurdle must be higher where environmental harm is being authorised. Where compensatory measures are undertaken, this also raises the question of whether those compensatory measures would then be afforded protection – i.e. the compensatory measures must also form part of the same or another MCZ. Explicit provision should be made in this section to require that compensatory measures are incorporated into the conditions of any permit, breach of which would then be an offence under s31. In so doing we would consider that the reference to making "arrangement for the undertaking of measures" is removed since this suggests a third party could be responsible for carrying out compensatory measures which may make enforceability under this provision more difficult – the party being authorised to create damage must be directly responsible; *S21(7)(c) the person seeking the authorisation will undertake measures*

		of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ and the requirement for the undertaking of such measures shall form part of any authorisation granted Even with these increased protections, questions still remain over how in practice the effect of compensatory measures may be assessed both as part of the authorisation-granting process and also post-grant of the authorisation. What happens if the compensatory measures fail? It should also be noted that these provisions cannot override the IROPI provisions of the Habitats Directive since the protection of EU designated habitats or species within an MCZ cannot be subject to compensatory measures. A further provision should be included; *s21(12) The provisions of this section are made without prejudice to the protection of features of an MCZ afforded under EU or International Law.* We also have concerns regarding how these provisions would operate in practice where the consideration of an authorisation and its likely impacts requires consultation between Departments. Historically this has been a process fraught with difficulties and at the very least clear guidance should be made available on how Departments must interact in determining an authorisation. This process would be far better managed through a dedicated MMO.
Failure to comply with duty	s23	Section 23 contains the sanctions against the public authority where it has failed to comply with its duties. The duties must be expressly extended to cover the new general duties we would impose under an extended Part 1. In addition; Section 23(2) is effectively no sanction at all, it is merely a discretionary right for the Department to request an explanation for the failure of the public authority to protect the MCZ. This must be upgraded to an obligation to request an explanation with the change of the word "may" with "must". Furthermore; sub-section 23 (2) (b) should have the words "within 14 days of such request" and new sub-section 23 (2) (c) should be inserted so that if the Department is not satisfied with the explanation it receives the public authority is subject to sanctions. We recommend the following wording: *23 (2) (c) if the authority does not provide an explanation in accordance with sub-section (b); or the Department considers that the public authority's explanation is inadequate; or the public authority's explanation does not prove that the public authority has complied with its duties under Part 1, section 20(2), section 21(5) or section 22 of this Act, then the Department may require the public authority to;* *(i) compensate the person aggrieved by the failure;* *(ii) discharge the duty where that is still possible;* *(iii) undertake measures to remediate the damage caused where such remediation is possible; or*

		(iv) *where remediation is not possible to undertake such measures of direct environmental benefit to MCZs as the Department shall direct*
Offences - byelaws	*s30*	*We welcome the imposition of offences for breaches of byelaws, but would question whether a maximum fine* **o**f £5,000 is sufficient. In certain circumstances, for example where emergency byelaws are imposed to protect features of an area that is to be designated as an MCZ, significant damage could occur and attract a relatively small penalty. We would propose the following amendment: *(2) A person who is guilty of an offence under this section is liable;* *(a) on summary conviction to a fine not exceeding level 5 on the standard scale* *(b) on conviction on indictment to a fine* *and where a person is guilty of an offence against this provision within one year after the conviction he shall be guilty of a further offence and shall be liable, in addition to that fine, to a fine not exceeding level 5 on the standard scale for every day subsequent to the day on which he is first convicted of an offence under that provision on which that provision is contravened.* We also note that the offence of "disturbance" of animals or plants within an MCZ only becomes an offence if a byelaw is in place (and it is not a mandatory requirement to impose byelaws). The offence of disturbance should be included within the general offences for MCZs under s31 (see below).
Offences	s31	The high level of penalty for offences in relation to MCZs is very much to be welcomed. We also welcome the inclusion of a provision requiring the courts to have regard to any financial benefit accrued by the person convicted in determining the level of penalty. However as with many environmental offences the need to ensure that the Courts (and in particular Magistrates' Courts) are suitably trained to ensure that penalties fit the offence must be addressed from the outset through the provision of appropriate guidance. As noted above we consider that the offence of "disturbance" must also be included within subsection (2)(a); *(2)(a) intentionally or recklessly kills, injures or disturbs any animal in an MCZ which is a protected feature of that MCZ"* Custodial sentences should also form part of the available penalties on a par with the Wildlife and Natural Environment Act (NI) 2011 – i.e. 6 months on summary conviction, 2 years on indictment. Provision should also be made to require compensatory / restoration measures to be implemented to ensure that the "polluter pays" principle is fully enacted. This may be achievable through amendment of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 to the extent these would not already apply.

Exceptions and defences	s32(4)	We have significant concerns over the defence relating to acts done in the course of sea fishing. We appreciate that this defence relates to Common Fisheries Policy, and equal access between 6-12nm of foreign fishing fleets with historical rights. However there does not appear to be any legal reason why sea fishing defence should remain between 0-6nm in the Northern Ireland inshore waters. This would ensure proper MCZ byelaw protection within the 0-6nm. Whilst we note that the Department has the discretion to amend or remove this defence, we would be concerned that once the provision becomes law, it would extremely difficult for the DOE to introduce further legislation to remove or limit its application. We suggest amending this Section 32(4) as follows: *(4) It is a defence for a person who is charged with an offence under section 31* *to show that—* *(a) the act which is alleged to constitute the offence was—* *(i) an act done for the purpose of, and in the course of, sea fishing between 6 and 12 nautical miles in the Northern Ireland inshore region*
Fixed penalties	s33	From the perspective of good administration we would welcome the ability of the Department to impose fixed penalties. Guidance is critical to ensuring that the level of such fines and circumstances under which they can be imposed are clear from the outset. We note that Schedule 2 requires such guidance to be produced and this must be done in a timely fashion.
Enforcement officers	s36	We are concerned that the Department has only a discretionary duty to appoint specialist persons to enforce s24, 27 and s31. Notwithstanding the broader issue of the need for such enforcement powers to be part of a dedicated MMO, the word "may" should be replaced with "shall".
Implementation	s47	There is no rationale for Part 3 not coming into force with the other sections. If it does not there is a great risk that Part 3 could lay dormant on the statute books. Section 47 should be amended as follows: *47. The provisions of this Act come into operation on the day after the day on which this Act receives Royal Assent.*
SCHEDULE 1 – MARINE PLANS: PREPARATION AND ADOPTION		
Statement of Public Participation	s5 s6	We have concerns over the nature and formulation of the Statement of Public Participation ("SPP"). In essence, the SPP determines the nature and format of the public participation/consultation process that is undertaken by the Department in formulating each marine plan. The SPP sets the timetable for preparation of a draft, the consultation period and how representations must be made. However, outside of this framework the Department has absolute discretion on the timescale for consultation and receipt of representations (limited to what the Department "considers reasonable"), meaning that the

		Department could set a very limited time period for representations, or potentially even a very restricted scope for consultation responses (see also below with regard to the scope for an examination in public). We also note that it is this broad framework that provides one of the central (albeit limited) grounds for challenging any marine plan (under s8 and 9 of Part 2 of the Bill). Arguably it may not be difficult for the Department to comply with a "procedural requirement" that the Department itself determines at its own discretion. S6(3) states that the SPP "may" include provision for the holding of public meetings regarding consultation drafts. This should be amended to "*must include provision*". We consider that the framework for consultation within the Bill must be more prescriptive in terms of allowing for a reasonable timeframe for consultation responses. The consultation provisions should also include a specific requirement for consultation to be carried out with the relevant Departments in Scotland, England, Wales and ROI.
Advice and assistance	s8(1)	The Department is only under a discretionary duty to seek advice and assistance in formulating a marine plan and no specific bodies are listed. This should be amended to: *8(1) In connection with the preparation of a marine plan, or of any proposals for a marine plan, the Department must seek advice or assistance from those bodies or persons in relation to any matter in which that body or person has in the Department's opinion particular expertise.*
	s8(2)	The Department is given a broad discretion in terms of the steps it may take to consult or "involve" persons in the development of the marine plan, for example through the convening of groups. Again this provision appears too broad and flexible in terms of whom the Department may choose to involve and the manner of such involvement. We consider that a more formalised structure to this consultation procedure should be implemented from the outset.
Independent investigation	s13	We have significant concerns over the framework for an independent "investigation" to be carried out into any marine plan. The Department is only required to "consider" the appointment of an independent person having had regard to representations received. The Department then has discretion over whom it appoints to undertake the investigation. The Department should not be given the power to determine who undertakes the investigation. In our experience Departmental appointments (for example for roads inquiries) have led to highly unsatisfactory inquiries due, quite frankly, to the person being appointed not being suitable for the post. The Bill should specify a fully independent body to undertake the investigation. In this jurisdiction the Planning Appeals Commission would be the preferred body due to its record of professionalism and

		impartiality. As drafted we do not see any requirement for such investigation to be a public examination (ie public inquiry or examination in public). This is a serious omission and again significantly restricts any scope for challenge under s8 and 9 of Part 2 of the Bill. Any investigation into a draft Bill must be subject to the rigour of a public examination where evidence can be fully tested in a transparent manner. *The Bill must contain provisions for;* *(i) a specified body to undertake an examination in public – the Planning Appeals Commission is the preferred independent body* (ii) *a specific requirement for a public inquiry/examination in public to be held except where no representations have been made, or any representations have been met or withdrawn or are representations which are solely of a frivolous or vexatious nature*
Matters to which the Department must have regard	s14	In setting the text of a marine plan, the Department is only required to "have regard" to recommendations of an independent examination. The Department may also take into account "any other matters that the Department considers relevant". Whilst we would be concerned that this affords the Department far too much discretion in determining the content of the final marine plan, this is balanced to some extent by the requirement in section 15 of the Schedule – but the balances do not go far enough – see further below in relation to s15(4)
Adoption and publication	s15(1)	A marine plan is only adopted (ie comes into force) when the Department "has decided" to publish the plan. The Department has no specific duty under the Bill to publish a plan within a reasonable timeframe and could therefore hold a draft plan in limbo for an indeterminate amount of time. Experience shows that the Department can be extremely slow in bringing policies and plans into force and the opportunity should not be lost in this Bill to put forward a reasonable timeframe for drafting, consulting AND publishing a plan. This will provide certainty for all parties and allow those likely to be affected by a marine plan to adequately prepare for its implementation.
Departure from the draft plan	s15(4)	We would welcome the requirement for the Department to publish any reasons for modification from the original draft including reasons why recommendations of the independent examination have not been implemented. However, in light of the limited grounds for challenge under s8 and 9 of the Bill, provided the Department publishes reasons, the final plan will be immune from challenge even if those reasons are completely irrational or without foundation, since the "procedural requirement" will have been complied with. Further, if no independent examination takes place, there is no requirement for the Department to provide any comment as to how it has taken representations into account in the final version of any plan (hence, in our view the need for a public examination to take place where substantive representations have been made).

Glossary of key terms

ASSI / Area of Special Scientific Interest	An area of land or water notified by the Nature Conservancy Council or its successor agencies under the Wildlife and Countryside Act 1981 as being of special nature (can include geological) conservation importance known as ASSIs in NI.
Ecologically coherent network of conservation sites	*Sites designated for the protection of relevant habitats and/or species; it should support habitats and populations of species in favourable conservation status across the whole of their natural range (including the wider environment and marine areas beyond Natura 2000 sites); and contribute significantly to the biological diversity of the region. At the scale of the whole network, coherence is achieved when: the full range of …valued features [are] represented; replication of specific features occurs at different sites over a wide geographic area; dispersal, migration and genetic exchange of individuals is possible between relevant sites; all critical areas for rare, highly threatened and endemic species are included; and the network is resilient to disturbance or damage caused by natural and anthropogenic factors.* *(R. Catchpole 2012,* Ecological Coherence Definitions in Policy and Practice - Final Report
GES / Good Environmental Status	The goal of the Marine Strategy Framework Directive. Good Environmental Status definition and targets is being developed by each Member state according to set indicators on environmental health of the seas.
Highly protected area	A marine protected area (MPA) from which the removal of any resources, living or dead is prohibited
Marine Conservation Zone	Marine Conservation Zones (MCZs) are a new type of Marine Protected Area (MPA) Marine Conservation Zones will form a key part of the UK MPA network. They are based upon nationally important species and habitat. See Natural England's Fact sheet on the English MCZ process
Marine Spatial Planning	'A practical way to create and establish a more rational organisation of the use of marine space and the interactions between its uses, to

	balance demands for development with the need to protect marine ecosystems, and to achieve social and economic objectives in an open and planned way' UNESCO, http://www.unesco-ioc-marinesp.be/ msp_guide\\\
Marine Strategy Framework Directive	European Directive which is legally binding on all Member States to achieve 'Good Environmental Status' in their waters by 2020. A series of programmes of measures are required, including marine protected area networks.
Marine Protected Area	Any area of intertidal or subtidal terrain, together with its overlaying water and associated fauna, flora, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment (IUCN Guidelines for Marine Protected Areas, Kellerher 1999)
Natura 2000 sites	The EU-wide network of protected sites established under the Birds Directive (SPA) and the Habitats Directive (SAC)
NI MMO	Northern Ireland Marine Management Organisation, an independent non-government body to take up marine functions and responsibility
OSPAR convention	The Oslo-Paris Convention for the protection of the environment of the North-East Atlantic
Precautionary Principle	Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation (as defined in the 1992 Rio Declaration on Environment and Development) (Defra, 2007).
Ramsar Sites/ Ramsar Convention	International Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, Iran 1971). Coastal waters of particular importance can be designated as Ramsar sites but they do not normally exceed 6 m in depth. During the 1990s the convention was amended to broaden its application to embrace among others, the needs of fish with an associated move towards closer involvement with fishery management (Anon, 2001).

Special Area of Conservation	A site designation specified in the Habitats Directive. Each site is designated for one or more of the habitats and species listed in the Directive. The Directive requires a management plan to be prepared and implemented for each SAC to ensure the favourable conservation status of the habitats or species for which it was designated. In combination with special protection areas (SPA), these sites contribute to the Natura 2000 network
Special Protection Area for Birds	A site of European Community importance designated under the Wild Birds Directive
Sustainable development:	*"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts the concept of* ***needs****, in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of* ***limitations*** *imposed by the state of technology and social organization on the environment's ability to meet present and future needs." (Brundtland* ***report, 198****7)* see http://www.iisd.org/sd/
Wednesbury unreasonableness	A reasoning or decision is Wednesbury unreasonable (or irrational) if it is so unreasonable that no reasonable person acting reasonably could have made it (see: http://uk.practicallaw.com/6-200-9152)

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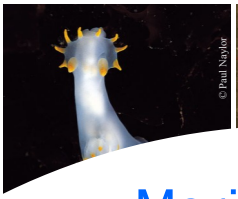




Marine Spatial Planning

What is MSP

Marine spatial planning (MSP) has been described as a 'practical way to create and establish a more rational organisation of the use of marine space and the interactions between its uses, to balance demands for development with the need to protect marine ecosystems, and to achieve social and economic objectives in an open and planned way'.[1] Just as you wouldn't build a house without a detailed plan of what goes where, when and how it fits in with everything else, so the many different uses for the sea need to be planned strategically.

Why MSP is necessary

The sea is used by humans in many different ways, including transportation, defence, energy (renewable and traditional), aggregate extraction, aquaculture, fisheries, environmental conservation, wildlife watching, scientific research, tourism, and leisure activities like sailing, diving, swimming, surfing etc. These uses are possible due to the marine resources and ecosystem services provided by the sea. Some areas are particularly important, both ecologically and economically, and so there are multiple claims for their use. There are some human activities which can occur together with minimal interference or conflict. Other activities, for example commercial trawl fishing in an area where there are wind turbines, are not suited to occupy the same sea-space. If this happens to be both an ideal fishing ground and an optimal area for both wind energy, then conflict will occur.

Typically, the planning of the world's seas has been done within a single sector, without considering the linkages and potential impacts on other sectors.[1] With more and more human activities occupying the seas, there are more opportunities for conflict to arise between sectors. This can potentially lead to a reduction in the services the seas provide us, including environmental and economic losses. MSP is not about prioritising one sector over another, or compromising the environment for the economy, or vice versa, but about integrated, balanced, long sighted decision making for the future. **Importantly, the environment which provides the ecosystem services needs to be protected and so MSP must provide space for conservation and protection of our seas.**

When done properly MSP can avoid or reduce conflict between sectors and stakeholders as it aims to balance all different uses and concerns for the management of our seas. MSP can facilitate informed decision making on the trade-offs and compromises necessary to achieve sustainable development and ecological well-being of the seas. **MSP can minimise the cumulative environmental impacts of certain human activities on particularly sensitive areas of the sea, and it provides a framework for the concurrent identification and designation of areas for conservation and biodiversity.** MSP can also have economic benefits, through greater certainty to the private sector when planning new investments, identification of compatible uses within the same area for development and through efficient use of marine resources. [1]

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MSP– Global Good Practice

MSP is a complex, ongoing process. Like the very seas it focuses on, the MSP process needs to be dynamic and adaptive to changing conditions (environmental and economic). The following are excellent examples of MSP in practice around the world, in which an ecosystem based approach has been used for environmental and economic benefits.

Australia: One of the best known examples of MSP is from the Great Barrier Reef Marine Park. The Marine Park Authority has zoned the 344,000km^2 of sea to deal with conflicting and multiple uses. [2]The Great Barrier Reef provides economic opportunities, including tourism and fishing, and is estimated to provide over 54,000 full time jobs.[2] This wealth is dependent on the ecosystem services provided by the Great Barrier Reef. The spatial plan has been adapted throughout the past three decades and has effectively managed to provide for high levels of environmental protection and multiple human uses. The zoning indicates which areas can be used for commercial and recreational fishing, shipping, tourism and highly protected No-Take Zones. The level of protection and the activities permitted are consistent with the management objectives for that zone and areas for conservation are identified in sync with human use areas. A recent evaluation of the plan led to an increase in the area of highly protected zones (33% of total area), as a precautionary approach to environmental protection. The MSP is based on an ecosystem approach, and considers the different uses of the sea around the Great Barrier Reef, the interactions between humans and the sea (and between land, sea, air). It attempts to ensure the best outcomes for both the environment and the community. Australia is now carrying MSP on an even larger scale, with the territorial waters divided into bio-regions and zoned according to an ecosystem based approach.

France: A type of marine spatial planning has been carried out across France since the 1970s.[3] The flexible, long term, strategic plans for ocean use can operate over local to broader regional scales. France, including its overseas territories has over 11 million kilometres of coastline, its maritime sector supports nearly 500,000 jobs, contributing 21.5 billion Euros to their economy. The strategic plans were designed to resolve conflicts over use of the sea. **While it aims to allow development of coastal activities, it gives precedence to environmental protection.[3]**

USA: The Massachusetts Ocean Act 2008, required the preparation of a MSP for the 5500km^2 area of the state's waters in response to increasing conflict from traditional and new energy projects.[1] The MSP is designed around 15 key principles, including valuing biodiversity, identifying areas for protection, linkages between ecosystems, addressing climate change and allowing for sustainable development without significant detriment to the environmental health of the seas. Decision making was assisted by explicit information on tradeoffs for each sector. A recent study on the economic value of MSP found that the Massachusetts Plan had the potential to prevent US$1 million in losses to the whale watching and fishing industry (through minimising conflict with wind farm placement). Furthermore, the wind energy sector had a potential saving of >$10 billion.[4]

MSP requires an ecosystem based approach which balances all uses of the sea, has explicit and transparent tradeoffs, and which coherently plans space for environmental protection and sustainable human use.

Further Reading

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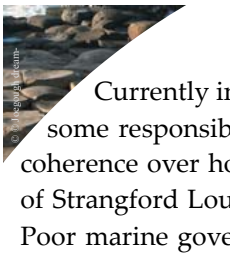
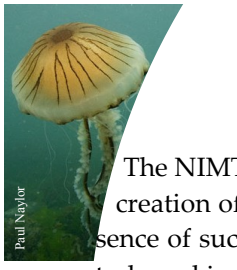

Marine Governance in NI

Context

Currently in Northern Ireland there are eleven different government agencies which hold some responsibility for our inshore waters. This is characterised by a lack of integration and coherence over how the seas are managed. A recent, poignant example is the mis-management of Strangford Lough, which has led to critical environmental damage of the horse mussel beds. Poor marine governance can also have negative economic consequences, and leads to a lack of confidence in those who use the sea for their livelihood. The NI Marine Bill has not addressed this critical issue. At this crucial time it is essential that the matter of marine governance structures is fully debated.

The NIMTF's believes that the ideal solution (both economically and environmentally) involves the creation of an independent single authority – a NI Marine Management Organisation (NIMMO). In the absence of such an authority, we are calling for the alternative management models presently being suggested to be subjected to similar scrutiny. As the Northern Ireland Marine Bill progresses into legislation, it is extremely important that we also achieve the right mechanisms and management structure to deliver it. Each of the other UK administrations took the opportunity when their marine legislation was being considered to look at and then change their marine management structures. NI would be unique in not doing so. What is required is a streamlined and coherent management model that has the authority to properly oversee all of our marine activities from the application processes, the bringing together of marine expertise and information, to managing the impact of commercial activities in the marine environment in a sustainable, equitable and long-lasting way.

What are the current options for marine governance?

- **A NIMMO**: An independent 'one-stop-shop' for most of our marine interests. A single authority would be a logical and cost effective way of regulating the sustainable development of Northern Ireland's seas as it begins to generate a wealth of resource opportunities for the local economy. Fishing, transport, tourism, aquaculture, aggregate extraction and renewable energy production will continue to be significant marine activities in the coming years.
- **A NI MARINE DIRECTORATE (NIMD):** Whilst the NIMMO would be a truly independent organisation a NIMD would be nested within a Government Department. It is an approach that might be likened to that developed in Scotland (Marine Scotland). It would have the merit of being a single authority, bringing with it the features of a NIMMO, however t it would obviously lack the independence of an independent NIMMO.
- **MINOR ADJUSTMENTS TO STATUS QUO:** With the introduction of the NI Marine Bill the role of a body called the **Interdepartmental Marine Working Group (IMWG**) has been presented on a number of occasions as the primary vehicle through which the various Departments with marine responsibilities within NI are improving the co-ordination of our marine activities. If this body is to be part of the marine governance solution then it is a body that demands detailed scrutiny, eg. what authority does it have or what potential authority might it develop? Will it be granted a meaningful role in any emergent marine management model? What sort of public accountability will it have?
- **MAINTAIN THE CURRENT STATUS QUO:** It is a fragmented model that evolved over the years and has increasingly demonstrated an inability to deliver for both commercial or environmental interests. In order to ensure that the environment can be protected and the sustainable use of our seas can continue into the future, the issue of our governance structure must be addressed.

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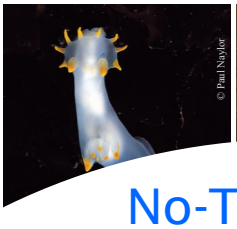




No-Take Zones (NTZs)

Summary

Highly protected marine reserves, also called 'No-Take Zones' (NTZs), where fishing and potentially damaging human activities are not permitted, offer many effective environmental and economic benefits. Previously exploited fish and shellfish increase in number, size and breeding success within a NTZ. Increasingly, scientific evidence has found that fishing communities may also benefit from NTZs, through more resilient fish stock, protection of nursery grounds and the 'spill-over' of larger fish and shellfish to outside the NTZ. Often these benefits can occur within a few years, and potential displacement costs to fishermen can be reduced by adaptive strategies. It is important that NTZs are selected using the best available scientific evidence. Understanding the habitat, life cycle and behaviours of target species can lead to better decisions to maximise conservation gains and potential economic opportunities. **The NIMTF believes that NTZs should be included within the NI Marine Conservation Zone network.**

What is a No-Take Zone[1]

A NTZ is a type of Marine Protected Area (MPA). An MPA is a general term given to an area of the sea which is designed to manage or restrict human activities, which aims to protect the natural environment and provide a reference of what the area would be like without human impacts. Northern Ireland's future Marine Conservation Zones (MCZs) are MPAs, and they can have varying levels of protection. To form an ecologically coherent network there should be some NTZs designated. These are the most highly protected areas where all fishing and any potentially damaging human activity is restricted. Scientific research is normally allowed through permitting and activities like scuba diving and sailing-through are usually permitted.

Environmental Benefits of No-Take Zones

There is extensive evidence around the world that NTZs can lead to rapid increases (within five years) in fish and shellfish numbers and density within its boundaries. A review of over a hundred NTZs globally found half had increases of at least 200%. The size of individuals and the overall biodiversity also increased significantly across the studied NTZs. The size of fish and shellfish is important, as larger animals produce more eggs, and so are more successful breeders.[2]

This can result in the phenomenon known as 'spill-over' in which fish and shellfish eggs or adults move from the NTZ where they are plentiful to the area outside. Spill-over is not guaranteed for every species, nor every NTZ, however research is increasingly demonstrating its effect. In particular lobster, scallop and some fish species such as haddock appear excellent candidates for spill-over. The effectiveness of NTZs depends on various factors, such as the size of the reserve, length of time as a NTZ, the habitat inside and outside the NTZ, the enforcement available, the status of the over-fished species, the speed and success of the species' breeding and the movement patterns of the target species.

Diagram demonstrating spill-over from a NTZ

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How No-Take Zones can benefit the fishing community

Over-fishing can have serious environmental and economic impacts. Regionally within the EU, 72% of commercial fish stocks are below optimal level. The number of people making a living in the EU fishing community has also decreased drastically over the last twenty years [3]. At the EU scale if fish stocks could be restored then an estimated additional €3.2 billion could be generated across Europe, supplying 100,000 extra jobs.[3] NTZs can be an important tool in restoring locally commercially important species. Athough NTZs can displace the fishing community from some of their fishing grounds, spill-over of commercially important species can produce economic opportunities for fishermen. The following are excellent examples of NTZs working to the fishing community's advantage.

USA: A large NTZ was established in New England to protect depleted fish stocks across an important fishing ground. The percentage of time spent trawling within the wider area did not significantly change (~30%), as fishermen moved to fish the area around the reserve. Most importantly, there was strong evidence for an increase and spill-over for haddock from the NTZ into the nearby area. The report noted that **42% of total U.S haddock catches now occur within 1km of the NTZ boundary and 72% within 5km.**[4]

Spain and France: In six NTZs established for more than eight years, small traditional fishing boats catching fish and shellfish chose to spend the majority of their time fishing around the borders of the reserves, demonstrating that spill-over was occurring.[5] When fishing around the borders, their fishing trips were more efficient, with more catch for reduced effort (time). This means that they spent less time fishing, costing them less in fuel and time, and caught more fish. Lobster and mullet spill-over extended up to a kilometre from the reserve boundaries and up to 2.5km for species of sea bream. Spill-over effects are more significant when the habitat outside the NTZ is similar to that being protected. **This highlights the importance of science based reserve design for maximum conservation and fisheries benefit.**

Isle of Man: In 1989, the Isle of Man introduced NTZs for scallop fishing in response to the critical decline in the number of scallops. By 2003, the number of scallops above the legal size limit was seven times higher inside the NTZ than in the fished areas. Scallops were also older and bigger inside and this enhanced their ability to breed. Increases in juvenile scallops were also found outside the NTZ, evidence for 'spill-over'.[6] Due to the success of the NTZs, the fishing community and the Isle of Man Government have protected additional areas– this time for the Queen scallop. An interesting case study on the benefits can be found in a report by the International Sustainability Unit.[7]

Lundy-UK: In 2003 a NTZ was established around the island of Lundy. Between 2004 and 2007, research found a five fold increase in the number of legal-sized lobster (there is a size limit imposed on lobster fisheries) within the reserve. This was observed within eighteen months of the NTZ being set up. Inside the reserve the lobsters were also bigger in size. An increase in the number of sub-legal catch lobsters was found within the reserve (up 97%) and in the areas next to it (1-5km; up 140%). This shows evidence of juvenile 'spill over' into the nearby area.[8]

No-Take Zones offer the most complete protection of all MPAs and there are advantages, both environmental and economic, that make their inclusion vital in the future Marine Conservation Zone network.

Further reading

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[2] Lester, S. E. *et al.* Biological effects within no-take marine reserves: a global synthesis. *Marine Ecology Progress Series* **384**, 33–46 (2009).
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