

Committee for the Environment

Report on the Marine Bill Volume One

**Together with the Minutes of Proceedings, Minutes of Evidence
and Written Submissions relating to the Report**

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Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2011 has been as follows:

Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell¹
Mr Colum Eastwood²
Mr Tom Elliott³
Mr Chris Hazzard⁴
Mrs Dolores Kelly⁵
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

1 Mr Gregory Campbell replaced Mrs Paula Bradley on 20 February 2012
2 Mr Colum Eastwood replaced Mr John Dallat on 18 June 2012
3 Mr Tom Elliott replaced Mr Danny Kinahan on 23 April 2012
4 Mr Chris Hazzard replaced Mr Willie Clarke on 8 May 2012
5 Mrs Dolores Kelly replaced Mr Patsy McGlone on 23 April 2012

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List of Abbreviations

ANIFPO	Anglo Northern-Irish Fish Producers' Organisation
ARD	Committee for Agriculture and Rural Development
BASC	British Association for Shooting and Conservation
BHC	Belfast Harbour Commissioners
BPA	British Ports Association
CAI	Countryside Alliance Ireland
CAL	Committee for Culture, Arts and Leisure
CBC	Carrickfergus Borough Council
CIL	Commissioners of Irish Lights
CMA	Centre for Maritime Archaeology (University of Ulster)
CNCC	Council for Nature Conservation and the Countryside
CP	Community Places
DARD	Department of Agriculture and Rural Development
DETI	Department of Enterprise, Trade and Investment
DOE	Department of the Environment
DRD	Department for Regional Development
GP	Green Party
GTG NI	Gun Trade Guild Northern Ireland
HIS	Honorable Irish Society
HS	Historic Scotland
IMCG	Inter-departmental Marine Coordination Group
IFA	Institute for Archaeologists
IFSA	Irish Federation of Sea Anglers
LLWC	Larne Lough Wildfowling and Conservation
MCNI	Marine Conservation Northern Ireland
MCS	Marine Conservation Society
MCZ	Marine Conservation Zone
MMO	Marine Management Organisation
MNR	Marine Nature Reserve
MOU	Memorandum of Understanding
MPA	Marine Protected Area
MS	Marine Scotland
NFFO	National Federation of Fishermen's Organisations
NICVA	Northern Ireland Council for Voluntary Action
NIEA	Northern Ireland Environment Agency
NIEL	Northern Ireland Environment Link
NIFDA	Northern Ireland Firearms Dealers Association
NILGA	Northern Ireland Local Government Association
NIMTF	Northern Ireland Marine Task Force
NIRIG	Northern Ireland Renewables Industry Group
NISMBAG	Northern Ireland Schools' Marine Bill Advocacy Group
NT	National Trust
RYANI	Royal Yachting Association Northern Ireland
SEPA	Scottish Environmental Protection Agency
SFF	Scottish Fishermen's Federation
SLLP	Strangford Lough and Lecale Partnership
SNI	Sport NI

Executive Summary

Purpose

1. This report sets out the Committee for the Environment's consideration of the Marine Bill.
2. Members sought a balanced range of views as part of their deliberations on the Marine Bill and requested evidence from interested organisations and individuals as well as from the Department of the Environment and other Executive departments.
3. The Committee made 12 recommendations having identified the following key issues.

Key issues

4. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Service and external organisations.

Clause-specific issues

- Delegated powers (Clause 16 and Clause 29)
- Clarification of the boundaries of the inshore region (Clause 1)
- Duty to develop a marine plan for the Northern Ireland inshore region (Clause 2)
- Multiple marine plans (Clause 2)
- Guidance on 'relevant considerations' (Clause 2 & Clause 6)
- Primacy for existing activities (Clause 2)
- Resolving policy conflicts (Clause 2)
- Length of time between publication and implementation of a marine plan (Clause 2)
- Statutory consultees (Clause 2)
- Synchronisation of marine plans and MCZs (Clause 2 & Clause 11)
- Withdrawal of marine plan (Clause 4)
- Notification of withdrawal of a marine plan (Clause 4)
- Mitigating decisions or compensatory measures for deviating from a marine plan (Clause 6)
- Reporting on marine plans (Clause 7)
- Reporting period on marine plan (Clause 7)
- Appeal period (Clause 8)
- Grounds for appeal (Clause 8)
- Duty to designate an MCZ (Clause 11)
- Replacing the term MCZ with 'Marine Protected Area' (Clause 11)
- Impairment of shipping and port operations by an MCZ (Clause 11)
- Designation of MCZs on historical and archaeological grounds (Clause 12)
- Highly protected areas (Clause 12)
- Factors for consideration when designating an MCZ (Clause 12)

- Publication of conservation objectives (Clause 12)
- Reference to conserving flora, fauna and habitat if they are not rare or threatened (Clause 12)
- Changes to MCZ boundaries (Clause 12)
- Relationship between protection afforded under the Marine Bill and that afforded by the Wildlife Order (Clause 12 & Clause 31)
- Consideration of the potential for renewable energy within an MCZ (Clause 12)
- Ecological consequences of the displacement of activities by an MCZ designation (Clause 12)
- MCZ designation process (Clause 13)
- Consultation (Clause 14)
- Publication of MCZ orders (Clause 15)
- Reviewing an order (Clause 17)
- The creation of network of conservation sites (Clause 18)
- Reports to the Assembly (Clause 19)
- Duties of public authorities in relation to MCZs (Clause 20)
- Compensatory measures (Clause 21)
- Advice and guidance issued by the Department to public authorities (Clause 22)
- Written explanation for failure by public authorities to comply with duties (Clause 23)
- The appropriateness of byelaws for the protection of MCZs (Clause 24)
- Interpretation of “any other part of Northern Ireland” (Clause 24)
- Emergency byelaws (Clause 26)
- Insufficient levels of fine (Clause 30)
- Sea fishing defence (Clause 32)
- Power to remove or restrict the sea fishing defence (Clause 32)
- Fixed monetary penalties (Clauses 33-35 and Schedule 2)
- Definition of member state (Clause 36)
- Appointment of enforcement officers (Clause 36)
- Loss of marine nature reserves (Clause 38)
- Definition of seashore (Clause 39)
- Effective management of the streamlined process (Clause 40)
- Timetables for decisions on major projects (Clause 40)
- Commencement (Clause 47)
- Timeframe for the delivery of marine plans (Schedule 1)
- Savings provision (Schedule 1)

Issues not linked directly to existing clauses

- General duties
- Coordination of marine functions across central government
- Costs and resources
- Public rights of navigation
- Dredging protocol
- Coastal Access

Clause-specific issues

Delegated powers

5. The Examiner of Statutory Rules advised the Committee that the Bill contains several powers to make subordinate legislation. The Committee was content with the proposed level of scrutiny for these powers.

Clarification of the boundaries of the inshore region

6. The Committee was content with the Department's explanation that the Bill applies to both Lough Foyle and Carlingford Lough and noted that existing arrangements put in place under the Belfast Agreement for joint management of the two cross-border loughs would be employed to assist with implementation of the Bill in these areas.

Duty to develop a marine plan for the Northern Ireland inshore region

7. In response to suggestions that Clause 2 should be strengthened to make it a requirement for the Department to produce a marine plan, the Department explained that because the Clause also requires it to produce a plan wherever a marine policy statement is in place, and such a statement is in place for the whole of the Northern Ireland marine region, the wording does not need strengthened. The Committee was content with this explanation.

Multiple marine plans

8. The majority of respondents wanted one marine plan for the whole region. The Department explained that it intends to have one overarching marine plan but it wants the flexibility to create some more localised and more detailed plans underneath for special areas that might require it and the wording of the Clause allows for this. The Committee was content with this explanation.

Guidance on 'relevant considerations'

9. The Committee asked for examples of what 'relevant considerations' might be and the Department noted that the wording allows the necessary flexibility for 'relevant considerations' to change over time. The Department indicated that it would probably produce guidance on 'relevant considerations' with responsibilities for public authorities. The Committee was content with this explanation.

Primacy for existing activities

10. Some stakeholders argued that the marine plan should give primacy to existing activities. The Department stressed that the rationale of a marine plan is to identify existing activities so that they can be taken into consideration. The Committee was content with this explanation.

Resolving policy conflicts

11. Some stakeholders felt that resolving policy conflicts would be difficult and asked how would take place in practice. The Committee was content with the Department's explanation that the marine plan would contain supporting information as well as policies but that the policy would have primacy.

Length of time between publication and implementation of a marine plan

12. A number of organisations suggested that there should be a period of time before a marine plan can be implemented after it has been published. The Committee was content with the Department's explanation that marine plan development is an inclusive process and that a Statement of Public Participation will be developed to allow for engagement throughout that process before publication.

Statutory consultees

13. Several organisations suggested that they should be included in a list of statutory consultees. However, the Department was adamant that it did not want to start listing different bodies as statutory consultees and it will be kept open-ended. The Committee was content with this explanation.

Synchronisation of marine plans and MCZs

14. Several organisations suggested that the marine planning process should be much more integrated and synchronised with the MCZ designation process. The Department replied that the MCZ designation team is not a 'nested part' of the Marine Plan team but both teams will work in conjunction with each other during the designation of MCZs and the development of the Northern Ireland Marine Plan. The Committee was content with this explanation.

Withdrawal of marine plan

15. A number of stakeholders were concerned that under this Clause the Department could withdraw a marine plan without another being in place. The Department maintained that it needs the flexibility to be able to withdraw a plan in the extremely exceptional circumstances of it being required by the Secretary of State. The Department stressed that the only reason it would be withdrawing a plan would be to replace it with a new plan or with a process leading to a more up-to-date plan. The Committee was content with this explanation.

Notification of withdrawal of a marine plan

16. The Committee was concerned about the accessibility of the Belfast Gazette and recommended that the Department should also be required to publish its intention to withdraw a marine plan on its website which the Department agreed to by way of an amendment (see clause by clause consideration of the Bill).

Mitigating decisions or compensatory measures for deviating from a marine plan

17. Several stakeholders were concerned that if an enforcement or authorisation decision deviated from a marine plan there could be no mechanism for mitigation or compensatory measures. The Department explained that there would be a mechanism for such measures in the authorisation regime and therefore is not required in the Bill. The Committee was content with this explanation.

Reporting on marine plans

18. It was suggested to the Committee that the marine plan report should be conducted independently of the Department. The Department's response indicated that it believed that the independent oversight of its report would come from laying it before the Assembly. The Committee was content with this explanation.

Reporting period on marine plan

19. Several stakeholders were concerned that the Bill stated an end to the reporting period of 2030. The Department explained that there is ongoing reporting and that the marine planning process must be reported on every six years and by 2030 the process will be well established. The Committee was content with this explanation.

Appeal period

20. The Committee was concerned that the six week period allowed for seeking leave for judicial review was too short and ran contrary to the generally accepted 12 week period. The Department agreed to an amendment to change the period to 12 weeks (see clause by clause consideration of the Bill).

Grounds for appeal

21. The Committee was concerned that the grounds for judicial review of a marine plan was limited to ultra vires and suggested that they should be expanded, at least to include irrationality. The Committee accepted the Department's argument that the rest of the UK marine planning authorities have similar provisions with regard to challenges in order to allow judicial review of a marine plan and agreed to recommend that the Minister stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of a marine plan and that the High Court option should not be considered an alternative.

Duty to designate an MCZ

22. Many stakeholders felt that the duty on the Department to designate an MCZ should be strengthened by making it a requirement. The Department argued that the terminology was quite explicit from a legal perspective. The Committee was content with this explanation.

Replacing the term MCZ with 'Marine Protected Area'

23. Some stakeholders felt that the term 'marine conservation zone' should be changed to 'marine protected area'. The Department argued that the term 'marine protected area' is a generic term used for a number of designations under local, national or international law. The Committee was content with this explanation.

Impairment of shipping and port operations by an MCZ

24. Representatives of harbours and ports were concerned that MCZs might restrict existing activities but the Department stressed that this would not be the case. The Committee was content with this explanation.

Designation of MCZs on historical and archaeological grounds

25. A few stakeholders argued that it would be appropriate to extend the scope of MCZs to include the protection of historical and archaeological sites as has been done in the Scottish Marine Act. The Department pointed out that this Bill is different from that in Scotland as Northern Ireland already has legislation in place and historic wrecks in Northern Ireland waters are currently protected by the UK-wide Protection of Wrecks Act 1973. The Committee was content with this explanation.

Highly protected areas

26. Many stakeholders wanted to see provisions for the creation of highly protected areas. However, the Department argued that the conservation objectives of an MCZ will determine the level of protection required and that designation will be based on sound science. The Committee was content with this explanation.

Factors for consideration when designating an MCZ

27. A number of stakeholders suggested that the Department should be required to take economic and social consequences of a designation into account rather than having the option of considering them. The Committee recommended the Department consider amending the clause to make it a requirement to consider social and economic factors and that the Department extends its consideration to cultural factors. The Department agreed to introduce an amendment (see clause by clause consideration).

Publication of conservation objectives

28. Stakeholders called for the Department to be required to publish robust supporting evidence to justify the conservation objectives of an MCZ. The Department stated it will, as a matter of course, publish its objectives. It wants to ensure everyone is involved from the outset and that everybody knows exactly where the MCZ is, where its boundaries are, what its

features are and why they are important. It is therefore willing to publish the information. The Committee was content with this explanation.

Reference to conserving flora, fauna and habitat if they are not rare or threatened

29. Several stakeholders questioned the need for flora, fauna and habitat to be protected if they are not rare or threatened. The Department replied that under the Marine Strategy Framework Directive it is required to protect rare and threatened species and more representative species that form part of the overall network. It therefore wants to retain the flexibility this provision provides. The Committee was content with this explanation.

Changes to MCZ boundaries

30. Some stakeholders called for changes to MCZ boundaries as a result of economic or social consequences to be justified in writing. The Department agreed that this would be the case. The Committee was content with this explanation.

Relationship between protection afforded under the Marine Bill and that afforded by the Wildlife Order

31. Stakeholders with an interest in wildfowling were concerned that precedence might be given to a restriction provided by the Marine Bill that was inconsistent with the Wildlife and Natural Environment Act. The Department stressed that one piece of primary legislation does not have greater weight than another and believes there is no conflict. The Committee was content with this explanation.

Consideration of the potential for renewable energy within an MCZ

32. The renewable energy sector was keen to get reassurances that the MCZ designation process would consider renewable energy infrastructure. The Department responded that the flexible regime will take account of pipelines or power cables crossing the sea bed and it will work with all industries involved in this regard. The Committee was content with this explanation.

Ecological consequences of the displacement of activities by an MCZ designation

33. Fishing stakeholders noted that it was important that the ecological consequences of changing or restricting activities within an MCZ on the surrounding areas were taken into consideration as part of the designation process. The Department responded that the intention of having an MCZ was not to disrupt fishing or any other interests and nor was it to designate large areas of Northern Ireland's territorial waters in order to displace other industries. The Committee was content with this explanation.

MCZ designation process

34. Many stakeholders expressed opinions on what should be taken into consideration during the designation of an MCZ. The Department clarified that an MCZ is primarily a measure to conserve seabed habitats and flora and fauna in the sea. The Committee was content with the explanation but felt that it was so important not to overlook or diminish the process of designating an MCZ that it would recommend that the Minister draws attention to it during Consideration Stage of the Bill.

Consultation

35. Many stakeholders expressed concerns to the Committee that their views would not be taken fully into consideration prior to the designation of an MCZ, particularly for urgent designations. The Department stressed that it will have a specific requirement on it to consult on an MCZ designation order with anyone who is likely to be interested or affected by the designation process and this will include the management measures that are required. The Department agreed it would produce guidance that specified the process and how

people are involved in it. The Department also agreed to set out provisions for emergency designations in its guidance. The Committee was content with this explanation.

Publication of MCZ orders

36. Several stakeholders felt that it was important that the Department should be required to publish orders in a manner that would bring it to the attention of interested parties as well as those affected by it. The Department pointed out that this is about the publication of orders, not about consulting or informing people. The Committee was content with this explanation.

Reviewing an order

37. Some stakeholders suggested that the Department should be able to require the review of an order as well as the Secretary of State, Scottish Ministers or those in the Republic of Ireland. The Department subsequently clarified that the current wording allows for the Department amend or revoke a designation order. The Committee was content with this explanation.

The creation of network of conservation sites

38. A number of stakeholders felt that in addition to Northern Ireland's MCZs contributing to the UK's MCZ network target, Northern Ireland should have a target for an MCZ network of its own. The Department reminded the Committee that the overall context of MCZs was so that it could fulfil its obligations under the Marine Strategy Framework Directive. The Department did suggest that there might be some MCZs that will be unique to Northern Ireland. The Committee was content with this explanation.

Reports to the Assembly

39. Some stakeholders suggested that reports to the Assembly should be extended beyond those parties that were 'restricted' by the MCZ to include those that are 'affected' by it. The Department clarified that it is required to report to the Assembly on the progress in designating a network of MCZs and it felt that use of the term 'affected' would be too broad. Both the Department and the Committee recognised that whatever word was used would be subject to interpretation and agreed to leave it as drafted. However, the Committee agreed to recommend that during Consideration Stage the Minister clarifies what will be included in the reports to the Assembly and that the reports should include retrospective consideration of what impacts were anticipated prior to the designation of an MCZ compared with the impacts that were subsequently experienced in practice.

Duties of public authorities in relation to MCZs

40. A number of stakeholders were concerned about the expectations being placed on public authorities in relation to the Bill. The Department explained that there is a general duty on all public authorities when they are undertaking their responsibility to regulate or licence activities in the marine environment to take MCZs into consideration and inform the Department if any activities they are licensing would impinge negatively on an MCZ. A public authority must have a very good reason for dismissing the advice because a third party could challenge its decision via judicial review. The Department also indicated it would be producing guidance on public authorities once the Bill progresses through the Assembly process. The Committee was content with this explanation.

Compensatory measures

41. Several stakeholders suggested that explicit provision should be made in the Bill to require that compensatory measures are incorporated into the conditions of any permit. The Department pointed out however, that the authorisation does not come from the Bill but from whatever legislation public authorities use. The Committee was content with this explanation.

Advice and guidance issued by the Department to public authorities

42. Some stakeholders were concerned about the proposals associated with advice and guidance to be issued and suggested it should include a requirement for it to be published and for the recipient of the advice and guidance to act in accordance with it. The Department clarified that advice and guidance issued is solely to do with MCZs and public authorities. The Committee was content with this explanation.

Written explanation for failure by public authorities to comply with duties

43. Several stakeholders felt that a written explanation for failure to comply with duties should be a requirement rather than optional and that it should include penalties or sanctions if a public authority covered by the Bill ignores the advice and guidance within a given time period. The Department reminded the Committee that it is unable to take court action against other public bodies. In terms of introducing a time limit for the provision of a written response, the Department pointed out that it would be difficult to include a time limit when each occasion would be considered on a site-by-site basis and would depend on circumstances. The Committee was largely content with this explanation but agreed an amendment proposed by the Department to make it a requirement for the Department to request a written explanation from a public authority for failure to comply with its duties in relation to an MCZ (see clause by clause consideration of the Bill).

The appropriateness of byelaws for the protection of MCZs

44. The Committee was concerned about the process of introducing byelaws and to what extent they would link to the MCZ order. The Department explained that during the designation process it would clarify the social, economic and cultural issues and then produce byelaws to protect the MCZ, if necessary. The Committee felt that in order to alleviate concerns about the use of byelaws to limit or prohibit unregulated activities, it should recommend that during Consideration Stage the Minister should make it clear that the provision of byelaws will be at a level that is appropriate to meet the objectives of the MCZ but will not exceed what is required.

Interpretation of “any other part of Northern Ireland”

45. A number of stakeholders were concerned that the use of the term “any other part of Northern Ireland” could be interpreted as literally anywhere in Northern Ireland and the Committee asked the Department to consider including an interpretation of its meaning. The Department replied that it does not believe an interpretation needs to be included because the boundaries of the byelaw will be confined to the limits of the MCZ which will be defined in the designation order. The Committee was content with this explanation.

Emergency byelaws

46. Several stakeholders were concerned that the Department would have the powers to bypass procedures for consultation to introduce emergency byelaws. The Department indicated that it would be producing guidance on byelaw procedure and emergency byelaws would be an important aspect of that. The Committee was content with this explanation.

Insufficient levels of fine

47. A number of stakeholders felt the proposed level of fine for contravening a byelaw was too low. The Department explained that level 5 was the highest level of fine that could be apportioned to a byelaw and stressed that byelaws would be used for unregulated activities and therefore, by definition, tended to be more benign activities anyway. The Committee was content with this explanation.

Sea fishing defence

48. Stakeholders acknowledged the necessity of including the sea fishing defence to meet the requirements of the European Common Fisheries Policy. However, it was pointed out by some stakeholders that this applies only to the 6-12 nautical mile zone and suggested that the defence should be removed from 0-6 nautical miles. The Department felt that this would be very difficult to enforce. It also argued that fishing activity should be treated equally, irrespective of whether it is two miles out or eight miles out. The Committee was content with this explanation.

Power to remove or restrict the sea fishing defence

49. The power enables the Department, by order, to remove or restrict the application of the sea fishing defence. The Committee questioned the appropriateness of using subordinate legislation to remove or restrict a defence set out in primary legislation. The Department acknowledged that the power to remove or restrict this defence being exercisable by order is not common practice but defended it on the basis that it will give the Department the flexibility to deal with any changes to the Common Fisheries Policy. The Committee was content with this explanation.

Fixed monetary penalties

50. The Examiner of Statutory Rules suggested that the proposed working of these provisions may cause difficulties in drafting the subordinate legislation as they appear overly complex for what they seem to do. He also indicated that there was no actual provision for an appeal tribunal. The Department responded that it has already made a similar order for fixed and variable monetary penalties in regard to marine licensing under the Marine and Coastal Act 2009 which will serve as a useful template for framing the order for fixed penalties under the Marine Bill. The Lands Tribunal Northern Ireland has, in principle, agreed to take on the role of appellate body dependent on the number and complexity of cases that arise. The Committee was content with this explanation.

Definition of member state

51. Some stakeholders wanted clarification of the meaning of 'member state' used within this Clause and suggested it might require definition within the Bill. The Department explained that references to 'member state' in this are to membership of the EU and this is already defined in legislation. The Committee was content with this explanation.

Appointment of enforcement officers

52. Some stakeholders felt that the discretionary duty on the Department to appoint enforcement officers should be strengthened and made obligatory. The Department explained that it will be the enforcement body in the marine environment and will have the discretionary power to appoint others for that purpose. The Committee was content with this explanation.

Loss of marine nature reserves

53. The Committee was concerned that commencement of Part 3 would result in the repeal of the Marine Nature Reserve (MNR) designation currently afforded to Strangford Lough. The Department explained that once the Bill becomes law Strangford Lough will no longer be an MNR but will still be afforded protection because although it will be an MCZ in name only, the wording of the Bill requires it to be treated as an MCZ. The protection afforded by an MNR was not fit for purpose and would be much stronger under an MCZ. The Committee was content with this explanation.

Definition of seashore

54. A number of stakeholders were concerned that the definition of seashore was too vague and could result in designations that extend significantly inland. The Department explained that

the extension of an MCZ landwards will only apply to where the natural geographical features extend inland and there would be no buffers. The Department stressed that physically this could not be miles inland but that it would be difficult to state a fixed limit. The Committee was content with this explanation.

Effective management of the streamlined process

55. A number of stakeholders stressed the need for effective management processes in relation to the issuing of licenses. The Department explained that it had been working with DETI to produce a memorandum of understanding of how they work together. The Committee was content with this explanation.

Timetables for decisions on major projects

56. Some stakeholders suggested that timetables should be introduced for a decision on strategically significant projects. The Department said it had considered this approach but decided against it as many different activities can take place in the marine environment and a timetable could restrict the time for decision-making. The Committee was content with this explanation.

Commencement

57. A number of stakeholders were concerned at the proposal to delay the commencement of Part 3 of the Bill and called for it to be introduced along with the rest of the Bill on Royal Assent. The Department is now of the opinion that it can enact the Bill in its entirety because it will allow Strangford Lough, for example, to become an automatic marine conservation zone on the day the Bill becomes law. The Committee agreed to recommend that the Bill comes into force in its entirety when it receives Royal Assent and supported the Department's proposed amendments to achieve this (see clause by clause consideration).

Timeframe for the delivery of marine plans

58. A number of stakeholders suggested that the Department should be bound to a timetable for the introduction of its marine plan. The Department argued that there will not just be a one-off plan and, being a process, it needs flexibility. The Committee accepted the argument but agreed to recommend that during Consideration Stage the Minister commits to a timeframe for the delivery of a marine plan.

Savings provision

59. The Department informed the Committee that it was already commencing work on a marine plan but, in order to capture the work done in advance of the Bill coming into force, it was necessary to add a savings provision to the Bill. The Committee felt that the principle made sense but wanted reassurance that the process of developing the plan would be in accordance with the requirements that would come into force with the Bill. The Department provided an amendment which the Committee supported (see clause by clause consideration of the Bill).

Issues not linked directly to existing clauses

General duties

60. Many stakeholders wanted to see the inclusion of an overarching aim or general duty outlining the responsibilities of the Department in relation to sustainable development and to mitigating and adapting to climate change when implementing the Bill. The Department maintained that this was unnecessary as these duties are already placed on all public authorities.

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61. The Department also noted that the Bill already includes several binding provisions in respect of sustainable development which require the Department to undertake a sustainability appraisal for the proposals for inclusion in a marine plan.
62. In relation to climate change, the Committee commissioned research which noted that the Sustainable Development Strategy makes a strong connection with the importance of adapting to and mitigating climate change. In addition, the UK Climate Change Act 2008 places a duty on the Department to develop a programme for adaptation to climate change.
63. The Department acknowledged that climate change is not explicitly referenced in the Bill but maintained it is one of the issues that must be taken into account when developing the marine plan and MCZs because mitigating the effects of climate change are reflected in the high level marine objectives in the Marine Policy Statement.
64. The Committee accepted that existing legislation places an obligation on public authorities to consider sustainable development and to mitigate and adapt to the effects of climate change. However, it also recognised that it would be inconsistent with current legislative practice in Northern Ireland to reiterate these duties or to make cross reference to them in this Bill. Members therefore felt that it was important for the Minister to place on record the applicability of these overarching duties to this Bill by drawing attention to it during Consideration Stage of the Bill and the Committee agreed to make this recommendation.

Coordination of marine functions across central government

65. Almost all stakeholders drew attention to the need for greater coordination of marine functions which are currently spread across six government departments. The majority of respondents suggested this could, and should, be achieved through the introduction of a marine management organisation, as in England and Wales. An alternative to this, suggested by some, would be the creation of a marine directorate, as in Scotland, but most made it clear that they would view this as an inferior compromise. A few stressed that they did not want an independent management body preferring that marine functions remained as they were within central government, with ministerial accountability and Assembly scrutiny.
66. The Department indicated that the principle forum for ensuring coordination between the departments with marine functions is the Inter-departmental Marine Coordination Group (IMCG) which it chairs. All departments with marine functions are represented on IMCG and officials from other relevant bodies such as the Loughs Agency. It indicated that it continues to progress the necessary work on developing a full business case to advance the Minister's view that the full benefits of the Marine Bill can only be realised if they are implemented in an integrated and independent way. The business case is considering the status quo (IMCG), a marine directorate and a non-departmental public body as the main options.
67. The Committee recognised the need for better coordination of marine functions across departments. It felt that the Minister's current approach was appropriate but was keen to see an amendment to this Bill that would underpin greater cooperation between departments in delivering their marine functions. Members felt that in the absence of any change to the management of marine functions by central government the most effective approach in the short term would be to strengthen and enhance the cooperation of departments and other public authorities that have responsibility for marine functions. The Committee consequently agreed that an amendment should be made to the Bill that would require agreement between the relevant central government departments and other public authorities on delivery of their marine functions (see Key Issues – Issues not linked directly to existing clauses).

Costs and resources

68. The Committee was concerned about the cost implications of the introduction of the Bill and its implementation and sought further information on anticipated resources. It welcomed the information on costs provided by the Department but was concerned that in the absence

of any indication of how many MCZ sites are anticipated the costs associated with MCZ designation are largely unknown.

Public rights of navigation

69. The Committee was alerted to concerns of the renewables industry that common law rights of fishing and navigation could hinder their progress when trying to install off-shore renewable energy infrastructure. They suggested that this had already been recognised and addressed in energy legislation in Scotland and England but had no equivalent in Northern Ireland. The Department indicated that this issue is the responsibility of DETI which is taking action to address it and the Committee was content that no further provision needed to be made in the Bill.

Dredging protocol

70. Following a briefing from representatives of ports and harbours the Committee sought further information on the maintenance dredging protocol and how it will work in practice. The Committee was content with the Department's response and agreed that the issue need not be addressed within the Bill.

Coastal Access

71. A few stakeholders suggested that this Bill should be used to introduce a commitment to extending the coastal access around Northern Ireland. The Department responded that, from its perspective, coastal access, like all access, is deal with at local council level. It stressed that it has not been inundated with requests and feels that the coast is already well opened up. The Committee was content with this explanation.

Recommendations

General Duties (General)

72. The Committee recommends that during Consideration Stage of the Bill the Minister places on record the fact that the duties placed on all public authorities in relation to sustainable development and climate change by the Northern Ireland (Miscellaneous Provisions) Act 2006 and the UK Climate Change Act 2008 respectively, apply to the implementation of this Bill.

Coordination of marine functions across central government (General)

73. The Committee recommends that an amendment should be made to the Bill that requires agreement and coordination between departments on delivery of their marine functions. The Committee agreed the following amendment accordingly:

“New clause

Arrangements to promote co-ordination of policy development and implementation relating to marine functions

- 1A.** – (1) The Department may enter into arrangements with relevant public authorities designed to promote effective co-ordination of policy development and implementation relating to marine functions exercised in the Northern Ireland inshore region.
- (2) The Department shall within one year of the date on which this Act receives Royal Assent publish details of the arrangements entered into under subsection (1).
- (3) The Department shall keep under review arrangements entered into under subsection (1).
- (4) The Department shall within three years of the date on which this Act receives Royal Assent lay before the Assembly a report on the effectiveness of the arrangements entered into under this section.
- (5) For the purposes of this section –
- (a) “the relevant public authorities” are-
- (i) the Department of Agriculture and Rural Development
- (ii) the Department of Culture, Arts and Leisure
- (iii) the Department of Enterprise, Trade and Investment
- (iv) the Department of Regional Development
- (v) the Agri-Food and Biosciences Institute
- (vi) the Foyle, Carlingford and Irish Lights Commission
- (vii) the Northern Ireland Environment Agency
- (b) “marine functions” are functions exercised-
- (i) under this Part, Part 3 or Part 4
- (ii) in respect of sea fisheries, navigation, planning, harbours, energy, leisure and tourism in so far as they are relevant to the marine environment”

Notification of withdrawal of marine plan (Clause 4)

74. The Committee recommends that in addition to the withdrawal of a marine plan being published in the Belfast Gazette, that it should also be published on the Department's website.

75. The Department has agreed to make the following amendment accordingly:

“Clause 4, Page 3, Line 37

At end insert ‘—

‘(a) publish notice of the withdrawal of the marine plan on the Department's website; and
(b)’”

Appeal period (Clause 8)

76. The Committee recommends that an application to the High Court on the validity of a marine plan should be allowed to take place up to 12 weeks after the publication of the plan, in keeping with standard practice, rather than the 6 weeks proposed by the Department.

77. The Department has agreed to make the following amendment accordingly:

“Clause 8, Page 6, Line 40

Leave out ‘6’ and insert ‘12’”

Grounds for appeal (Clause 8)

78. The Committee agreed to recommend that the Minister stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of a marine plan and that the High Court option should not be considered an alternative.

Factors for consideration when designating a Marine Conservation Zone (MCZ) (Clause 12)

79. The Committee recommends that it should be a requirement for the Department to take into consideration any social, economic and cultural consequences when considering whether it is desirable to designate an area as an MCZ.

80. The Department has agreed to make the following amendments accordingly:

“Clause 12, Page 9, Line 16

Leave out ‘may’ and insert ‘must’”

“Clause 12, Page 9, Line 16

Leave out ‘or social’ and insert ‘, social or cultural’”

MCZ designation process (Clause 13)

81. The Committee recommends that during Consideration Stage of the Bill the Minister stresses the importance of the MCZ designation process.

Reports to the Assembly (Clause 19)

82. The Committee recommends that during Consideration Stage the Minister clarifies what will be included in reports to the Assembly. It also recommends that the reports should include retrospective consideration of what impacts were anticipated prior to the designation of an MCZ compared with the impacts that were experienced in practice post designation.

Written explanation for failure by public authorities to comply with duties (Clause 23)

83. The Committee recommends that public authorities are required to provide a written explanation for failing to comply with duties required by an MCZ.

84. The Department has agreed to make the following amendment accordingly:

“Clause 23, Page 16, Line 36,

Leave out paragraphs (a) and (b) and insert ‘the authority must provide the Department with an explanation in writing for the failure’.”

The appropriateness of byelaws for the protection of MCZs (Clause 24)

85. The Committee recommends that during Consideration Stage the Minister makes it clear that the provision of byelaws will be at a level that is appropriate to meet the objectives of the MCZ but will not exceed what is required.

Commencement (Clause 47)

86. The Committee recommends that all parts of the Bill should come into force at the same time; i.e. on Royal Assent, including the introduction of MCZs.

87. The Department has agreed to make the following amendments accordingly:

“Clause 41, Page 29, Line 13

Leave out paragraph (b)”

“Clause 47, Page 31, Line 2,

Leave out from beginning to ‘come’ in line 4 and insert ‘This Act comes’.”

“Clause 47, Page 31, Line 6

Leave out subsection (3).”

Preparation and adoption of marine plans (Schedule 1)

88. The Committee recommends that during Consideration Stage the Minister commits to a timeframe for the delivery of a marine plan.

Introduction

89. The Marine Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 5 March 2012.

90. The Minister of the Environment made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Marine Bill would be within the legislative competence of the Northern Ireland Assembly'.

91. The Bill will provide for marine plans in relation to the Northern Ireland inshore region; to provide for marine conservation zones in that region; to make further provision in relation to marine licensing for certain electricity works in that region; and for connected purposes.

92. The main aim of the Bill is to establish a strategic system of marine planning in Northern Ireland's inshore region (out to 12 nautical miles) that will be proactive, co-ordinated and responsive; assist in the delivery of a modernised licensing and enforcement regime that is streamlined, consistent and promotes integrated decision making; and contribute to the delivery of the United Kingdom's aim of establishing an ecologically coherent network of Marine Protected Areas so that marine biodiversity is protected and international European commitments are met.

93. The Bill contains five Parts; 48 Clauses and 2 Schedules.

94. The Bill has five parts:

Part 1 The Northern Ireland Inshore Region

Clause 1 The Northern Ireland inshore region

95. Clause 1 defines the geographical area referred to elsewhere in this Bill for the purposes of managing Northern Ireland's maritime space. It includes the sea and seabed within the territorial sea (out to 12 nautical miles) adjacent to Northern Ireland and describes the landward limit of the marine area.

Part 2 Marine Planning

Clause 2 Marine plans for Northern Ireland inshore region

96. Clause 2 provides for the creation of marine plans, and sets out certain basic requirements as to their content and the way in which they are to be prepared.

Clause 3 Amendment of marine plan

97. Clause 3 provides provision for the Department to amend a marine plan.

Clause 4 Withdrawal of marine plans

98. Clause 4 enables the Department (after consultation with the relevant Northern Ireland departments) to withdraw a marine plan. This clause also allows the Secretary of State to withdraw his agreement to a plan (if his agreement was required to the plan's adoption).

Clause 5 Duty to keep relevant matters under review

99. Clause 5 requires the Department to keep under review matters which may affect its functions of identifying marine plan areas and preparing marine plans. This clause ensures that the Department stays up to date with what is happening in the Northern Ireland inshore region and its sustainable development, in order to make effective planning decisions.

Clause 6 Decisions affected by a marine plan

100. Clause 6 makes provision about the effect which “any appropriate marine plans” are to have on the taking of certain decisions by “a public authority”. The provisions ensure if a public authority takes an authorisation or enforcement decision, otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons.

Clause 7 Monitoring of, and periodical reporting on, marine plans

101. Clause 7 sets out the duties imposed on the Department in relation to the monitoring of, and reporting on, marine plans. The clause requires that the Department reports on a review at least every three years after each marine plan is adopted and these reports must be laid before the Assembly.
102. This clause also imposes a second reporting duty, requiring the Department to report at least every six years until 2030 on the marine plans it has prepared, and its intentions as to the amendment of existing plans or preparation of additional plans. Again, these reports must be laid before the Assembly.

Clause 8 Validity of marine plans

103. Clause 8 sets out how and when people may challenge a marine plan or an amendment to a marine plan. The only grounds for challenge are that the marine plan or amendment is not within the “appropriate powers”, or that a “procedural requirement” has not been complied with. A challenge must be brought within 6 weeks of the plan being published.

Clause 9 Powers of the High Court on an application under clause 8

104. Clause 9 sets out the powers of the High Court when hearing a challenge to the validity of a marine plan (and amendments). The clause provides the High Court with the provision to quash or remit the whole or parts of the marine plan or amendment. Where the High Court remits the plan or amendment; this clause allows for whatever was wrong with the document to be put right, without having to start the entire preparation process from the beginning.

Clause 10 Interpretation of this part

105. Clause 10 contains definitions for words or expressions used in Part 2 of the Bill.

Part 3 Marine Protection**Clause 11 Designation of marine conservation zones**

106. Clause 11 provides a power for the Department to designate areas as marine conservation zones (MCZs) by means of an administrative order. The provision states that the Department may not designate an MCZ without agreement from the Secretary of State.

Clause 12 Grounds for designation of MCZ

107. Clause 12 sets out the circumstances in which the Department may designate an MCZ. The order designating the MCZ must state both the protected features and the conservation objectives for the MCZ.
108. This Clause also allows the Department to take account of the economic or social consequences of designation. This provision ensures that MCZs may be designated in such a way as to conserve biodiversity and ecosystems whilst minimising any economic and social impacts. The term “social” in this clause includes sites of historic or archaeological interest.

Clause 13 Further provisions as to orders designating MCZs

109. Clause 13 sets out further requirements for MCZ designations, including the requirement to specify the boundaries of the designated area. The provisions allow for the inclusion in an

MCZ of islands within the designated area, regardless of whether the land lies above mean high water spring tide.

110. This Clause also allows the Department under certain conditions (e.g. protection of threatened species) to extend the boundary of an MCZ to include an additional area of seashore above the mean high water spring tide.

Clause 14 Consultation before designation

111. Clause 14 requires the Department to carry out public consultation before designating an MCZ. The Department must publish a notice of the proposed designation order to ensure any party likely to be affected by the proposed order have the opportunity to have their interests taken into account. The Department is required to make a decision of an individual MCZ within 12 months of publishing the notice.

112. This clause also provides an exemption from general requirements of publication and consultation if there is an urgent need to designate an MCZ. In such cases the Department still needs to consult the Secretary of State. An urgent order may remain in place for up to two years unless the Department within this period makes an order confirming the designation. Publication and consultation is required in relation to an order confirming designation.

Clause 15 Publication of orders

113. Clause 15 makes provision for the Department to publish notice of the making of an order in a way most likely to bring it to the attention of interested individuals. It also requires that a copy of the order is made available for inspection and anyone who asks for a copy is provided with one. The Department may charge a fee, not exceeding its costs, for providing a copy.

Clause 16 Hearings

114. Clause 16 allows the Department to hold hearings before deciding whether to make an order under clause 11 to designate an MCZ. The Department has discretion to give any persons the opportunity of being heard, either orally or in writing.

Clause 17 Review of orders

115. Clause 17 requires the Department to review any order designating an MCZ if it receives representations that the order should be amended or revoked from the Secretary of State, the Scottish Ministers or the department of the Government of Ireland responsible for marine nature conservation.

Clause 18 Creation of network of conservation sites

116. Clause 18 places a duty on the Department to designate MCZs so as to contribute to the creation of a network of marine sites. The Department must prepare a statement detailing the principles which it will apply in designating MCZs to help create the UK network. The Department must lay the statement before the Assembly, and it must be reviewed and, if necessary, updated periodically.

Clause 19 Reports

117. Clause 19 requires the Department to report to the Assembly on progress in designating a network of MCZs, beginning on the date on which this section comes into operation and ending on 31 December 2018; and each subsequent period of 6 years.

Clause 20 General duties of public authorities in relation to MCZs

118. Clause 20 places a general duty on public authorities to carry out their functions in the manner they consider best furthers, or least hinders, the conservation objectives set for MCZs. A public authority must inform the Department if it thinks that the exercise of its

functions or a proposed activity will or might significantly hinder the conservation objectives of the MCZ. Under this clause the public authority must wait at least 28 days before proceeding with its proposed activity.

Clause 21 Duties of public authorities in relation to certain decisions

119. Clause 21 applies to all public authorities (other than the Department) with responsibility for authorising applications for certain activities capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent.

Clause 22 Advice and guidance by the Department

120. Clause 22 confers powers and duties on the Department to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties under clauses 20 and 21.

Clause 23 Failure to comply with duties, etc.

121. Clause 23 enables the Department to obtain an explanation if it thinks a public authority has failed to exercise its functions to further (or where permissible, least hinder), the conservation objectives of the MCZ, or failed to act in accordance with the guidance provided by the Department. This clause has effect even when the public authority did not initially request the advice or guidance.

Clause 24 Byelaws for protection of MCZs

122. Clause 24 gives the Department the power to make byelaws to protect MCZs in the Northern Ireland inshore region or in any part of Northern Ireland and allows the Department to control specific activities on the seashore adjacent to the MCZ, for the purpose of protection.
123. This clause also enables byelaws to provide for the Department to issue permits to authorise activities (with whatever conditions it feels appropriate) which would otherwise be unlawful under the byelaws.

Clause 25 Byelaws: procedure

124. Clause 25 requires the Department to carry out public consultation before making byelaws. Byelaws must be confirmed by the Secretary of State before they come into operation. Once confirmed, the Department must publish notice of making the byelaws.

Clause 26 Emergency byelaws

125. Clause 26 enables the Department to make byelaws (under clause 24) urgently, without having to comply with the usual consultation and publication requirements and without confirmation by the Secretary of State. This is only permitted where the Department considers there is an urgent need to protect an MCZ.

Clause 27 Interim byelaws for MCZ

126. Clause 27 enables the Department to make interim byelaws to protect features in an area where the Department considers there may be reasons for the Department to designate an MCZ and where there is an urgent need for protection. Byelaws under this clause are essentially the same as emergency byelaws (clause 26) except that they apply to areas which are not yet designated as MCZs.

Clause 28 Byelaws: supplementary

127. Clause 28 sets out the administrative and notification requirements in relation to byelaws and interim byelaws.

Clause 29 Hearings

128. Clause 29 makes provision for either the Secretary of State or the Department to hold a hearing before deciding whether to make byelaws or interim byelaws, to confirm byelaws or to revoke emergency or interim byelaws.

Clause 30 Offence of contravening byelaws

129. Clause 30 provides that breaching byelaws is an offence. A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level five on the standard scale (£5,000 based on current amount of a level 5 fine).

Clause 31 Offence of damaging, etc. protected features of MCZ

130. Clause 31 creates a general offence to catch deliberate or reckless acts of damage to protected features of an MCZ. This includes killing or injuring plants and animals and removing anything that is a protected feature from an MCZ. A person found guilty of an offence under this section is liable on summary conviction, to a fine not exceeding £50,000.

Clause 32 Exceptions

131. Clause 32 sets out the circumstances in which a person will not be guilty of an offence under clauses 30 and 31.

Clause 33 Fixed monetary penalties

132. Clause 33 enables the Department to make an order which confers a power on the Department to issue fixed monetary penalties for the breach of byelaws. It also provides for the maximum fixed financial penalty, which will be £200 (current amount of a level 1 fine). This level reflects the nature of the likely offences, which tend to be minor breaches of byelaws.

Clause 34 Fixed monetary penalties: procedure

133. Clause 34 specifies certain minimum requirements that must be included in any fixed monetary penalty regime.

Clause 35 Fixed monetary penalties: further provisions

134. Clause 35 gives effect to the further provisions about fixed monetary penalties set out in Schedule 2.

Clause 36 Enforcement officers

135. Clause 36 enables the Department to appoint officers for the purpose of enforcing any byelaws made under clause 24 or 27 and enforcing clause 31.

Clause 37 The common enforcement powers

136. Clause 37 defines the “common enforcement powers” as those set out in Chapter 2 of Part 8 of the Marine and Coastal Access Act 2009 and further explains how the powers conferred under clause 36 (2) are to apply.

Clause 38 Repeals and transitional provisions

137. Clause 38 makes the repeals and transitional amendments relating to this part of the Bill.

Clause 39 Interpretation of this part

138. Clause 39 contains definitions for words or expressions used in Part 3 of the Bill.

Part 4 Marine Licensing: Generating Stations**Clause 40 Special procedure for applications relating to generating stations**

139. Clause 40 provides for the situation where both a marine licence, and a consent under Article 39 of the Electricity (Northern Ireland) Order 1992 (in relation to offshore generating stations), are required.

Part 5 Supplementary**Clause 41 Regulations and Orders**

140. Clause 41 contains general provisions for making regulations and orders under the Bill.

Clause 42 Offences: companies, etc.

141. Clause 42 provides for individual liability in cases where there is also corporate liability.

Clause 43 Disapplication of requirement for consent to certain prosecutions

142. Clause 43 has the effect of disapplying section 3 of the Territorial Waters 1878 Act in relation to proceedings for offences committed under the Bill.

Clause 44 Supplementary, incidental, consequential, transitional provision etc.

143. Clause 44 allows the Department to make, by order, supplementary and transitional provisions and savings for the Bill.

Clause 45 Crown application

144. Clause 45 states that the Crown is bound by the provisions of the Bill.

Clause 46 Interpretation

145. Clause 46 contains definitions of expressions used in the Bill.

Schedule 1 Marine plans: preparation and adoption

146. Schedule 1 sets out the procedure which must be followed when preparing and adopting marine plans under clause 2.

Schedule 2 Further provision about fixed monetary penalties under clause 33

147. Schedule 2 sets out further provisions about fixed monetary penalties.

Consideration of Bill by Committee

Process

Schedule

148. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 1 & 8 March, 19 April, 3, 10, 17, 24, 29 & 31 May and 7, 12, 21 & 28 June 2012. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1 and Minutes of Evidence at Appendix 2.
149. The Committee had before it the Marine Bill (NIA 5/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill.
150. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 12 March 2012 in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill.

Extension of Committee Stage of the Bill

151. On 8 March 2012, the Assembly agreed to extend the Committee Stage of the Bill to 6 July 2012.

Evidence gathering

152. A total of 31 organisations and individuals responded to the request for written evidence along with input from 2 Assembly Committees (CAL, ARD), 3 Executive Departments (DARD, DETI, DRD), 1 council (Carrickfergus Borough Council) and an MP (Mr J Shannon). A copy of the written submissions received by the Committee is included at Appendix 3 and additional information submitted at Appendix 6.
153. The Committee was first briefed by departmental officials about the consultation stages and policy development of the policy areas covered by the Bill on 1 March 2012 in advance of its second stage reading. The Committee was briefed by Assembly Research and Information Services (RaISe) and again by the Department on the detail of the bill on 19 April 2012 and agreed to oral briefings from the following organisations:
- Anglo Northern-Irish Fish Producers' Organisation
 - Belfast Harbour Commissioners
 - British Association for Shooting and Conservation
 - British Ports Association
 - Council for Nature Conservation and the Countryside
 - Countryside Alliance Ireland
 - Department of Agriculture and Rural Development – Fisheries Division
 - Institute for Archaeologists
 - Irish Federation of Sea Anglers
 - National Federation of Fishermen's Organisations
 - Northern Ireland Marine Task Force
 - Northern Ireland Renewables Industry Group
 - Northern Ireland Schools' Marine Bill Advocacy Group
 - Sport NI
 - University of Ulster Planning Division – Professor Greg Lloyd
 - University of Ulster Centre for Maritime Archaeology

154. The Committee participated in the Northern Ireland Marine Taskforce workshop on 22 March 2012 during which it listened to a number of stakeholder opinions on what they felt needed to be done to improve the Bill.
155. The Committee conducted a visit to Edinburgh on 25-26 April 2012 during which it held discussions with Marine Scotland, the Scottish Environmental Protection Agency, Historic Scotland, the Marine Conservation Society and the Scottish Fishermen's Federation.
156. The Committee conducted its formal Clause by Clause scrutiny of the Bill on 21 June 2012.

Report on the Marine Bill

157. At its meeting on 5 July 2012 the Committee agreed its report on the Bill and agreed that it should be printed.

Summary of Oral Briefings

Departmental briefing on the Bill, 1 March 2012

158. Departmental officials briefed the Committee on the Bill at its meeting on 1 March 2012 prior to its second stage reading. The officials provided members with an overview of the policies contained within the Bill before taking questions from members.
159. The main areas of discussion were the Wild Birds Directive, consultation across departments on the Bill, marine planning, resources, enforcement, the interdepartmental marine group, the possibility of EU funding, discussions with the fishing industry, the role of the Crown Estate, coastal erosion, the role of local authorities, the timescale for the Bill and consultation with the Republic of Ireland.

Departmental briefing on the Bill, 19 April 2012

160. Departmental officials briefed the Committee on the Bill at its meeting on 19 April 2012.
161. The Departmental officials provided members with an explanation of each clause.
- The main areas of discussion were a marine management organisation (MMO), the designation of historic sites, the level of fines, marine licensing, byelaws, marine conservation zones, the duties of public authorities, stakeholder involvement, Crown immunity, implementing the Bill in Foyle and Carlingford Loughs and European designated sites.

Northern Ireland Renewable Industry Group briefing on the Bill, 3 May 2012

162. Representatives from the Northern Ireland Renewable Industry Group (NIRIG) briefed the Committee on the Bill at its meeting on 3 May 2012.
163. The Group stated they hoped the Marine Bill would facilitate sustainable development and would have due regard to the marine policy statement and the high-level principles in it. NIRIG would really like to see the marine conservation zone designation process, as well as the management measures, not conflicting with the construction and operation of renewable energy. In relation to the duty on authorities to advise against activities that may interfere with the conservation objectives of an MCZ, NIRIG would like to ensure that there is some flexibility on those points.
164. Streamlining the process for consent applications for projects was also viewed as being very important and NIRIG welcomed the provision to achieve this in the Marine Bill. On common-law rights of navigation and fishing, NIRIG stated it was unfortunate that it was not dealt with in the Marine Bill.

165. Members questioned the representatives on marine conservation zones, sustainable economic development, wind farms, pre application discussions, marine management, the current value of renewable energy and tidal and wave energy.

Northern Ireland Marine Taskforce briefing on the Bill, 3 May 2012

166. The Northern Ireland Marine Taskforce (NIMTF) stated the Bill would be greatly strengthened by the inclusion of a commitment to the principle of sustainable development and protection for the Northern Ireland marine area. The group also felt that marine governance had not been properly addressed in the Bill and that a single unitary authority, such as a Northern Ireland MMO, would be the most environmentally efficient, economically coherent and sensible direction to go.
167. The group felt that socio-economic factors needed to be taken into consideration in the Bill and that a high level of stakeholder involvement was essential. On funding and resources, NIMTF felt there was lack of clarity in the Bill on how the activities and programme of work that will come from it would be funded. The NIMTF also believe that highly protected areas should be included in the Northern Ireland network and that a specific clause in the Bill would facilitate their designation.
168. In relation to marine planning, NIMTF stated that there is an apparent lack of integration between the future MCZ designation process and the marine spatial planning process. The group felt that there should be an explicit requirement in the Bill for the integration of the two processes and for synchronisation and joined-up time frames.
169. Members questioned the representatives on marine planning, MCZ designation, stakeholder engagement, NIMTF engagement with other interests such as fishing, the role of the Crown Estate, a MMO, the statement of public participation, the flexibility of the Bill, review periods and consultation with the Department.

Council for Nature Conservation and the Countryside briefing on the Bill, 3 May 2012

170. The Council for Nature Conservation and the Countryside (CNCC) stated it supported the creation of an MMO, as it is a vehicle to achieve co-ordination across departments. The group feels that the current Civil Service mechanisms make it extraordinarily difficult for the DOE to do its job and to deliver what is required by the Marine Strategy Framework Directive and the Marine Bill.
171. CNCC believes that because of the way in which the Marine Bill is framed, all too many clauses are stated in a discretionary form rather than a statutory form and that there is a need for an evidence-based approach to all of the activity that goes on. In relation to the designation of marine conservation zones, CNCC states that the history of designation tends to suggest that a more top-down but very careful, evidence-based approach is a better one and that there should be a category of highly protected marine conservation zones where there is a much greater presumption in favour of virtually no other activity within them.
172. Members questioned the representatives on the possible lack of expertise in the Department on marine governance, marine licensing, European infractions, the designation of Marine Conservation Zones, the role of local authorities, planning and capacity and climate change.

Countryside Alliance Ireland and British Association for Shooting and Conservation briefing on the Bill, 10 May 2012

173. Countryside Alliance Ireland (CAI) and the British Association for Shooting and Conservation (BASC) stated that they were not opposed to the Marine Bill in its entirety, as there are parts of the Bill that will undoubtedly benefit marine life and biodiversity. However, they had concerns in relation to other parts of the Bill that are ambiguous and, therefore, open to misinterpretation and potential abuse.

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174. CAI and BASC are not in favour of an MMO to manage the marine environment. They feel the responsibility for managing the marine environment should remain with the Department, which would allow the Committee to have oversight.
175. The organisations believe that a marine plan should come into effect 20 working days after being published by the Department, and not on publication. In relation to MCZs, the groups stated that irrefutable evidence must be provided to prove the necessity of an MCZ before one is designated.
176. In relation to Clause 24, byelaws for the protection of MCZs, the groups stated that it is completely unacceptable in its current format. The groups also proposed that the Department retains a register of interested parties who must be consulted as they feel the current definition is too loose and runs the risk of genuinely interested persons or organisations being excluded or overlooked. They further stated that the Bill must be fit for purpose and recognise the needs of the country sports community, which depends upon and engages in sustainable management of the rich marine resources of Northern Ireland.
177. Members questioned the representatives on consultation, stakeholder participation, Marine Conservation Zones, appeals, emergency byelaws, a marine management organisation and the interdepartmental working group.

Institute for Archaeologists and Centre for Maritime Archaeology briefing on the Bill, 10 May 2012

178. The Institute for Archaeologists (IFA) and the Centre for Maritime Archaeology (CMA) stated that they are supportive of the marine spatial planning system as it is a key mechanism to ensure that the marine historic environment and other interests are considered early, strategically and comprehensively. The groups are also strongly supportive of marine conservation zones as a mechanism to manage and protect the marine environment.
179. In relation to the marine historic environment, the groups believe that the 1973 Protection of Wrecks Act and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 are not adequate and that the Bill is an opportunity to significantly better manage and protect the marine historic environment. The groups hope that the Bill leads to a much more flexible management regime, with a focus on management rather than enforcement.
180. Members questioned the representatives on the Marine (Scotland) Act, maritime protection, recorded wrecks and sustainable development.

Sport Northern Ireland and Irish Federation of Sea Anglers briefing on the Bill, 10 May 2012

181. Sport NI stated that the Marine Bill could have presented an opportunity to help to redress the lack of access to the natural environment for physical recreation and the lack of rights of way on footpaths by making a commitment to developing coastal access in line with that in the UK Marine and Coastal Access Act 2009.
182. Sport NI also expressed concern that clause 24 could enable the Department to create by-laws that could remove the ancient right of navigation on the sea and concerns were also expressed about other aspects of clause 24, including the restriction of sustainable and economically beneficial activities, such as sea angling.
183. The Irish Federation of Sea Anglers (IFSA) stated that clause 24 of the Bill has the potential to allow the Department to prevent access to those marine areas by introducing byelaws that could stop recreational anglers collecting bait or even angling there. The Federation requested that it is included as stakeholders in the formulation of any new byelaws that the Department proposes for any marine protected area in the future.
184. Members questioned the representatives on coastal access, the designation of Marine Conservation Zones and a marine management organisation.
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National Federation of Fishermen's Organisation and Anglo North Irish Fish Producers' Organisation briefing on the Bill, 17 May 2012

185. The National Federation of Fishermen's Organisation (NFFO) and the Anglo North Irish Fish Producers' Organisation (ANIFPO) stated that they are not opposed to marine protected areas but that the process must allow for the appropriate application of real evidence in the decision-making process and must take into consideration issues such as displacement resulting from protected areas or marine conservation zones. The groups also feel that there is a government responsibility to manage and to mitigate any losses which should be reflected in the legislation.
186. Members questioned the representatives on the experience of protected areas in England, the statement of public participation, the designation of conservation zones, relationships with non-governmental organisations, the potential impact on the fishing industry, socio-economic interests and scientific evidence.

Professor Greg Lloyd, University of Ulster, briefing on the Bill, 17 May 2012

187. Professor Lloyd stated that the marine environment is one of the big challenges for modern societies, because it is a resource that, in scientific terms, is highly vulnerable and highly sensitive to change. Professor Lloyd felt that the mentality being brought to managing and planning for the marine environment is too dependent on terrestrial experience and thinking. The economic context was also a major concern and Professor Lloyd felt that if the idea behind the Bill was simply growth and development at any cost, things such as the marine environment may be at risk.
188. Members questioned Professor Lloyd on economic growth and protecting the environment, marine planning, stakeholder engagement, the Scottish Marine Act, conservation zones, scientific evidence and the capacity for marine planning and management.

Northern Ireland Schools' Marine Bill Advocacy Group briefing on the Bill, 24 May 2012

189. The Schools Group stated that they would welcome an amendment to the Bill to include highly protected areas. The group also stated that the benefits of conservation zones far outweigh any commercial gains from overfishing and overuse of the environment. From talking to local marine users for their research, the group found the consensus of opinion to be that the present system of managing our seas is simply not working.
190. The group feels that without an independent MMO or, at least, a single government body such as Marine Scotland, it will be impossible to create an effectively managed and coherent network of marine protected areas of local importance to Northern Ireland.
191. Members questioned the group on conservation zones, an MMO, economic considerations, consultation with fishermen, scientific evidence and leisure and tourism.

DARD briefing on the Bill, 24 May 2012

192. DARD stated that one of its major concerns was that offshore renewable designations would take place in the western Irish Sea which could mean that more area of sea could effectively be excluded from activities, including fishing, than is strictly necessary. The officials stated that the DARD Minister has suggested to her counterpart in DEFRA that any decisions about MCZs that are taken in the offshore region of the Northern Ireland fisheries zone should be deferred until the introduction of the NI Marine Bill so that MCZ designation can be handled in a proper coordinated way.
193. The officials answered members' questions on engagement with the fishing industry, no-take zones, the designation of conservation zones, scientific evidence, marine management and enforcement and sustainability.

British Ports Association and Belfast Harbour Commissioners briefing on the Bill, 24 May 201

194. The British Ports Association (BPA) and Belfast Harbour Commissioners (BHC) stated that they support the principles of the Bill and, if it is implemented in the right way, it should make a helpful contribution not only to conservation but to ensuring that the planning regime is efficient and fit for purpose.
195. The main area of concern was marine plans and the groups felt that there should be a single plan covering the whole of Northern Ireland which should not change the role of government in new developments with the commercial initiative remaining with the ports. The groups felt the plan should also be completed before any MCZs are identified and that there should also be a sufficient opportunity for proper consultation on the sites and their effects, particularly where it is probable that site protection will have a serious impact on commercial activity.
196. The organisations further stated that it is important that the Bill recognises and does not impede the vital role that ports play both for the Northern Ireland population and the economy and also, that matters of navigational safety are not compromised.
197. Members questioned the organisations on existing strategies and legislation, engagement with stakeholders, dredging, bye-laws, the designation of conservation zones, management and enforcement, marine licensing and emergency consultation.

Key issues

198. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Service and external organisations.

Clause-specific issues

Delegated powers (Clause 16 and Clause 29)

199. The Examiner of Statutory Rules advised the Committee that the Bill contains several powers to make subordinate legislation. Clauses 16 and 29 include provisions for the making of regulations on procedural matters which are subject to negative resolution.
200. The Committee was content with this level of scrutiny for these powers.
201. Other delegated powers are referred to within the appropriate clause or schedule.

Clarification of the boundaries of the inshore region (Clause 1)

202. The Committee sought clarification of the extent to which the Bill would apply to Carlingford Lough and Lough Foyle in response to concerns raised by some stakeholders. The Department confirmed that the Bill applies to both loughs and existing arrangements put in place under the Belfast Agreement for joint management of the two cross-border loughs, the Foyle, Carlingford and Irish Lights Commission's Lough Agency, will be employed to assist with the implementation of the Bill in these areas. The boundary order referred to in Clause 1(5) defines which part of the UK territorial sea is adjacent to Northern Ireland and which part is not.
203. The Committee was content with this explanation.

Duty to develop a marine plan for the Northern Ireland inshore region (Clause 2)

204. A number of stakeholders suggested that the wording of Clause 2 should be strengthened to make it a requirement for the Department to produce a marine plan. The Department explained that because the Clause also requires it to produce a plan wherever a marine policy statement is in place, and such a statement is in place for the whole of the Northern Ireland marine region, the wording does not need strengthening.
205. The Committee was content with this explanation.

Multiple marine plans (Clause 2)

206. Some stakeholders were concerned that the flexible wording of Clause 2 could allow for the Department to produce a number of marine plans or for a marine plan not to cover all inshore waters. The majority of respondents wanted one marine plan for the whole region.
207. The Department explained that it intends to have one overarching marine plan but it wants the flexibility to create some more localised and more detailed plans underneath for special areas that might require it. The wording of the Clause allows for this and also should unforeseen circumstances prevent them covering the whole of the Northern Ireland marine area with a marine plan for whatever reason. They stressed that the process will be developed over the next 20 years so that it can make sure it has plans to cover all Northern Ireland waters in the most suitable way.
208. The Committee was content with this explanation.

Guidance on ‘relevant considerations’ (Clause 2 & Clause 6)

209. The Committee asked for examples of what ‘relevant considerations’ might be and if this term could be made more specific in the Bill. The Department noted that the wording of this Clause allows the necessary flexibility for ‘relevant considerations’ to change over time. This will ensure it can accommodate advances in scientific knowledge, new economic priorities, new European legislation or the identification of new species etc. Also, the Marine Policy Statement could be amended and this may need to be taken into account as a ‘relevant consideration’ in due course.
210. The Department indicated that it would probably produce guidance on ‘relevant considerations’ with responsibilities for public authorities and how they react with the marine plan.
211. The Committee was content with this explanation.

Primacy for existing activities (Clause 2)

212. Some stakeholders, particularly from the fishing sector, argued that the marine plan should give primacy to existing activities. The Department stressed that the rationale of a marine plan is to identify existing activities so that they can be taken into consideration.
213. The Committee was content with this explanation.

Resolving policy conflicts (Clause 2)

214. Some stakeholders felt that resolving policy conflicts in accordance with sub-section 8 would be difficult and asked how would take place in practice. The Department explained that the marine plan would contain supporting information as well as policies but that the policy would have primacy. So, if a departmental policy was listed, but some of the supporting information conflicted with it, the policy would always prevail. The process of resolving policies would involve consultation with Departments and sectors, agreement with Departments and getting it through the Executive.
215. The Committee was content with this explanation.

Length of time between publication and implementation of a marine plan (Clause 2)

216. A number of organisations suggested that there should be a period of time before a marine plan can be implemented after it has been published. They wanted a suitable period of time after the plan had been published to allow adequate time for objections to be lodged and further consultation to be undertaken if needed and were concerned that they would have no time to lodge objections under the current proposals. The Department stressed that marine plan development is an inclusive process and a Statement of Public Participation will be developed to allow for that. The Department will be developing and discussing the marine plan over a period of two years during which there will be plenty of opportunity for stakeholders to engage. The Department also noted that it cannot amend the plan without going back out to consult.
217. The Committee was content with this explanation.

Statutory consultees (Clause 2)

218. Several organisations suggested that they should be included in a list of statutory consultees. However, the Department was adamant that it did not want to go down the route of starting to list different bodies as statutory consultees. It will be kept open-ended and all interested parties and the public must be consulted in the development of a marine plan.
219. The Committee was content with this explanation.

Synchronisation of marine plans and MCZs (Clause 2 & Clause 11)

220. Several organisations suggested that the marine planning process should be much more integrated and synchronised with the MCZ designation process. The representatives of ports and harbours however, were adamant that the marine plan should be put in place first before any MCZs were designated. The Department replied that the MCZ designation team is not a ‘nested part’ of the Marine Plan team but both teams will work in conjunction with each other during the designation of MCZs and the development of the Northern Ireland Marine Plan. It stressed that a high level of coordination is already taking place and that both the plan and MCZ designation are lengthy processes and are progressing in tandem.
221. The Committee was content with this explanation.

Withdrawal of marine plan (Clause 4)

222. A number of stakeholders were concerned that under this Clause the Department could withdraw a marine plan without another being in place. They suggested that the Department should be prevented from doing this unless a new plan has been prepared or will be brought forward within a specified period of time. The Department maintained that it needs the flexibility to be able to withdraw a plan in the extremely exceptional circumstances of it being required by the Secretary of State. It also noted that it would have to consult with the Executive before withdrawing a plan. The Department stressed that the only reason it would be withdrawing a plan would be to replace it with a new plan or with a process leading to a more up-to-date plan.
223. The Committee was content with this explanation.

Notification of withdrawal of a marine plan (Clause 4)

224. The Committee was concerned about the accessibility of the Belfast Gazette and recommended that the Department should also be required to publish its intention to withdraw a marine plan on its website.
225. The Committee agreed the Department’s suggested amendment to achieve this as follows:

“**Clause 4**, Page 3, Line 37

At end insert ‘—

- ‘(a) publish notice of the withdrawal of the marine plan on the Department’s website; and
(b)’”

Mitigating decisions or compensatory measures for deviating from a marine plan (Clause 6)

226. 226. Several stakeholders were concerned that if an enforcement or authorisation decision deviated from a marine plan there could be no mechanism for mitigation or compensatory measures. The Department explained that there would be a mechanism for such measures in the authorisation regime and therefore is not required in the Bill. The requirement for consultation will come under the authorisation or enforcement regime that is used, e.g. a marine licence for a wind turbine will already require consultation but under this Bill there will also be a requirement to state the reasons if that turbine deviates from the marine plan.
227. The Committee was content with this explanation.

Reporting on marine plans (Clause 7)

228. It was suggested to the Committee that the marine plan report should be conducted independently of the Department. The Department’s response indicated that it believed that the independent oversight of its report would come from laying it before the Assembly.
229. The Committee was content with this explanation.

Reporting period on marine plan (Clause 7)

230. Several stakeholders were concerned that the Bill stated an end to the reporting period of 2030. The Department explained that there is ongoing reporting; as long as a marine plan exists it must be reported on every three years ad infinitum. However, the marine planning process must be reported on every six years and by 2030 the process will be well established. If it is not working, the Department will know to look at different legislation.
231. The Committee was content with this explanation.

Appeal period (Clause 8)

232. The Committee was concerned that the six week period allowed for seeking leave for judicial review was too short and ran contrary to the generally accepted 12 week period. The Department argued that the provision mirrored that in the UK Marine and Coastal Access Act but subsequently put forward the following amendment which the Committee agreed:

“Clause 8, Page 6, Line 40

Leave out ‘6’ and insert ‘12’”

Grounds for appeal (Clause 8)

233. The Committee was concerned that the grounds for judicial review of a marine plan was limited to ultra vires or failure to comply with a procedural requirement and suggested that they should be expanded, at least to include irrationality. The Department argued that the rest of the UK marine planning authorities have similar provisions with regard to challenges in order to allow judicial review of a marine plan and that the standard grounds of judicial review are reflected in the grounds of challenge specified. It also stressed that it wanted anyone who has a problem with a marine plan to be able to go to the Department and recourse to the High Court should be the last resort.
234. The Committee accepted this argument and agreed to recommend that the Minister stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of a marine plan and that the High Court option should not be considered an alternative.

Duty to designate an MCZ (Clause 11)

235. Many stakeholders felt that the duty on the Department to designate an MCZ should be strengthened by making it a requirement. The Department argued that the terminology was quite explicit from a legal perspective leaving no doubt that the Department was obliged to designate an MCZ unless there was an exceptionally good reason not to. It also noted that changing the wording would put the provisions out of context with the rest of UK when there is an overarching requirement to have a coherent network of marine protected areas.
236. The Committee was content with this explanation.

Replacing the term MCZ with ‘Marine Protected Area’ (Clause 11)

237. Some stakeholders felt that the term ‘marine conservation zone’ should be changed to ‘marine protected area’ and the scope for which a designation could be made could then be extended beyond pure conservation. This would be comparable with the Scottish Marine Bill. The Department argued that the term ‘marine protected area’ is a generic term used for a number of designations under local, national or international law. For example, DARD Fisheries have introduced no-take zones that are referred to as marine protected areas. Also, as the Northern Ireland MCZs are to form part of a coherent network of MCZs the Department would prefer to retain the term MCZ as part of a specific designation process for nationally important sites in Northern Ireland.
238. The Committee was content with this explanation.

Impairment of shipping and port operations by an MCZ (Clause 11)

239. Representatives of harbours and ports were concerned that MCZs might restrict existing activities such as shipping and port operations. The Department stressed that this would not be the case. The Bill will be primary legislation but will not counteract other legislative requirements. Navigation routes are explicit and MCZs will not interfere with main shipping routes. Also, the Department has to take socio-economic factors into account when designating an MCZ which will include shipping and port operations.
240. The Committee was content with this explanation.

Designation of MCZs on historical and archaeological grounds (Clause 12)

241. A few stakeholders argued that it would be appropriate to extend the scope of MCZs to include the protection of historical and archaeological sites as has been done in the Scottish Marine Act. The Department pointed out that this Bill is different from that in Scotland, which includes provisions for several types of marine protected area including one for historical sites. In addition, unlike Scotland, Northern Ireland already has legislation in place, the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 which provides for the scheduling of any archaeological site to 12 nautical miles offshore. Also, historic wrecks in Northern Ireland waters are currently protected by the UK-wide Protection of Wrecks Act 1973.
242. The Committee was content with this explanation.

Highly protected areas (Clause 12)

243. Many stakeholders wanted to see provisions for the creation of highly protected areas. However, the Department argued that the conservation objectives of an MCZ will determine the level of protection required and that designation will be based on sound science. This eliminates the needs for additional measures for levels of protection.
244. The Committee was content with this explanation.

Factors for consideration when designating an MCZ (Clause 12)

245. A number of stakeholders involved in various marine activities suggested that the Department should be required to take economic and social consequences of a designation into account rather than having the option of considering them. The Department initially resisted this, arguing that it needed this flexibility in case a conservation zone contained a feature not commonly found elsewhere in the UK and it wanted to prioritise the environmental aspects.
246. The Committee was not content with this and recommended the Department consider amending the clause to make it a requirement to consider social and economic factors. It also recommended that the Department extends its consideration to cultural factors.
247. The Department subsequently agreed to the following amendments to this effect:

“Clause 12, Page 9, Line 16

Leave out ‘may’ and insert ‘must’”

“Clause 12, Page 9, Line 16

Leave out ‘or social’ and insert ‘, social or cultural’”

Publication of conservation objectives (Clause 12)

248. Stakeholders called for the Department to be required to publish robust supporting evidence to justify the conservation objectives of an MCZ. The Department acknowledged it may have been at fault in identifying and designating European sites under the Habitats Directive but is keen to have a much more open and transparent process for MCZs and will, as a matter

of course, publish its objectives. It wants to ensure everyone is involved from the outset and that everybody knows exactly where the MCZ is, where its boundaries are, what its features are and why they are important. It is therefore willing to publish the information and it will be in the guidance material on the designation process.

249. The Committee was content with this explanation.

Reference to conserving flora, fauna and habitat if they are not rare or threatened (Clause 12)

250. Several stakeholders questioned the need for flora, fauna and habitat to be protected if they are not rare or threatened. They felt that this approach could restrict some of their activities and called for the reference to be removed. The Department replied that under the Marine Strategy Framework Directive, on achieving and maintaining good environmental status, it is required to protect rare and threatened species and more representative species that form part of the overall network. It therefore wants to retain the flexibility this provision provides.

251. The Committee was content with this explanation.

Changes to MCZ boundaries (Clause 12)

252. Some stakeholders called for changes to MCZ boundaries as a result of economic or social consequences to be justified in writing. The Department agreed that this would be the case, noting that the MCZ process is designed to be flexible about which features are protected, the level of protection that is afforded and the zone's boundaries. As drafted the Bill will allow the Department to take account of any need to change the boundary and in such circumstances the Department will go through a consultation process and publish its findings.

253. The Committee was content with this explanation.

Relationship between protection afforded under the Marine Bill and that afforded by the Wildlife Order (Clause 12 & Clause 31)

254. Stakeholders with an interest in wildfowling were concerned that precedence might be given to a restriction provided by the Marine Bill that was inconsistent with the Wildlife and Natural Environment Act, e.g. the Marine Bill could prohibit or restrict the taking or killing of a bird that is allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985. The Department stressed that one piece of primary legislation does not have greater weight than another. However, it noted that while there are synergies between the two pieces of legislation, the Wildlife and Natural Environment Act applies more to individual species and MCZs are primarily for habitats, e.g. if someone kills a seahorse they will be liable under the Wildlife and Natural Environment Act but if they damage an MCZ they will be liable under the Marine Act. The Department believes there is no conflict.

255. The Committee was content with this explanation.

Consideration of the potential for renewable energy within an MCZ (Clause 12)

256. The renewable energy sector was keen to get reassurances that the MCZ designation process would consider renewable energy infrastructure. The Department responded that the flexible regime will take account of pipelines or power cables crossing the sea bed and it will work with all industries involved in this regard.

257. The Committee was content with this explanation.

Ecological consequences of the displacement of activities by an MCZ designation (Clause 12)

258. Fishing stakeholders noted that it was important that the ecological consequences of changing or restricting activities within an MCZ on the surrounding areas were taken into consideration as part of the designation process. The Department responded that the intention of having an MCZ was not to disrupt fishing or any other interests and nor was it to designate large areas of Northern Ireland's territorial waters in order to displace other industries. It acknowledged that as further MCZs are designated there might be a perception that certain activities are being squeezed into the remaining areas, however that was not its intention and socio-economics would be taken fully into account.
259. The Committee was content with this explanation.

MCZ designation process (Clause 13)

260. Many stakeholders expressed opinions on what should be taken into consideration during the designation of an MCZ including coastal erosion, the amorphous nature of marine boundaries, the three-dimensional dynamic characteristics of the marine environment, the inclusion of the seashore and the need for assessment of impacts and how these might be managed and mitigated for. The Department clarified that an MCZ is primarily a measure to conserve seabed habitats and flora and fauna in the sea. It does not relate directly to coastal erosion which is already covered by a different mechanism, the Bateman formula. It also insisted that the Clause already adequately covers consideration of the seashore.
261. The Committee was content with the explanation but felt that it was so important not to overlook or diminish the process of designating an MCZ that it would recommend that the Minister draws attention to it during Consideration Stage of the Bill.

Consultation (Clause 14)

262. Many stakeholders expressed concerns to the Committee that their views would not be taken fully into consideration prior to the designation of an MCZ, particularly for urgent designations. Also, that it was essential that the Department consulted on the measures that were to be introduced within an MCZ rather than just its boundaries. The Department stressed that this Clause places a specific requirement on it to consult on an MCZ designation order with anyone who is likely to be interested or affected by the designation process and this will include the management measures that are required. It had no objection to the idea of having a register of consultees but noted that this reduces its flexibility and risks overlooking someone that is not on the register.
263. The Committee agreed that it was not necessary to include a requirement for a consultee register in the Bill but sought reassurance from the Department that a comprehensive list of consultees would be kept. The Department agreed it would produce guidance that specified the process and how people are involved in it. Its intention is to be totally inclusive and transparent but would tailor who it consults according to geographical location, relevant and interest, etc.
264. The Committee recognised the difficulty of consulting when there was an urgent need to protect the area proposed to be designated as an MCZ but sought reassurance that measures would be put in place to at least inform affected people. The Department agreed to set out provisions for this in its guidance.
265. The Committee was content with this explanation.

Publication of MCZ orders (Clause 15)

266. Several stakeholders felt that it was important that the Department should be required to publish orders in a manner that would bring it to the attention of interested parties as well as

those affected by it. The Department pointed out that this Clause is about the publication of orders, not about consulting or informing people.

267. The Committee was content with this explanation.

Reviewing an order (Clause 17)

268. Some stakeholders suggested that this Clause should be extended to enable the Department to require the review of an order as well as the Secretary of State, Scottish Ministers or those in the Republic of Ireland, i.e. those whose waters Northern Ireland's territorial waters abut. The Department subsequently clarified that the current wording of the Clause allows for the Department amend or revoke a designation order.

269. The Committee was content with this explanation.

The creation of network of conservation sites (Clause 18)

270. A number of stakeholders felt that in addition to Northern Ireland's MCZs contributing to the UK's MCZ network target, Northern Ireland should have a target for an MCZ network of its own. The Department reminded the Committee that the overall context of MCZs was so that it could fulfil its obligations under the Marine Strategy Framework Directive. The UK has taken the decision to designate MCZs and marine protected areas in Scotland to meet that directive's requirement to achieve good environmental status by 2020. It does not believe Northern Ireland can be looked at in isolation because it is part of a bigger picture. However, it did suggest that there might be some MCZs that will be unique to Northern Ireland.

271. The Committee was content with this explanation.

Reports to the Assembly (Clause 19)

272. Some stakeholders suggested that reports to the Assembly should be extended beyond those parties that were 'restricted' by the MCZ to include those that are 'affected' by it. The Department clarified that this Clause requires it to report to the Assembly on the progress in designating a network of MCZs. The report would contain information on any restrictions placed on activities as part of the designation order. Consequently, the Department considered that use of the term 'affected' would be too broad.

273. The Committee felt that the point of the report would be to give the Assembly an update of MCZs, what the Department has done and what activities have been affected, e.g. if a pipeline has had to be rerouted to avoid an MCZ, the Committee felt this should be captured in the report if the Assembly is to get a true reflection of the impact of the MCZ network. The Department argued that having to include everything that didn't happen because of an MCZ would be too onerous.

274. Both the Department and the Committee recognised that whatever word was used in the Clause would be subject to interpretation. The Committee therefore agreed that it would be satisfactory to leave the Clause as drafted but would recommend that during Consideration Stage the Minister clarifies what will be included in the reports to the Assembly. It also agreed to recommend that the reports should include retrospective consideration of what impacts were anticipated prior to the designation of an MCZ compared with the impacts that were experienced in practice post designation.

Duties of public authorities in relation to MCZs (Clause 20)

275. A number of stakeholders were concerned about the expectations being placed on public authorities in relation to the Bill such as the assumption that public authorities will be able to judge the risk of "relevant events" and understand the terms "hindering the achievement of the conservation objectives", "having an adverse effect on the integrity of" and "capable of affecting (other than insignificantly)". Some also felt that this Clause places a less stringent burden on public authorities than Clause 21 puts on private individuals.

276. The Department explained that there is a general duty on all public authorities when they are undertaking their responsibility to regulate or licence activities in the marine environment to take MCZs into consideration and inform the Department if any activities they are licensing would impinge negatively on an MCZ. When the Department designates an MCZ public authorities have their own responsibilities and must have due regard to any advice that the Department gives them in relation to the MCZ such as the designation features. A public authority must have a very good reason for dismissing the advice because a third party could challenge its decision via judicial review.
277. The Department also clarified that if a public body licenses something that is detrimental to an MCZ the Department will ask for an explanation and try to mitigate the effect of the activity as much as possible but it cannot take another Department or public body to court.
278. The Committee asked if guidance would be produced and was informed that the Department would be producing guidance on public authorities once the Bill progresses through the Assembly process.
279. The Committee was content with this explanation.

Compensatory measures (Clause 21)

280. Several stakeholders suggested that explicit provision should be made in the Bill to require that compensatory measures are incorporated into the conditions of any permit. The Department pointed out however, that the authorisation does not come from the Bill but from whatever legislation public authorities use. They can put conditions on the authorisation and that is where it would be carried out. The Bill is merely saying that if an authorisation is given it must include conditions.
281. The Committee was content with this explanation.

Advice and guidance issued by the Department to public authorities (Clause 22)

282. Some stakeholders were concerned about the proposals associated with advice and guidance issued under this Clause suggesting it should include a requirement for it to be published and for the recipient of the advice and guidance to act in accordance with it. The Department clarified that advice and guidance issued under this Clause is solely to do with MCZs and public authorities.
283. The Committee was content with this explanation.

Written explanation for failure by public authorities to comply with duties (Clause 23)

284. Several stakeholders felt that this Clause should require a written explanation for failure to comply with duties rather than leaving it optional and also that it should include penalties or sanctions if a public authority covered by the Bill ignores the advice and guidance within a given time period. The Department reminded the Committee that it is unable to take court action against other public bodies. However, it did agree to consider making it a requirement for the Department to insist on a written explanation from a public authority for failure to comply with MCZ duties. In terms of introducing a time limit for the provision of a written response, the Department pointed out that it would be difficult to include a time limit when each occasion would be considered on a site-by-site basis and would depend on circumstances. Officials also pointed out that most public authorities have an internal requirement to respond to queries, typically two weeks, and would be criticised if they did not respond within that timeframe.
285. The Committee was largely content with this explanation but agreed to recommend that the Clause is amended to make it a requirement for the Department to request a written explanation from a public authority for failure to comply with its duties in relation to an MCZ and agreed the following amendment proposed by the Department:

“Clause 23, Page 16, Line 36,

Leave out paragraphs (a) and (b) and insert ‘the authority must provide the Department with an explanation in writing for the failure’.”

The appropriateness of byelaws for the protection of MCZs(Clause 24)

286. The Committee was concerned about the process of introducing byelaws and to what extent they would link to the MCZ order. The Department explained that during the designation process it would clarify the social, economic and cultural issues and then produce byelaws to protect the MCZ, if necessary. It stressed that the two processes were separate but related. In the designation process the Department would set out what the feature is, why it is important and what activities could be detrimental to it. If an activity is regulated, the duty will fall on the regulating authority to adhere to the requirements but if an activity is unregulated the Department will consider byelaws to manage the activity. These will be subject to full consultation.
287. The Examiner of Statutory Rules drew the Committee’s attention to the provisions for making byelaws which are intended to regulate local activities, and noted that they are not subject to any Assembly procedure.
288. The Committee felt that in order to alleviate concerns about the use of byelaws to limit or prohibit unregulated activities, it should recommend that during Consideration Stage the Minister should make it clear that the provision of byelaws will be at a level that is appropriate to meet the objectives of the MCZ but will not exceed what is required.

Interpretation of “any other part of Northern Ireland” (Clause 24)

289. A number of stakeholders were concerned that the use of the term “any other part of Northern Ireland” could be interpreted as literally anywhere in Northern Ireland and the Committee asked the Department to consider including an interpretation of its meaning. The Department replied that it does not believe an interpretation needs to be included because the boundaries of the byelaw will be confined to the limits of the MCZ which will be defined in the designation order.
290. The Committee was content with this explanation.

Emergency byelaws (Clause 26)

291. Several stakeholders were concerned that the Department would have the powers to bypass procedures for consultation to introduce emergency byelaws. The Department indicated that it would be producing guidance on byelaw procedure and emergency byelaws would be an important aspect of that. While it hopes never to use the procedure, the Department argued that it needs the powers because there could be unforeseen circumstances in which they are needed, e.g. a one-off power boat race close to a bird nesting site. Provision of information would be part of the process.
292. The Committee was content with this explanation.

Insufficient levels of fine (Clause 30)

293. A number of stakeholders felt the proposed level of fine for contravening a byelaw was too low. The Department explained that level 5 was the highest level of fine that could be apportioned to a byelaw and stressed that byelaws would be used for unregulated activities and therefore, by definition, tended to be more benign activities anyway. It also reminded the Committee that the Department has general enforcement powers which allow for a heavier fine for someone who wilfully destroys a site.
294. The Committee was content with this explanation.

Sea fishing defence (Clause 32)

295. Stakeholders acknowledged the necessity of including the sea fishing defence to meet the requirements of the European Common Fisheries Policy. However, it was pointed out by some stakeholders that this applies only to the 6-12 nautical mile zone and suggested that the defence should be removed from 0-6 nautical miles. The Department felt that this would be very difficult to enforce. It also argued that fishing activity should be treated equally, irrespective of whether it is two miles out or eight miles out.
296. The Committee was content with this explanation.

Power to remove or restrict the sea fishing defence (Clause 32)

297. The power in this Clause enables the Department, by order, to remove or restrict the application of the sea fishing defence. On the advice of the Examiner of Statutory Rules, the Committee questioned the appropriateness of using subordinate legislation to remove or restrict a defence set out in primary legislation. The Department acknowledged that the power to remove or restrict this defence being exercisable by order is not common practice but defended it on the basis that it will give the Department the flexibility to deal with any changes to the Common Fisheries Policy. It also noted that it is subject to Assembly scrutiny using the draft affirmative procedure and that these provisions are consistent with those in the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010.
298. The Committee was content with this explanation.

Fixed monetary penalties (Clauses 33-35 and Schedule 2)

299. The Examiner of Statutory Rules advised the Committee that Clauses 33-35 and Schedule 2 set out the framework for developing a system of fixed monetary penalties as an alternative to prosecution for contravention of byelaws. The Department is given the power in Clause 33 to make an order providing for this in relation to offences under Clause 30, which will be subject to draft affirmative procedure. He indicates that it is appropriate that the penalties that could be created are circumscribed on the face of the Bill and that the powers have an appropriate level of scrutiny.
300. However, he suggested that the proposed working of these provisions may cause difficulties in drafting the subordinate legislation as they appear overly complex for what they seem to do. He also indicates that there is no actual provision for an appeal tribunal.
301. The Department responded that it has already made a similar order for fixed and variable monetary penalties in regard to marine licensing under the Marine and Coastal Act 2009 which will serve as a useful template for framing the order for fixed penalties under the Marine Bill. In addition the Department indicated that it has consulted informally with the Department for Justice on the new proposed offences and penalties provisions included within the Bill. A formal appeals mechanism will help to ensure that civil sanctions are applied fairly and any revenue from the penalties will be paid into a consolidated fund. The Lands Tribunal Northern Ireland has, in principle, agreed to take on the role of appellate body, however this agreement will be dependent on the number and complexity of cases that arise.
302. The Committee was content with this explanation.

Definition of member state (Clause 36)

303. Some stakeholders wanted clarification of the meaning of 'member state' used within this Clause and suggested it might require definition within the Bill. The Department explained that references to 'member state' in this Clause are to membership of the EU and this is already defined in legislation.
304. The Committee was content with this explanation.

Appointment of enforcement officers (Clause 36)

305. Some stakeholders felt that the discretionary duty on the Department to appoint enforcement officers should be strengthened and made obligatory. The Department explained that it will be the enforcement body in the marine environment and will have the discretionary power to appoint others for that purpose.
306. The Committee was content with this explanation.

Loss of marine nature reserves (Clause 38)

307. The Committee was concerned that commencement of Part 3, and in particular this Clause, would result in the repeal of the Marine Nature Reserve (MNR) designation currently afforded to Strangford Lough. Members wanted to know what will happen in the interim before the designation of an MCZ. The Department explained that once the Bill becomes law Strangford Lough will no longer be an MNR but will still be afforded the protection. The Department will then enter into the process of designating it as an MCZ which is a lengthy process because it is a different rationale to an MNR as it takes in social, economic and cultural aspects. Until the Department makes the formal designation, it will be an MCZ in name only – a candidate MCZ. Nonetheless, the wording of the Bill requires it to be treated as an MCZ and it will have the protection of an interim byelaw.
308. The Committee discussed the impact of the repeal of the MNR status and was concerned that Strangford Lough, having been unique in this designation in Northern Ireland, would eventually become one of a number of MCZs. In terms of branding this might be detrimental to the area, but the Department stressed that the protection afforded by an MNR was not fit for purpose and would be much stronger under an MCZ. It also noted that branding could be applied to specific MCZs as well.
309. The Committee was content with this explanation.

Definition of seashore (Clause 39)

310. A number of stakeholders were concerned that the definition of seashore was too vague and could result in designations that extend significantly inland. They were also worried about the introduction of buffer zones that could restrict activities on land around the MCZ. The Department explained that the extension of an MCZ landwards will only apply to where the natural geographical features extend inland and there would be no buffers. In addition they stressed that there are restrictions within the Clause on how a seashore can be designated, e.g. if it is impossible or impractical to designate the MCZ without that part of the seashore. The Department stressed that physically it could not be miles inland but that it would be difficult to state a fixed limit.
311. The Committee was content with this explanation.

Effective management of the streamlined process (Clause 40)

312. A number of stakeholders stressed the need for effective management processes in relation to the issuing of licenses. The Department explained that it had been working with DETI to produce a memorandum of understanding of how they work together and this Clause puts in statute that, if they need to, the two departments can develop a process whereby two applications can be taken together and one of them can be deemed to have been made.
313. The Committee was content with this explanation.

Timetables for decisions on major projects (Clause 40)

314. Some stakeholders suggested that timetables should be introduced for a decision on strategically significant projects. The Department said it had considered this approach but decided against it as many different activities can take place in the marine environment and a timetable could restrict the time for decision-making. However, the Environment Agency

has set out targets for marine licensing and these could be promoted on the Department's website.

315. The Committee was content with this explanation.

Commencement (Clause 47)

316. A number of stakeholders were concerned at the proposal to delay the commencement of Part 3 of the Bill and called for it to be introduced along with the rest of the Bill on Royal Assent. The Department explained that commencement of Part 3 would repeal marine nature reserves and at the time of drafting it wanted to have sufficient flexibility to be ready in relation to continued protection of Strangford Lough. However, it is now of the opinion that it can enact the Bill in its entirety because it will allow Strangford Lough, for example, to become an automatic marine conservation zone on the day the Bill becomes law.

317. The Committee agreed to recommend that the Bill comes into force in its entirety when it receives Royal Assent and supported the Department's proposed amendments to achieve this as follows:

“Clause 41, Page 29, Line 13

Leave out paragraph (b)”

“Clause 47, Page 31, Line 2,

Leave out from beginning to ‘come’ in line 4 and insert ‘This Act comes’.”

“Clause 47, Page 31, Line 6

Leave out subsection (3).”

Timeframe for the delivery of marine plans (Schedule 1)

318. A number of stakeholders suggested that the Department should be bound to a timetable for the introduction of its marine plan. The Department argued that there will not just be a one-off plan and, being a process, it needs flexibility.

319. The Committee accepted the argument that the production of a marine plan should not be time bound by the Bill but agreed to recommend that during Consideration Stage the Minister commits to a timeframe for the delivery of a marine plan.

Savings provision (Schedule 1)

320. The Department informed the Committee that it was already commencing work on a marine plan but, in order to capture the work done in advance of the Bill coming into force, it was necessary to add a savings provision to the Bill. The Committee felt that the principle made sense but wanted reassurance that the process of developing the plan would be in accordance with the requirements that would come into force with the Bill.

321. The Department provided the following amendment which the Committee supported accordingly:

“Schedule 1, Page 37, Line 23

At end insert—

‘Action taken by the Department before commencement

16. –(1) This paragraph applies to any action taken by the Department before commencement which, after commencement, could have been taken in accordance with a provision of paragraphs 1-11.

- (2) *For the purposes of this Act, it is immaterial that action was taken before rather than after commencement; and any reference in this Schedule to an action taken under or for the purposes of any provision of paragraphs 1 to 11 is to be read accordingly.*
- (3) *In this paragraph “commencement” means the coming into operation of this Act.’”*

Issues not linked directly to existing clauses

General duties

322. Many stakeholders wanted to see the inclusion of an overarching aim or general duty outlining the responsibilities of the Department in relation to sustainable development and to mitigating and adapting to climate change when implementing the Bill. The Department maintained that this was unnecessary as these duties are already placed on all public authorities.
323. The Committee sought additional research which indicated that the Northern Ireland (Miscellaneous Provisions) Act 2008 places a duty on all public authorities in relation to sustainable development by requiring them to have regard to any strategy or guidance issued on it as follows:
- (1) *A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.*
- (2) *For this purpose—*
- (a) *a public authority must have regard to any strategy or guidance relating to sustainable development issued by the Department of the Environment, and*
- (b) *a public authority other than a Northern Ireland department must have regard to any guidance relating to sustainable development issued by a Northern Ireland department other than the Department of the Environment.*
324. The Department also noted that the Bill already includes several binding provisions in respect of sustainable development, e.g. paragraph 9 of Schedule 1 requires the Department to undertake a sustainability appraisal for the proposals for inclusion in a marine plan. In addition, the marine plan has to be in accordance with the Marine Policy Statement. Sustainable Development is very strongly emphasised in the Statement as it comes from the high-level marine objectives that have been set for the whole of the UK.
325. In relation to climate change, the research noted that the Sustainable Development Strategy makes a strong connection with the importance of adapting to and mitigating climate change. In addition, the UK Climate Change Act 2008 places a duty on the Department to develop a programme for adaptation to climate change as follows:
- 60 *Programme for adaptation to climate change: Northern Ireland*
- (1) *It is the duty of the relevant Northern Ireland department to lay programmes before the Northern Ireland Assembly setting out—*
- (a) *the objectives of the department in relation to adaptation to climate change,*
- (b) *the department’s proposals and policies for meeting those objectives, and*
- (c) *the time-scales for introducing those proposals and policies addressing the risks identified in the most recent report under section 56¹*

¹ a report on the impacts of climate change prepared by the Secretary of State, sent to all national authorities

326. The Department acknowledged that climate change is not explicitly referenced in the Bill but maintained it is one of the issues that must be taken into account when developing the marine plan and MCZs because mitigating the effects of climate change are reflected in the high level marine objectives in the Marine Policy Statement.
327. The Committee accepted that existing legislation places an obligation on public authorities to consider sustainable development and to mitigate and adapt to the effects of climate change. However, it also recognised that it would be inconsistent with current legislative practice in Northern Ireland to reiterate these duties or to make cross reference to them in this Bill. Members therefore felt that it was important for the Minister to place on record the applicability of these overarching duties to this Bill by drawing attention to it during Consideration Stage of the Bill and the Committee agreed to make this recommendation.

Coordination of marine functions across central government

328. Almost all stakeholders drew attention to the need for greater coordination of marine functions which are currently spread across six government departments. The majority of respondents suggested this could, and should, be achieved through the introduction of a marine management organisation, as in England and Wales. An alternative to this, suggested by some, would be the creation of a marine directorate, as in Scotland, but most made it clear that they would view this as an inferior compromise. A few stressed that they did not want an independent management body preferring that marine functions remained as they were within central government, with ministerial accountability and Assembly scrutiny.
329. The Department indicated that the principle forum for ensuring coordination between the departments with marine functions is the Inter-departmental Marine Coordination Group (IMCG) which it chairs. All departments with marine functions are represented on IMCG and officials from other relevant bodies such as the Loughs Agency. Its role is to provide advice on the scope and objectives of new marine policy proposals. However, the Committee was advised that this group acts purely in an advisory role, it has no legal status and policy and legislative control remains the responsibility of respective ministers.
330. In addition, DOE and NIEA are members of DETI's Offshore Renewable Energy Forum which informed DETI on its Offshore Renewable Energy Strategic Action Plan 2012-2020. DETI and DOE are developing a Memorandum of Understanding that should facilitate the development of administrative guidance for use by developers and officials on the streamlined processes associated with marine licenses and electricity consents. This will set out roles and responsibilities, including timelines for actions, to streamline the administration processes and provide clarity. The need for additional MOUs between Departments has been considered and will be developed further through the IMCG.
331. During its visit to Scotland the Committee was informed by Marine Scotland that the directorate approach had been chosen in Scotland because it was not considered a large enough region to justify the creation of a non-departmental public body to deliver its marine functions.
332. The Department informed the Committee that it continues to progress the necessary work on developing a full business case to advance the Minister's view that the full benefits of the Marine Bill can only be realised if they are implemented in an integrated and independent way. The business case is considering the status quo (IMCG), a marine directorate and a non-departmental public body as the main options.
333. The Committee recognised the need for better coordination of marine functions across departments. It felt that the Minister's current approach was appropriate but was keen to see an amendment to this Bill that would underpin greater cooperation between departments in delivering their marine functions under the Bill. The Committee considered introducing a requirement in the Bill that would require its implementation to be reviewed after a period of time. The Department noted that the Bill already required the Marine Plan to be reviewed

every 3 years and this would identify problems with implementation of the Bill. It stressed that there would be no Departmental amendment to the Bill in this regard.

334. Members felt that in the absence of any change to the management of marine functions by central government the most effective approach in the short term would be to strengthen and enhance the cooperation of departments and other public authorities that have responsibility for marine functions.
335. On 28 June 2012 the Committee considered an amendment that would require the Department, within one year of the Bill coming into force, to enter into arrangements with other relevant public authorities designed to promote effective co-ordination of policy development and implementation relating to marine functions in the Northern Ireland inshore region. The amendment would also require the Department to report to the Assembly on the effectiveness of these arrangements after three years.
336. The Committee welcomed the amendment, in particular the flexibility it would afford in the development of arrangements and the exercising of departmental functions. However, as initially drafted the amendment proposed a ‘one-off’ event of entering into arrangements and members wanted to give the clause more longevity.
337. On 5 July 2012 the Committee agreed the following clause accordingly:

“New clause

Arrangements to promote co-ordination of policy development and implementation relating to marine functions

- 1A.** – (1) The Department may enter into arrangements with relevant public authorities designed to promote effective co-ordination of policy development and implementation relating to marine functions exercised in the Northern Ireland inshore region.
- (2) The Department shall within one year of the date on which this Act receives Royal Assent publish details of the arrangements entered into under subsection (1).
- (3) The Department shall keep under review arrangements entered into under subsection (1).
- (4) The Department shall within three years of the date on which this Act receives Royal Assent lay before the Assembly a report on the effectiveness of the arrangements entered into under this section.
- (5) For the purposes of this section –
- (a) “the relevant public authorities” are-
- (i) the Department of Agriculture and Rural Development
- (ii) the Department of Culture, Arts and Leisure
- (iii) the Department of Enterprise, Trade and Investment
- (iv) the Department of Regional Development
- (v) the Agri-Food and Biosciences Institute
- (vi) the Foyle, Carlingford and Irish Lights Commission
- (vii) the Northern Ireland Environment Agency
- (b) “marine functions” are functions exercised-
- (i) under this Part, Part 3 or Part 4
- (ii) in respect of sea fisheries, navigation, planning, harbours, energy, leisure and tourism in so far as they are relevant to the marine environment”

Costs and resources

338. The Committee was concerned about the cost implications of the introduction of the Bill and its implementation and sought further information on anticipated resources.
339. It was informed by the Department that the introduction of the Bill would be funded within its existing allocation to take forward legislation. However, preparation, adoption and publication of the Marine Plan could cost approximately £1.87 million spread over 3-4 years which would include the staff required to prepare the plan, initial data collection and management, stakeholder engagement, public consultation, impact appraisals and other special services required.
340. Costs associated with the licensing provisions are not expected to be significant, estimated in the region of £1.5-4k.
341. The cost of marine conservation is estimated at £195-221k per site in initial one-off costs and approximately £163k per site in annual costs over a period of up to 5 years to complete the designation process.
342. The Committee welcomed the information provided but was concerned that in the absence of any indication of how many MCZ sites are anticipated the costs associated with MCZ designation are largely unknown.

Public rights of navigation

343. The Committee was alerted to concerns of the renewables industry that common law rights of fishing and navigation could hinder their progress when trying to install off shore renewables energy infrastructure. They suggested that this had already been recognised and addressed in energy legislation in Scotland and England but had no equivalent in Northern Ireland.
344. The Department indicated that this issue is the responsibility of DETI which is taking action to address it and the Committee was content that no further provision needed to be made in the Bill.

Dredging protocol

345. Following a briefing from representatives of ports and harbours the Committee sought further information on the maintenance dredging protocol and how it will work in practice. The Department advised that the development of a protocol for maintenance dredging is a measure within the River Basin Management Plan Programme of Measures and is being taken forward by DRD. It will set out best practice for maintenance dredging activities in order to help commercial port authorities comply with environmental European Directives.
346. The Department also noted that before a marine licence is granted for the disposal of dredged material at sea, the applicant must demonstrate that sea disposal is the best practicable environmental option and that it has exhausted other beneficial reuses which will then be subject to other authorisations.
347. The Committee was content with this response and agreed that the issue need not be addressed within the Bill.

Coastal Access

348. A few stakeholders suggested that this Bill should be used to introduce a commitment to extending the coastal access around Northern Ireland. The Department responded that, from its perspective, coastal access, like all access, is deal with at local council level. It stressed that it has not been inundated with requests and feels that the coast is already well opened up. Where there are ongoing restrictions it does not see the need to legislate.
349. The Committee was content with this explanation.

Clause by clause consideration of the Bill

350. The Committee conducted its clause by clause scrutiny of the Bill on 21 June 2012 – see Appendix 2. The Committee supported 5 proposed amendments brought forward by the Department in response to Committee recommendations. On 28 June 2012 the Committee agreed another amendment to meet its own needs. Decisions for each clause and schedule are outlined below:

Part 1 – The Northern Ireland Inshore Region

Clause 1 – The Northern Ireland Inshore Region

351. At the meeting on 21 June the Committee was content with the clause as drafted. In addition the Committee agreed to recommend that during Consideration Stage the Minister makes reference to the duties placed on all public bodies in delivering all their functions in relation to sustainable development by the Northern Ireland (Miscellaneous Provisions) Act 2006 and to climate change by the UK Climate Change Act 2008.

Part 2 – Marine Planning

Clause 2 – Marine plans for the Northern Ireland inshore region

352. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 3 – Amendment of marine plan

353. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 4 – Withdrawal of marine plan

354. At the meeting on 21 June the Committee was content with the clause subject to the departmental amendment to require it to publish its intention to withdraw a marine plan on its website as follows:

“**Clause 4**, Page 3, Line 37

At end insert ‘—

- ‘(a) publish notice of the withdrawal of the marine plan on the Department’s website; and
(b)’”

Clause 5 – Duty to keep relevant matters under review

355. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 6 – Decisions affected by a marine plan

356. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 7 – Monitoring of, and periodical reporting on, marine plans

357. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 8 – Validity of marine plans

358. At the meeting on the 21 June the Committee was content with the clause subject to an amendment to allow a marine plan to be challenged legally up to 12 weeks after its publication as follows:

“Clause 8, Page 6, Line 40

Leave out ‘6’ and insert ‘12’”

359. In addition the Committee agreed to recommend that the Minister stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of a marine plan and that the high court option should not be considered an alternative.

Clause 9 – Powers of the High Court on an application under section 8

360. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 10 – Interpretation of this Part

361. At the meeting on 21 June the Committee was content with the clause as drafted.

Part 3 – Marine Protection

Clause 11 – Designation of marine conservation zones (MCZs)

362. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 12 – Grounds for designation of MCZ

363. At the meeting on 21 June the Committee was content with the clause subject to Departmental amendments making it a requirement to consider social and economic factors and to include a reference to cultural factors as follows:

“Clause 12, Page 9, Line 16

Leave out ‘may’ and insert ‘must’”

“Clause 12, Page 9, Line 16

Leave out ‘or social’ and insert ‘, social or cultural’”

Clause 13 – Further provision as to orders designation MCZs

364. At the meeting on 21 June the Committee was content with the clause as drafted. In addition, the Committee agreed to recommend that during Consideration Stage the Minister stresses the importance of the MCZ designation process.

Clause 14 – Consultation before designation

365. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 15 – Publication of orders

366. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 16 – Hearings

367. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 17 – Review of orders

368. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 18 – Creation of network of conservation sites

369. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 19 – Reports

370. At the meeting on 21 June the Committee was content with the clause as drafted. In addition the Committee agreed to recommend that during Consideration Stage the Minister should clarify what will be included in reports to the Assembly and suggested that reports should include retrospective consideration of what impacts were anticipated prior to the designation of an MCZ compared with the impacts that were experienced in practice post designation.

Clause 20 – General duties of public authorities in relation to MCZs

371. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 21 – Duties of public authorities in relation to certain decisions

372. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 22 – Advice and guidance by the Department

373. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 23 – Failure to comply with duties etc.

374. At the meeting on 21 June the Committee was content with the clause subject to a Departmental amendment requiring a public authority to provide a written explanation if it fails to comply with the duties required by an MCZ as follow:

“**Clause 23**, Page 16, Line 36,

Leave out paragraphs (a) and (b) and insert ‘the authority must provide the Department with an explanation in writing for the failure’.”

Clause 24 – Byelaws for protection of MCZs

375. At the meeting on 21 June the Committee was content with the clause as drafted. In addition the Committee agreed to recommend that during Consideration Stage the Minister stresses that the provision of byelaws will be as appropriate to meet the objectives of the MCZ but will not exceed what is required.

Clause 25 – Byelaws: procedures

376. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 26 – Emergency byelaws

377. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 27 – Interim byelaws for MCZ

378. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 28 – Byelaws: supplementary

379. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 29 – Hearings

380. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 30 – Offence of contravening byelaws

381. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 31 – Offence of damaging, etc. protected features of MCZ

382. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 32 – Exceptions

383. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 33 – Fixed monetary penalties

384. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 34 – Fixed monetary penalties: procedure

385. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 35 – Fixed monetary penalties: further provision

386. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 36 – Enforcement officers

387. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 37 – The common enforcement powers

388. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 38 – Repeals and transitional

389. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 39 – Interpretation of this Part

390. At the meeting on 21 June the Committee was content with the clause as drafted.

Part 4 – Marine Licensing: Generating Stations

Clause 40 – Special procedure for applications relating to generating stations

391. At the meeting on 21 June the Committee was content with the clause as drafted.

Part 5 – Supplementary

Clause 41 – Regulations and orders

392. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 42 – Offences: companies, etc.

393. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 43 – Disapplication of requirement for consent to certain prosecutions

394. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 44 – Supplementary, incidental, consequential, transitional provision etc.

395. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 45 – Crown application

396. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 46 – Interpretation

397. At the meeting on 21 June the Committee was content with the clause as drafted.

Clause 47 – Commencement

398. At the meeting on 21 June the Committee was content with the clause subject to Departmental amendments bringing Part 3 of the Bill into force along with the rest of the Bill on Royal Assent as follows:

“**Clause 41**, Page 29, Line 13

Leave out paragraph (b)”

“**Clause 47**, Page 31, Line 2,

Leave out from beginning to ‘come’ in line 4 and insert ‘This Act comes’.”

“**Clause 47**, Page 31, Line 6

Leave out subsection (3).”

Clause 48 – Short Title

399. At the meeting on 21 June the Committee was content with the clause as drafted.

Schedules

Schedule 1 – Marine plans: preparation and adoption

400. At the meeting on 21 June the Committee was content with the schedule subject to a Departmental amendment introducing a savings provision to preserve work done on a marine plan in advance of the Marine Bill coming into force as follows:

“**Schedule 1**, Page 37, Line 23

At end insert —

‘Action taken by the Department before commencement

16. — (1) This paragraph applies to any action taken by the Department before commencement which, after commencement, could have been taken in accordance with a provision of paragraphs 1 to 11.

(2) For the purposes of this Act, it is immaterial that the action was taken before rather than after commencement; and any reference in this Schedule to an action taken under or for the purposes of any provision of paragraphs 1 to 11 is to be read accordingly.

(3) In this paragraph “commencement” means the coming into operation of this Act.’.”

401. In addition the Committee agreed to recommend that during Consideration Stage the Minister commits to a timeframe for the delivery of a marine plan.

Schedule 2 – Further provision about fixed monetary penalties under section 33

402. At the meeting on 21 June the Committee was content with the schedule as drafted.

Long title

403. At the meeting on 21 June the Committee was content with the long title as drafted.

New Clause

404. At the meeting on 28 June the Committee agreed to recommend the inclusion of a new clause to promote co-ordination of policy development and implementation of marine functions by public authorities. On considering a draft amendment, members agreed that

it should be adjusted to ensure longevity rather than a one-off event and the following amendment was agreed on 5 July 2012:

“New clause

Arrangements to promote co-ordination of policy development and implementation relating to marine functions

- 1A.** – (1) The Department may enter into arrangements with relevant public authorities designed to promote effective co-ordination of policy development and implementation relating to marine functions exercised in the Northern Ireland inshore region.
- (2) The Department shall within one year of the date on which this Act receives Royal Assent publish details of the arrangements entered into under subsection (1).
- (3) The Department shall keep under review arrangements entered into under subsection (1).
- (4) The Department shall within three years of the date on which this Act receives Royal Assent lay before the Assembly a report on the effectiveness of the arrangements entered into under this section.
- (5) For the purposes of this section –
- (a) “the relevant public authorities” are-
 - (i) the Department of Agriculture and Rural Development
 - (ii) the Department of Culture, Arts and Leisure
 - (iii) the Department of Enterprise, Trade and Investment
 - (iv) the Department of Regional Development
 - (v) the Agri-Food and Biosciences Institute
 - (vi) the Foyle, Carlingford and Irish Lights Commission
 - (vii) the Northern Ireland Environment Agency
 - (b) “marine functions” are functions exercised-
 - (i) under this Part, Part 3 or Part 4
 - (ii) in respect of sea fisheries, navigation, planning, harbours, energy, leisure and tourism in so far as they are relevant to the marine environment”



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Thursday 1 March 2012, Senate Chamber, Parliament Buildings

- Present:** Ms Anna Lo MBE (Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Francie Molloy
Lord Morrow
Mr Peter Weir
- In Attendance:** Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)
- Apologies:** Mr Simon Hamilton (Deputy Chairperson)

8. **Departmental briefing on the Marine Bill**

Departmental Officials briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Marine Planning, Marine Nature Conservation and Marine Licensing.

10:53am Mr Dallat rejoined the meeting.

10:54am Mr Boylan rejoined the meeting.

10:58am Mr Campbell joined the meeting.

11:22am Lord Morrow left the meeting.

11:31am Mr McGlone left the meeting.

Agreed: That a letter is sent to the Department to ask about the indicative costs of the introduction of the Bill, whether EU funding can be accessed to implement the Bill and what mechanisms will be put in place to ensure agreement between the relevant Departments when it comes to enacting the legislation.

Anna Lo, MLA

Chairperson, Committee for the Environment

8 March 2012

[EXTRACT]

Thursday 8 March 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

8. Marine Bill

The Chairperson informed members that they had been provided with a Draft Committee motion to extend the Committee Stage of the Bill until 6 July 2012.

Agreed: That the Committee motion is signed by the Chairperson and forwarded to the Business Office.

The Chairperson informed members that they had been provided with a Draft timeline for Committee Stage of the Bill.

Agreed: That the timeline is accepted and a letter is sent to the Department to inform them that members have agreed the extended Committee stage of the Bill.

The Chairperson informed members that they had been provided with a Draft Stakeholder list.

Agreed: That all the stakeholders listed are invited to submit written evidence on the Marine Bill and that a number of groups/individuals are added to the list.

The Chairperson informed members that they had been provided with a Draft signposting advert.

Agreed: To inform the NI Assembly Communication Office that this advert can be published.

The Chairperson informed members that they had been provided with a Delegated powers memorandum.

Agreed: That the Delegated powers memorandum is forwarded to the Examiner of Statutory Rules for comment.

The Chairperson informed members that they had been provided with an editorial on the Marine Bill.

Agreed: That the editorial is amended as instructed and forwarded to the NI Assembly Communications Office for circulation.

Anna Lo, MLA
Chairperson, Committee for the Environment
15 March 2012

[EXTRACT]

Thursday 19 April 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

3. **Assembly Research briefing on Marine Bill**

An Assembly Researcher briefed the Committee and answered members' questions on the Marine Bill.

10:24am Mr Boylan joined the meeting.

The main area of discussion was a comparison of the Bill with marine legislation in England, Scotland and Wales.

4. **Departmental briefing on Marine Bill**

Departmental Officials briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Marine Planning, Marine Protection, Marine Licensing and the individual clauses within each of these areas.

11:22am Mr Hamilton left the meeting.

Agreed: That a letter is sent to the Department to ask for more information on the existing legislative capacity to deal with historical sites in Northern Ireland's inshore region and the possibility of introducing time limits in relation to paragraph 13 of schedule 1.

11:44am Mr Hamilton re-joined the meeting.

Anna Lo, MLA
Chairperson, Committee for the Environment

03 May 2012

[EXTRACT]

Thursday 3 May 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

6. **Assembly Research briefing paper on Marine Bill**

The Chairperson informed members that they had been provided with an Assembly Research briefing paper on the Marine Bill.

Agreed: That an Assembly Researcher is invited to brief the Committee on this paper.

Members noted a Departmental reply to Committee queries on the Marine Bill.

7. **Marine Bill submissions**

The Chairperson informed members that they had been provided with submissions to the Committee's call for evidence.

Agreed: That the following organisations are invited to brief the Committee on their Marine Bill submissions: Countryside Alliance Ireland/BACS; Institute for Archaeologists/Centre for Maritime Archaeology; Northern Ireland Schools' Marine Bill Advocacy Group; Anglo-Northern Irish Fish Producers Organisation; Professor Greg Lloyd; DARD; Irish Federation of Sea Anglers; Belfast Harbour and Port Authority.

11:03am Mr Boylan re-joined the meeting.

8. **Northern Ireland Marine Taskforce briefing on Marine Bill**

Representatives from the NI Marine Taskforce briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were the Northern Ireland Marine Task Force submission in relation to the Marine Bill and their proposals for amendments to the Bill.

11:20am Mr Hamilton left the meeting.

11:52am Mr Campbell left the meeting.

Agreed: That a letter is sent to the Department asking for clarification on the inter-departmental management group; specifically its legal status, its membership and its authority.

9. Northern Ireland Renewable Industry Group (NIRIG) briefing on Marine Bill

Representatives from the NI Renewable Industry Group briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Northern Ireland Renewable Industry Group submission in relation to the Marine Bill and their proposals for amendments to the Bill.

Agreed: That a letter is sent to NIRIG asking for further information on common law rates on fishing and navigation. Also ask for further information on the economic value of the renewable energy sector in Northern Ireland.

10. Council for Nature Conservation and the Countryside (CNCC) briefing on Marine Bill

Representatives from the Council for Nature Conservation and the Countryside briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Council for Nature Conservation and the Countryside submission in relation to the Marine Bill and their proposals for amendments to the Bill.

Anna Lo, MLA

Chairperson, Committee for the Environment

10 May 2012

[EXTRACT]

Thursday 10 May 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Gregory Campbell
Mr Tom Elliott
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

7. **Marine Bill submissions**

The Chairperson informed members that they had been provided with submissions to the Committee's call for evidence.

Agreed: That the submissions are included in the final Committee report.

8. **Countryside Alliance/British Association for Shooting and Conservation briefing on Marine Bill**

Representatives from the Countryside Alliance and British Association for Shooting and Conservation briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were the Countryside Alliance and British Association for Shooting and Conservation submissions in relation to the Marine Bill and their proposals for amendments to the Bill.

Agreed: That a letter is sent to the Department asking for clarification on Clause 24 and Clause 39(b) and an indication of the impact the Department expects marine conservation zones to have on wildfowling, marine sporting activities and sea angling. Also to ask if greater precedence will be given to protection provided by marine protected zones than that provided by the Wildlife and Natural Environment Act.

9. **Institute for Archaeologists/Centre for Maritime Archaeology briefing on Marine Bill**

Representatives from the Institute for Archaeologists and Centre for Maritime Archaeology briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Institute for Archaeologists and Centre for Maritime Archaeology submissions in relation to the Marine Bill and their proposals for amendments to the Bill.

10. **Sport NI/Irish Federation of Sea Anglers briefing on Marine Bill**

Representatives from Sport NI and the Irish Federation of Sea Anglers briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Sport NI and Irish Federation of Sea Anglers submissions in relation to the Marine Bill and their proposals for amendments to the Bill.

Anna Lo, MLA

Chairperson, Committee for the Environment

17 May 2012

[EXTRACT]

Thursday 17 May 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow

9. **Marine Bill**

The Chairperson informed members that they had been provided with a copy of a letter from the Department of Regional Development in relation to the Marine Bill.

Agreed: That the Committee will accept a late submission from DRD.

10. **National Federation of Fishermen's Organisations/Anglo-Northern Ireland Fish Producers' Organisation briefing on the Marine Bill**

Representatives from the National Federation of Fishermen's Organisations/Anglo-Northern Ireland Fish Producers' Organisation briefed the Committee and answered members' questions on the Marine Bill.

11:15am Mr Hamilton re-joined the meeting.

11:28am Mr Dallat re-joined the meeting.

The main areas of discussion were the National Federation of Fishermen's Organisations/Anglo-North Ireland Fish Producers' Organisation submission in relation to the Marine Bill and their proposals for amendments to the Bill.

Anna Lo, MLA

Chairperson, Committee for the Environment

24 May 2012

[EXTRACT]

Thursday 24 May 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mr Chris Hazzard
Mrs Dolores Kelly
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

6. Marine Bill

The Chairperson informed members that they had been provided with a paper from the Examiner of Statutory Rules on the delegated powers of the Bill.

Agreed: That this paper is forwarded to the Department for comment and ask if they have consulted with the Department for Justice on its tribunal proposals.

Members noted a Departmental reply to Committee queries on the Inter-Departmental Marine Co-ordination Group and common law rights on navigation and fishing activities.

The Chairperson informed members that they had been provided with a Departmental reply to Committee queries following the briefing sessions on 10 May.

Agreed: That a copy of the reply is forwarded to the British Association for Shooting & Conservation and Countryside Alliance Ireland for comment.

The Chairperson informed members that they had been provided with a Department of Enterprise, Trade and Investment submission to the Committee's call for evidence.

Agreed: That the Committee will accept the late submission from the Department of Enterprise, Trade and Investment.

The Chairperson informed members that they had been provided with a Department of Culture, Arts and Leisure submission to the Committee's call for evidence.

Agreed: That the Committee will accept the late submission from the Department of Culture, Arts and Leisure.

Members noted a reply to an Assembly question on Clause 24 of the Bill.

The Chairperson informed members that they had been provided with a letter from the Council for Nature Conservation and the Countryside (CNCC) following their briefing on 10 May.

Agreed: That a copy of the letter is forwarded to the Department for comment.

The Chairperson informed members that they had been provided with a submission from RYA and RYA Northern Ireland.

Agreed: That the Committee will accept the late submission from RYA and RYA Northern Ireland.

7. Professor Greg Lloyd briefing on Marine Bill

Professor Greg Lloyd briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were Professor Greg Lloyd's submission in relation to the Marine Bill and his proposals for amendments to the Bill.

10:51am Mr Weir left the meeting.

11:09am Mr Hamilton left the meeting.

11:16am Mr Campbell re-joined the meeting.

8. Department of Agriculture and Rural Development (DARD) briefing on Marine Bill

DARD officials briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were the Department of Agriculture and Rural Development submission in relation to the Marine Bill and their proposals for amendments to the Bill.

11:21am Mr Hazzard left the meeting.

11:33am Mr Hamilton re-joined the meeting.

9. NI Schools Advocacy Group briefing on Marine Bill

Representatives from the NI Schools Advocacy Group briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were the NI Schools Advocacy Group submission in relation to the Marine Bill and their proposals for amendments to the Bill.

12:27pm The Chairperson left the meeting. The Deputy Chairperson assumed the Chair.

12:28pm Mr Campbell left the meeting.

12:33pm Mrs Kelly left the meeting.

Anna Lo, MLA

Chairperson, Committee for the Environment

31 May 2012

[EXTRACT]

Tuesday 29 May 2012, Room 29, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mr Chris Hazzard
Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

4. **Marine Bill**

Members noted an e mail from NILGA in relation to a Marine Management Organisation.

The Chairperson informed members that they had been provided with a late submission from the Department of Regional Development.

Agreed: That the Committee will accept the late submission from the Department of Regional Development.

5. **British Ports Association/Belfast Harbour Commissioners briefing on Marine Bill**

Representatives from the British Ports Association and the Belfast Harbour Commissioners briefed the Committee and answered members' questions on the Marine Bill.

The main areas of discussion were the British Ports Association and Belfast Harbour Commissioners submission in relation to the Marine Bill and their proposals for amendments to the Bill.

1:24pm Mr Hazzard left the meeting.

1:25pm Mrs Kelly re-joined the meeting.

1:45pm Mr Weir left the meeting.

1:55pm Mr Campbell left the meeting.

1:57pm Mr Molloy left the meeting.

Agreed: That a letter is sent to the Department asking for clarification on the dredging protocol. Also ask what flexibility exists within the licensing process to allow the dredged material to be recycled or reused.

Anna Lo, MLA
Chairperson, Committee for the Environment

07 June 2012

[EXTRACT]

Thursday 31 May 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Cathal Boylan

6. **Marine Bill**

Members noted a copy of an e mail from Newtownards Wildfowlers Association on the Marine Bill.

7. **Marine Bill – informal clause by clause consideration**

The Committee commenced informal clause by clause consideration of the Marine Bill with discussion on issues raised by stakeholders in relation to Clauses 1 – 12.

The main areas of discussion were the Northern Ireland Inshore Region, Marine Planning and the designation of Marine Conservation Zones.

Agreed: In relation to Clause 1, that a research paper is requested on the robustness of other legislation that places a duty on public authorities to take sustainable development and climate change into account when implementing the Marine Act.

11:30am Mr Campbell left the meeting.

Agreed: In relation to Clause 4, that the Department considers adding the Departmental website as an outlet for publishing information and informing consultees and to consider rewording so that a marine plan cannot be withdrawn unless another has been or will be drawn up.

11:57am Mrs Kelly left the meeting.

11:58am Mr Hazzard left the meeting.

12:14pm Mrs Kelly re-joined the meeting.

Agreed: In relation to Clause 8, that the Department considers amending the 6 week timeframe for appeals, the reference to 2 specific grounds for appeal and what impact this might have on other grounds and gives a further explanation of the established Judicial Review process.

Agreed: In relation to Clause 11, that the Department provides further information on the designation of historic sites under MCZs.

12:42pm Mr Molloy left the meeting.

12:43pm Mr Elliott left the meeting.

Agreed: In relation to Clause 12, that the Department considers the inclusion of the word 'cultural' and considers amending the word 'may' for 'shall'; both in subsection 7.

Anna Lo, MLA

Chairperson, Committee for the Environment

07 June 2012

[EXTRACT]

Thursday 7 June 2012, The Meeting Room, Ecos Centre Ballymena

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr John Dallat
Mr Tom Elliott
Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Peter Weir

6. **Marine Bill**

The Chairperson informed members that they had been provided with a Departmental reply to a Council for Nature Conservation and the Countryside (CNCC) letter on shoreline management plans.

Agreed: That the Departmental reply is included in the final Committee report.

The Chairperson informed members that they had been provided a copy of the Examiner of Statutory Rules paper on delegated powers.

Agreed: That the paper is included in the final Committee report.

Members noted a reply from the Countryside Alliance Ireland to the Departmental response on Marine Conservation Zones.

7. **Marine Bill – informal clause by clause consideration**

The Committee continued the informal clause by clause consideration of the Marine Bill with discussion on issues raised by stakeholders in relation to Clauses 13 – 35.

The main areas of discussion were Marine Conservation Zones, the duties of public authorities and the byelaws for the protection of Marine Conservation Zones.

Agreed: In relation to Clause 17, that the Department considers an amendment to enable the Department to amend or revoke an order.

Agreed: In relation to Clause 19, that the Department considers an amendment to change 'restricted' to 'affected' in sub-section 2(c).

Agreed: In relation to Clause 23, that the Department considers an amendment to require an explanation for failure to comply by changing 'may' to 'must' or 'shall' in sub-section 2(a).

12:09pm Mrs Kelly left the meeting.

Agreed: In relation to Clause 24, that the Department considers including in this clause an interpretation of 'any other part of Northern Ireland' in sub-section 2.

12:16pm Mr Campbell left the meeting.

Agreed: In relation to Clause 26, that the Department provides clarity on what constitutes an emergency.

12:22pm Mr Molloy joined the meeting.

Anna Lo, MLA

Chairperson, Committee for the Environment

14 June 2012

[EXTRACT]

Tuesday 12 June 2012, Room 29, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mr Chris Hazzard
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

2. **Marine Bill – informal clause by clause consideration**

The Chairperson informed members that they had been provided with a Departmental reply to issues raised during the 2nd Stage debate of the Bill.

Agreed: That any issues not already covered are incorporated into the Committee report.

12:52pm Mr Elliott joined the meeting.

3. **Marine Bill - informal clause by clause consideration**

The Committee continued the informal clause by clause consideration of the Marine Bill with discussion on issues raised by stakeholders in relation to Clauses.

The main areas of discussion were Marine Licensing and the integration and coordination of marine functions.

Agreed: In relation to clause 36, that the Department considers if the term ‘member State’ needs to be defined in the Bill.

Agreed: In relation to clause 47, that the Department forwards a copy of the amendment which will ensure the whole Bill comes into effect on Royal Assent.

1:40pm Mr Weir left the meeting.

Agreed: That the Department forwards a copy of the amendment which will introduce a savings provision for work done on the marine plan to date and details of the work that has been done and is likely to be done before Royal Assent.

Agreed: That the Department provides an update on the work done to date on improving co-ordination of marine functions.

1:53pm Mr Campbell left the meeting.

1:55pm Mr Hazzard left the meeting.

1:59pm Lord Morrow left the meeting.

Anna Lo, MLA
Chairperson, Committee for the Environment

14 June 2012

[EXTRACT]

Thursday 21 June 2012, Room 30, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mr Chris Hazzard
Mrs Dolores Kelly
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Colum Eastwood

7. **Marine Bill – formal clause by clause consideration**

The Committee commenced formal clause by clause consideration of the Marine Bill.

Clause 1 – The Northern Ireland Inshore Region

Agreed: That the Committee is content with Clause 1 as drafted

Agreed: That the Committee recommends that the Minister refers to the existing sustainable development and climate change obligations for public authorities under the Northern Ireland (Miscellaneous Provisions) Act 2006 and the UK Climate Change Act 2008 during the Consideration Stage of the Bill.

Clause 2 – Marine plans for the Northern Ireland inshore region

Agreed: That the Committee is content with Clause 2 as drafted.

Clause 3 – Amendment of marine plan

Agreed: That the Committee is content with Clause 3 as drafted.

Clause 4 – Withdrawal of marine plan

Agreed: That the Committee is content with Clause 4 subject to a Departmental amendment to publish its intention to withdraw a plan on its website.

Clause 5 – Duty to keep relevant matters under review

Agreed: That the Committee is content with Clause 5 as drafted.

Clause 6 – Decisions affected by a marine plan

Agreed: That the Committee is content with Clause 6 as drafted.

Clause 7 – Monitoring of, and periodical reporting on, marine plans

Agreed: That the Committee is content with Clause 7 as drafted.

11:21am Mr Weir left the meeting.

Clause 8 – Validity of marine plans

Agreed: That the Committee is content with Clause 8 subject to a Departmental amendment to extend the period during which a legal challenge can be made to 12 weeks after the plan has been published.

Agreed: That the Committee recommends that the Minister stresses during Consideration Stage of the Bill that there is a recognised process for engagement throughout the preparation of the marine plans and that the high court option should not be considered an alternative.

Clause 9 – Powers of the High Court on an application under section 8

Agreed: That the Committee is content with Clause 9 as drafted.

Clause 10 – Interpretation of this Part

Agreed: That the Committee is content with Clause 10 as drafted.

Clause 11 – Designation of marine conservation zones (MCZs)

Agreed: That the Committee is content with Clause 11 as drafted.

Clause 12 – Grounds for designation of MCZ

Agreed: That the Committee is content with Clause 12 subject to a Departmental amendment making it a requirement to consider social and economic factors and to include a reference to cultural factors.

11:35am Mr Weir re-joined the meeting.

Clause 13 – Further provision as to orders designation MCZs

Agreed: That the Committee is content with Clause 13 as drafted.

Agreed: That the Committee recommends that during Consideration Stage of the Bill the Minister stresses the importance of the MCZ designation process.

Clause 14 – Consultation before designation

Agreed: That the Committee is content with Clause 14 as drafted.

Clause 15 – Publication of orders

Agreed: That the Committee is content with Clause 15 as drafted.

Clause 16 – Hearings

Agreed: That the Committee is content with Clause 16 as drafted.

11:38am Mr Weir left the meeting.

Clause 17 – Review of orders

Agreed: That the Committee is content with Clause 17 as drafted.

Clause 18 – Creation of network of conservation sites

Agreed: That the Committee is content with Clause 18 as drafted.

11:50am Mr Weir re-joined the meeting.

Clause 19 – Reports

Agreed: That the Committee is content with Clause 19 as drafted.

Clause 20 – General duties of public authorities in relation to MCZs

Agreed: That the Committee is content with Clause 20 as drafted.

Clause 21 – Duties of public authorities in relation to certain decisions

Agreed: That the Committee is content with Clause 21 as drafted.

Clause 22 – Advice and guidance by the Department

Agreed: That the Committee is content with Clause 22 as drafted.

Clause 23 – Failure to comply with duties etc

Agreed: That the Committee is content with Clause 23 subject to a Departmental amendment requiring a public authority to provide a written explanation if it fails to comply with the duties required by an MCZ.

Clause 24 – Byelaws for protection of MCZs

Mr Elliott expressed his concern at Clause 24, Section 3(e).

Agreed: That the Committee is content with Clause 24 as drafted

Agreed: That the Committee recommends that during Consideration Stage of the Bill that the Minister stresses that the provision of byelaws will be as appropriate to meet the objectives of the MCZ but will not exceed what is required.

Clause 25 – Byelaws: procedures

Agreed: That the Committee is content with Clause 25 as drafted.

Clause 26 – Emergency byelaws

Agreed: That the Committee is content with Clause 26 as drafted.

Clause 27 – Interim byelaws for MCZ

Agreed: That the Committee is content with Clause 27 as drafted.

Clause 28 – Byelaws: supplementary

Agreed: That the Committee is content with Clause 28 as drafted

Clause 29 – Hearings

Agreed: That the Committee is content with Clause 29 as drafted.

Clause 30 – Offence of contravening byelaws

Agreed: That the Committee is content with Clause 30 as drafted.

Clause 31 – Offence of damaging, etc. protected features of MCZ

Agreed: That the Committee is content with Clause 31 as drafted.

Clause 32 – Exceptions

Agreed: That the Committee is content with Clause 32 as drafted.

Clause 33 – Fixed monetary penalties

Agreed: That the Committee is content with Clause 33 as drafted.

Clause 34 – Fixed monetary penalties: procedure

Agreed: That the Committee is content with Clause 34 as drafted.

Clause 35 – Fixed monetary penalties: further provision

Agreed: That the Committee is content with Clause 35 as drafted.

Clause 36 – Enforcement officers

Agreed: That the Committee is content with Clause 36 as drafted.

Clause 37 – The common enforcement powers

Agreed: That the Committee is content with Clause 37 as drafted.

12:20pm Mr Campbell left the meeting.

Clause 38 – Repeals and transitional provisions

Agreed: That the Committee is content with Clause 38 as drafted.

Clause 39 – Interpretation of this Part

Agreed: That the Committee is content with Clause 39 as drafted.

Clause 40 – Special procedure for applications relating to generating stations

Agreed: That the Committee is content with Clause 40 as drafted.

Clause 41 – Regulations and orders

Agreed: That the Committee is content with Clause 41 as drafted.

Clause 42 – Offences: companies, etc

Agreed: That the Committee is content with Clause 42 as drafted.

Clause 43 – Disapplication of requirement for consent to certain prosecutions

Agreed: That the Committee is content with Clause 43 as drafted.

Clause 44 – Supplementary, incidental, consequential, transitional provision etc

Agreed: That the Committee is content with Clause 44 as drafted.

Clause 45 – Crown application

Agreed: That the Committee is content with Clause 45 as drafted.

Clause 46 – Interpretation

Agreed: That the Committee is content with Clause 46 as drafted.

Clause 47 – Commencement

Agreed: That the Committee is content with Clause 47 subject to a Departmental amendment bringing Part 3 into force along with the rest of the Bill on Royal Assent.

Clause 48 – Short Title

Agreed: That the Committee is content with Clause 48, the short title, as drafted.

Schedule 1 – Marine plans: preparation and adoption

Agreed: That the Committee is content with Schedule 1 subject to a Departmental amendment introducing a savings provision for work done in advance on the marine plan

Agreed: That the Committee recommends that the Minister commits to a timeframe for the delivery of a marine plan during Consideration Stage of the Bill.

Schedule 2 – Further provision about fixed monetary penalties under section 33

Agreed: That the Committee is content with Schedule 2 as drafted.

Other Issues – Integration and Coordination of marine functions

Agreed: That the Committee is content for the Bill Clerk to draft an amendment which will provide a mechanism for a Memorandum of Understanding to be agreed between departments for marine functions for consideration by the Committee at the next meeting.

12:51pm Mr Weir left the meeting.

12:52pm Mr Elliott left the meeting.

Other Issues – Common law right of navigation and fishing

Agreed: That a letter is sent to the Department of Enterprise, Trade and Investment asking for confirmation that this issue is being pursued and that the Committee is kept informed of any developments.

Agreed: That the extract of the Departmental reply on common law right of navigation and fishing is forwarded to NIRIG for information.

Other Issues – Dredging protocol

Agreed: That the extract of the Departmental reply on dredging protocol is forwarded to the Belfast Harbour Commissioners and the British Ports association for information.

Other Issues – Long Title

Agreed: That the Committee is content with the Long Title as drafted.

The Chairperson informed members that they had been provided with Departmental responses to Committee concerns and proposed amendments.

Agreed: That the Departmental reply is included in the final Committee report.

The Chairperson informed members that they had been provided a response from the Northern Ireland Renewables Industry Group to queries raised during their briefing in relation to common law navigation, fishing, licensing and consenting.

Agreed: That the paper is included in the final Committee report.

The Chairperson informed members that they had been provided with an Assembly Research paper on Sustainable Development and Climate Change General Duties.

Agreed: That the Assembly Research paper is included in the final Committee report.

The Chairperson informed members that they had been provided with correspondence from the Committee for Agriculture and Rural Development in relation to MCZ's.

Agreed: That the paper is included in the final Committee report.

1:00pm Mr Elliott re-joined the meeting.

Anna Lo, MLA

Chairperson, Committee for the Environment
28 June 2012

[EXTRACT]

Thursday 28 June 2012, Room 30, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mr Chris Hazzard
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Francie Molloy

5. **Marine Bill**

Members noted a copy of the draft Committee report on the Marine Bill.

The Chairperson informed members that they had been provided with a tabled copy of a draft Committee amendment in relation to the integration and co-ordination of marine functions between departments.

Agreed: That the amendment is revised to take account of the Committee's comments and circulated to members by email.

Agreed: That the revised amendment is included in the draft report for discussion at next week's meeting.

Anna Lo, MLA

Chairperson, Committee for the Environment
5 July 2012

Thursday 5 July 2012, Senate Chamber, Parliament Buildings

Present: Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Gavin Ervine (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

9. **Marine Bill – agreement of draft Committee report**

The Chairperson informed members that they had been provided with a revised version of the draft Committee amendment on increasing integration and coordination of marine functions across government departments

Agreed: That the Committee is content for the amendment to be included in the Report

Members formally considered the final draft of the Committee Report into the Marine Bill

Agreed: That the Committee is content with the Report as drafted

Agreed: That the Committee is content for the Report to contain the relevant extracts from the minutes from today's meeting

Agreed: That the Report is printed and submitted to the Business Office

Anna Lo, MLA

Chairperson, Committee for the Environment
13 September 2012

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

19 April 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Danny Kinahan
 Mr Patsy McGlone
 Mr Francie Molloy
 Lord Maurice Morrow of Clogher Valley
 Mr Peter Weir

Witnesses:

Mr Ken Bradley *Department of the*
 Ms Brenda Cuning *Environment*
 Mr Angus Kerr

1. **The Chairperson:** I welcome Angus Kerr, director of planning policy division; Brenda Cuning from the marine policy team; and Ken Bradley, planning and environment. You have 10 minutes or so for your briefing. I am sure that members will have a lot of questions after also hearing from the researcher.
2. **Mr Angus Kerr (Department of the Environment):** Thank you very much, Chair. As you and the Committee are probably aware, I have recently taken over from Maggie Smith as director of planning policy division. I find myself with responsibility for the Marine Bill. You will be glad to hear that, today, I have with me Brenda Cuning and Ken Bradley, who are the experts in this area. They will kill me for saying that. Nevertheless, compared with me, they are experts.
3. We have informal and formal clause-by-clause scrutiny coming down the line. Today, if the Committee is content, we will just do an overview of each clause. I think that that is what we have been asked to do. Chair, you said that we have 10 minutes. We wondered what would be the best way to do this. The Bill fits neatly into three areas. Brenda can deal with marine planning, and Ken can deal with the nature and marine conservation aspects. Brenda can then do the licensing aspects and other remaining parts of the Bill. We could have questions at the end of each those three parts, or we could run through them all and take questions at the end. It is really up to you.
4. **The Chairperson:** Perhaps section by section would be easier.
5. **Mr Campbell:** It may also take longer.
6. **The Chairperson:** OK. We will do it all in one go.
7. **Mr Kerr:** We will go through it all in one go and take questions at the end. Thanks very much. In that case, I will pass over to Brenda, Brenda will pass to Ken and then we will come back to Brenda again. We will get through it all. Thank you.
8. **Ms Brenda Cuning (Department of the Environment):** Good morning. It is good to see you all again. We will rattle through this relatively quickly.
9. Clause 1 defines the Northern Ireland inshore region. To follow on neatly from what the Assembly researcher said, I have to confirm that it does actually apply to the Foyle and Carlingford areas. It applies to all UK waters that are adjacent to Northern Ireland, inside the sea loughs as well. It also includes loughs that the sea flows into, regardless of whether they are closed. For example, it includes part of the River Lagan — wherever the tidal reach is. Clause 1 defines the extent of the Bill, which is from high water out to 12 nautical miles.
10. Clause 2 allows the Department to prepare a marine plan. It says that a marine plan must be prepared for any area that is covered by the marine policy statement. The marine policy statement is in effect for all of the Northern Ireland region. Therefore, the Department will

- have to prepare a plan or plans for all of the Northern Ireland inshore region. It sets out what the marine plan will be, and links in with the idea that other Departments' policies will be included in the plan. It has to identify what the marine plan area is, as it could apply to part or all of the Northern Ireland inshore area. It must also conform with the marine policy statement, and, if it is for part of the inshore region, it must conform with a plan for all of the inshore region. Basically, it sets out how we can actually do the marine plan. The plan must also state whether it applies to retained functions and, if it does, we have to get the Secretary of State's permission or approval, but only in that case.
11. Clause 3 allows for the amendment of a marine plan by the same procedure as a marine plan is developed.
 12. Clause 4 allows for the withdrawal of a plan. That could either be because the Department, after consulting with other Departments, feels that it needs to withdraw the plan, or because the Secretary of State withdraws permission or approval. In both cases, the Department places a notice and withdraws the plan.
 13. Clause 5 lists various issues that the Department must keep under review. It is not an exhaustive list; it covers things like the physical characteristics of the marine area, social and cultural characteristics and historical marine issues. The Department must also keep the purposes for which the marine area is used under review — for example, energy and transport. After a marine plan is created, a report must be placed before the Assembly, and I will come to that in a moment.
 14. Clause 6 places a duty on all public authorities to take decisions in accordance with the marine plan. The Loughs Agency is a public authority in Northern Ireland, and it applies to the Loughs Agency as to any other public authority. Any authorisation and enforcement decisions must be taken in accordance with the marine plan, and other decisions must have regard to it.
 15. Clause 7 says that the Department must keep marine plans under review. It must place a report before the Assembly every three years on the effects of a marine plan and on whether it is meeting its objectives. Every six years, a report must be made on marine planning in general — how many marine plans have been made, whether it is intended to have any more or withdraw any, etc.
 16. Clause 8 sets out when a marine plan can be questioned in the taking of a judicial review to the High Court, and the researcher touched on that. It is not just aggrieved persons who can challenge the vires of a marine plan; anyone can challenge a marine plan if it is outside the powers. However, the researcher was right to point out that only those who have been substantially prejudiced can challenge the marine plan on a procedural issue, and the High Court will then take that into account when making a decision to quash the plan or to remit it back to the Department, etc. The powers of the High Court and what it can do if a marine plan is brought to it for judicial review are covered in clause 9.
 17. Clause 10 sets out some definitions of marine plans and the marine policy statement.
 18. That is 10 clauses rattled through quickly in terms of where they apply and how marine plans will be created and reviewed.
 19. Schedule 1 also applies for the purposes of marine planning. It really sets out the whole procedure on how we do a plan. It sets out that we have to consult with various people and create a statement of public participation. A non-exhaustive list of all the things that we have to take into account when we create the final marine plan is set out in schedule 1. I do not want to go into that in too much detail, and you may have some questions on that.
 20. **Mr Ken Bradley (Department of the Environment):** Thank you, Chair. The marine nature conservation clauses are fairly self-explanatory, and I will go through them very generally.

21. Clause 11 gives the Department the power to designate a marine conservation zone (MCZ). It is intended that marine conservation zones will be for nationally important species or habitats. That is in addition to our European commitments under the birds and habitats directive to designate sites or habitats for species that are of European importance.
22. Clause 12 sets out the grounds for designation and the circumstances in which the Department can designate marine conservation zones. Clause 13 gives further provisions for the designation process and provides more detail on the boundary, etc.
23. Clause 14 requires the Department to consult with all key stakeholders or anyone who has an interest or responsibility in relation to a marine conservation zone. Clause 15 requires the Department to publish a notice before making a designation order. A designation order sets out the conservation objectives, the boundaries of a marine conservation zone and all the detail. Clause 16 allows the Department to hold hearings if anybody objects to a marine conservation zone.
24. Clause 18 requires the Department to create a network of conservation sites. The researcher referred to a commitment to an ecologically coherent network of marine protected areas by 2012. Obviously, our Bill may not be agreed in this calendar year, so we could not include a 2012 commitment to report on that. We have included a commitment to report between when the Bill comes into force and December 2018. By 2018, we will be in sync with the rest of the UK.
25. Our overall commitment on marine conservation is the marine strategy framework directive requirement to have good environmental status by 2020. This is part of that undertaking. So, we will then be within the reporting round at 2018. Obviously, we will report prior to that.
26. Clause 20 places a duty on public authorities to be aware of marine conservation zones and not to do anything when undertaking their activities that would be detrimental to the conservation features of a marine conservation zone. That is similar to the duty that public bodies have under the habitats and birds directive to European sites. We will issue guidance on the requirements of public bodies.
27. Clauses 22 and 23 go on about failure to comply with that duty and set out various steps. It then goes on to enforcement by-laws. We envisage three types of by-laws to protect marine conservation zones. There will be a general by-law, which we can put in place at any time. That will set out what is permitted or what activity is detrimental to the conservation objective of a site. We also envisage an emergency by-law to stop any potentially detrimental activity straight away when we designate a site, and an interim by-law. Obviously, the designation process is fairly lengthy, with a lot of consultation and engagement. We do not want a potential site to be affected detrimentally, so we can, before the site is designated, put in an interim by-law that is time-bound and gives immediate protection to a potential site until we go through the process of designating that site. Those are the by-laws that we envisage in the Bill, which run through clauses 25, 26 and 27.
28. Clause 28 sets out the process of hearings if anybody objects to a by-law. Clause 30 deals with the offence of contravening a by-law and sets out a level 5 fine, which, at the minute, is a maximum of £5,000. With regard to general offences, any major damage to an MCZ attracts a fine of up to £50,000. Clause 32 gives exceptions to that general offence. Clause 32(5) sets out how we can repeal those exceptions.
29. Clause 33 sets out another type of offence, a fixed monetary penalty. It is really more like an on-the-spot fine. Say something fairly minor happens, but that activity is detrimental to the site. The Department can issue a fine on the spot and require the person to stop that activity. The fine on such occasions may be up to £200. The difference is that

- that is a civil penalty as opposed to a criminal penalty. Clauses 34 and 35 set out the procedure for introducing that regime.
30. Clause 36 gives the Department powers to enforce any by-laws and sets out that the Department will be the main enforcement authority for marine conservation zones under the Marine Bill. In that respect, it is fairly new because at the moment the Department has no specific enforcement powers in the marine environment for marine nature conservation. In addition, the DOE can delegate that responsibility to another body, for instance, councils, the Department of Agriculture and Rural Development (DARD), fisheries or any other potential body.
31. Clause 38 repeals the marine nature reserve provisions, in line with GB. It was felt that the marine nature reserve provisions are not really fit for purpose and the marine conservation zone designation process will take that over. So we repeal the marine nature reserves in our provisions and that means, in practical terms, that Strangford lough will fail to be a marine nature reserve. Therefore, taking that into account, by default, Strangford lough will become our first marine conservation zone.
32. That is really it. I will go back over a couple of points that the researcher pointed out. There is a Conservation of Seals Act 1970, relevant to England, Scotland and Wales, but not to Northern Ireland. Both common and grey seals have been given full protection under the Wildlife and Natural Environment Act (Northern Ireland) 2011. In Scotland, there are a lot of exceptions made for the killing of seals, primarily because there is so much fin-fish aquaculture in Scotland. Obviously, fish in pens attract seals, so the owners of fish farms get licences from the Scottish Government to take out seals which are potentially a threat to their livelihoods. So Northern Ireland is slightly different to the rest of GB.
33. I should also mention the element of historic shipwrecks, which is not included in the Bill. In the designation of marine conservation zones, archaeological wrecks can included, but we do not designate specifically for maritime wrecks. We already have provision for that in the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. Probably, the most important wreck that we have designated in Northern Ireland is the Girona, which was a part of the Spanish Armada of 1588. That wreck has full protection. Wrecks and maritime archaeological objects are protected through other means.
34. **Ms Cuning:** Clause 40 is the one clause that deals with marine licensing in the Bill. It is intended to streamline the procedure whereby a generating consent is needed from the Department of Enterprise, Trade and Investment (DETI) and a marine license from DOE. Basically, the clause says that the Departments can decide and notify the applicant that those applications will be considered together. It is quite a long-winded way of saying it, but that is in effect what it means. The Department can make an order to disapply certain things within the marine licensing application requirements. That is unlikely to happen, but we have it in just in case. The crux of it is that DETI and DOE can say to the applicant that their applications will be considered together, to streamline it, so that only one environmental impact assessment (EIA) is needed, for example, instead of having to do two separate ones which would be more or less the same thing.
35. The rest of the clauses of the Bill are pretty standard. Clause 41 sets out which of the subordinate legislation proceeding from the Act will be enacted by negative resolution, draft affirmative resolution or administrative means. In clause 42, it is set out that the offences will apply to individuals as well as to companies. Clause 43 disapplies the requirement to seek Secretary of State approval for prosecuting someone who is non-British who is carrying out an offence. Clause 44 is a fairly standard clause about making supplementary

- legislation to deal with transitional arrangements, etc. Clause 45 applies to the Crown, and, again, is a standard clause. Clauses 46, 47, and 48 deal with interpretation, commencement and the short title.
36. **The Chairperson:** Thanks very much indeed for your presentation. As you know, we just heard from our researcher, Suzie. It was a quick fly-through of what she had found out. I wish that I had had the paper beforehand so that I could have had a good read. Ken has addressed a number of the gaps that she mentioned, but I still want to go back to the marine management organisations (MMO) and marine management schemes (MMS). How do you foresee your Department being able to co-ordinate all of the duties under the Bill between the six different Departments? How are you going to do that? I know that you have the interdepartmental group, but that is a very loose, voluntary set-up. There is no statutory basis for it. Is it going to give you lots of difficulties?
37. **Ms Cunning:** It is recognised that more integration of marine management would be a good thing, but we are where we are in terms of the Bill. If we do not have an MMO, we will have to work with the other Departments. That is why there is the requirement to consult with other Departments and the requirement on all public authorities to carry out their functions in accordance with the marine plan or to further the aims of an MCZ. Ultimately, as we said before, the Executive will have to agree a marine plan. That brings together all of the Departments. That is the mechanism that we have without an MMO.
38. **The Chairperson:** Is it going to be very protracted because of the fact that you have to consult all of the different Departments?
39. **Mr Kerr:** Those are issues that happen in any case because of the nature of government in Northern Ireland at the moment. We have come across them in a number of different areas, such as marine and terrestrial planning and so forth. In many ways they are part of the way that the system of government has been arranged. It is forcing Departments to come together and work together jointly through the Executive. It can, of course, create difficulties and challenges. The Minister has asked us to continue to look at options for how it can be handled in a better way or to the best effect, but, essentially, like lots of those issues, it is agreed through the various Departments liaising with each other before plans and policies get to the Executive, departmental write-rounds and so forth. The integration is achieved in that way.
40. **The Chairperson:** I presume that, in each Department, there are officials who are designated to look at marine issues, and that you have counterparts in other Departments who you can liaise with.
41. **Mr Kerr:** There is close liaison between the Departments.
42. **The Chairperson:** I still think that it is going to be a concern for many people. OK, thank you.
43. **Mr Hamilton:** I want to go back to the issue of the designation of historical sites, which is the broad term used. I appreciate the points that Ken has made in respect of other legislation, and I know that there are some references in the Bill to historical reasons, although it appears to be more about the consequences for those. It is not a reason to designate a zone; it is the consequences for that site of designating it as a marine conservation zone. If other legislation is already in place — I presume that Scotland has similar legislation, or that Westminster legislation covers Scotland, whether that is the wrecks Act or the other legislation that you talked about — why did the Scottish see the need to include a section in their Act that specifically stated that the existence of historical sites such as the Girona, or whatever is in Lough Foyle and elsewhere, was a reason in itself to have marine conservation zones? What is your take on that? Why did we not think that it was necessary here?

44. **Mr K Bradley:** I am not sure why the Scottish felt that they needed a separate or specific provision for historic sites. Perhaps Scotland has a greater potential need for it than Northern Ireland.
45. We know of nothing in Northern Ireland territorial waters that requires protection and does not already have it. Therefore, we do not feel that there is any further legislative requirement. As I said, the UK-wide Protection of Wrecks Act 1973 and the Northern Ireland-specific Historical Monuments and Archaeological Objects (Northern Ireland) Order 1995 give us the powers to designate and thus protect any seabed object. We do not feel that there is any need for further legislation. During the consultation, no one told us that the existing protection was not adequate. If there is a need, we have no problem looking at that again. However, we do not feel that there is any justification for widening it.
46. In practical terms, if we are designating an MCZ and there is a maritime object beside it, which, for whatever reason, is not protected but is a habitat for the feature, we could include that. However, if it does not stand on its own merits, perhaps it does not need to be protected. If there is merit, we will certainly look at it.
47. **Mr Hamilton:** The point is that wrecks have historical significance, and the Girona is an obvious example of that. We are not sure what is in Lough Foyle, and I agree with you that there may not be many other examples. However, we did not know that the Girona was there until a matter of time ago. Wrecks are historical and significant in their own right, and, because of what happens at the bottom of the sea, they also become habitats for creatures to live in and feed off. I would be interested to learn a bit more. On a superficial level, I think that the existence of those wrecks at the bottom of the sea may be a reason to designate such a zone. I appreciate that there may not be a terrible lot of demand, but, in a way, that is not the point.
48. I would also be interested to find out whether the current legislation is sufficient, particularly to do the job that we want it to do, and whether there might be any tension between the two. It would be worth the Committee looking at that.
49. **Mr K Bradley:** We will look at it again and go back to our Scottish colleagues and ask them why they felt the need to have a specific provision. We will see whether there is anything that we have missed or need to include from a Northern Ireland point of view.
50. **Mr Hamilton:** It is not a matter of legislating for the sake of it, but it would send out a signal that, if something like the Girona was found, it would be possible to protect it in a particular and special way. That may not happen frequently, but it would send out a signal of intent.
51. **The Chairperson:** Do we have any warships hidden somewhere in the sea?
52. **Mr Kinahan:** There is one off Rathlin Island.
53. **The Chairperson:** That is right. OK. Thank you.
54. **Mr Kinahan:** As you can imagine, I have a series of questions, the first of which is on the timescales. In schedule 1, paragraphs 13 and 14 deal with independent investigations, and we can see that there is a possibility of delays. I wonder whether there is a chance of including an end date to force things to be done by certain dates. Is there a mechanism to allow that? Otherwise, we could continue to let the whole thing drift, and it may never be put in place.
55. My next question relates to the fines that I asked the researcher about earlier. Is there a good mechanism for making sure that fines are possible within the nought to 12 mile area and the nought to six mile area? Could that be balanced against what Europe is likely to fine us if we do not follow the birds and habitats directive and other directives?
56. I am intrigued by clause 17, which you skipped over. It seems to state that we have to obey whatever the Secretary

- of State, the Scottish Ministers or the relevant Department in Ireland puts in place. Does that give them an overriding say in what we must do? A marine management organisation already has such a say, so I wondered whether that clause was there as a safety mechanism.
57. My next question is on our fining ourselves. If members of the Executive did not like part of the marine plan and decided to breach it by, for example, putting in place lots of wind farms, which may be the right thing to do, would we be able to fine another Department, be that through an on-the-spot fine or larger fine? If so, that seems daft, and I am concerned about it. I see a conflict there. If that is the case, the whole process could go back to the beginning.
58. My last point is about trying to get agreement from the Department of Culture, Arts and Leisure (DCAL) on regulating the zones through the use of fishing licences, potting licences and others. The Bill does not seem to drive any of that and has left all that alone.
59. **Ms Cunning:** You are right that the timescales for the independent investigation are not set out in paragraph 13 of schedule 1. I think that the idea is that when appointing an independent person, you give them the remit to look at all the unresolved issues raised on the consultation draft of the marine plan. In some ways, you would not want to tie that person's hands. However, we can certainly look at that and come back to you. I understand your point, which is that you would not want an investigation to run on indefinitely. Then again, when you appoint an independent person, you give them a clear remit to look at specific unresolved issues and come back with a recommendation. It could be set out in the remit given to the independent person appointed.
60. **Mr K Bradley:** I see your point about fines. A £50,000 fine is not in the same ballpark as a fine from the Commission, which may amount to several million euros. In light of that, we are thankful not to have had any fines imposed by the Commission, and we hope not to get any. The process for the fines that we are talking about will probably be much shorter than any European process. A fine will be specific to a person, as opposed to the UK Government. As a result, the process will, we hope, be resolved much more quickly and not drag on for years and years. So this is a different sort of regime entirely. It is about a specific site and a person or body doing something that it should not be doing. We hope that the process will be much more flexible and a lot quicker so that any detriment will not be ongoing.
61. **Mr Kinahan:** Will that be superimposed over the provision that seems to say that one need only apologise for having done something wrong?
62. **Ms Cunning:** I think that you are getting that slightly mixed up with what public authorities can do. If an activity of a public authority is in some way detrimental to, or not furthering the aims of, an MCZ, it can say, "Look, we have to do it". That is because we give public authorities the power to carry out certain functions.
63. I think that Ken was talking about the fines levied against individuals or companies that may or may not be authorised to carry out certain activities and that have done something to breach an MCZ. That is where the fines come in: they are against individuals or companies, not public authorities.
64. **Mr Kinahan:** You can see my point. We are putting in a provision to say that authorities can do what they like.
65. **Mr K Bradley:** They have a public duty. They can carry out their functions, but they have to be mindful of the conservation objectives of a site by not doing anything that would be detrimental to it. In other words, they can carry out their activities, but they must be mindful not to do anything that may be detrimental to an MCZ.
66. **Mr Kinahan:** Saying that they have to be "mindful" is wonderfully loose. That worries me.

67. **Mr Weir:** Following on from Danny's point about the position of public authorities, I think that clause 23 on the failure to comply with duties seems rather weak, in that a letter of a explanation seems to be the only sanction. I wondered about that, so will you explain the thinking behind it?
68. **Mr K Bradley:** That is right. If a public body or Department does something that is detrimental to a site, it has to explain that it is within its remit and that it has an overriding interest. So it must explain the reasons behind its actions.
69. **Mr Weir:** I can understand that, certainly as a first step, but should there not be some stronger sanction? If the worst that I had to do every time that I did something wrong was to provide a letter of explanation —
70. **Lord Morrow:** I suspect that you would get the words [Inaudible.]
71. **Mr Weir:** I am tempted to say that, across the board, there is probably much more crime in this country.
72. Clause 23 just seems a little bit weak.
73. **Mr K Bradley:** This is about a public body or Departments doing what they are required to do. Those are the circumstances that we are talking about. If DETI, for example, were to install a wind farm and, through consultation and discussions, it was —
74. **Mr Weir:** Strictly speaking, DETI would not build a wind farm. It may be built by a private developer with, perhaps, the permission of —
75. **Mr K Bradley:** If a private individual does not abide by the agreement with DETI, he or she is in breach of that, so the activity should stop. Clause 23 applies only if a Department or public body does something that it is required to do, and that something is detrimental to an MCZ. If, through discussion, that cannot be resolved and has to happen, it must be explained. I do not envisage that —
76. **Mr Weir:** OK, maybe we can come back to that.
77. There seems to be a fairly wide scope for by-laws. One issue that has been raised relates to highly designated, or very restricted, MCZs. Are you satisfied that these by-laws would be able to permit that designation should it be needed, or is that the explanation for why there is no specific reference to highly protected or highly designated MCZs?
78. **Mr K Bradley:** We took a policy decision not to introduce highly protected marine reserves. Our designations will be based on the scientific evidence. In other words, it will depend on what is on the seabed and whether that allows some activities but not others. So the conservation objectives and nature of a particular feature will determine the level of protection.
79. **Mr Weir:** I want to make sure that I have made the correct causal link. Is that why you took the policy decision not to introduce highly protected MCZs?
80. **Mr K Bradley:** No, that means that there could well be. We are not just saying that there will be x number —
81. **Mr Weir:** Sorry, but that is not the answer to the question that I asked. You said that a policy decision was taken not to include in legislation highly designated, or highly protected, MCZs. You then said that there was, however, a level of flexibility. I am just trying to check whether the two are causally linked and whether the policy decision was taken because you felt that such flexibility gave you sufficient protection. That is what I am seeking to clarify,
82. **Mr K Bradley:** Sorry, I probably confused you, so I will go back a step. Wales took the decision to have other MCZs as highly protected marine reserves and underpin its European sites. We took the decision, as did Scotland and England, not to go down that line. We took the decision that all sites would be designated based on scientific rationale and that the conservation objectives of the habitat would determine the level of protection — that may or may not be highly protected. If it is highly protected,

- the general offence and by-laws come into play.
83. **Mr Weir:** Presumably, as well as the by-laws, you at least have some flexibility should there be a change of position. If, for example, an initial examination determined that a certain activity was not creating a problem, but, two or three years down the line, that same activity was found to cause some marine destruction, you could step in to strengthen the designation.
84. **Mr K Bradley:** That is exactly it. Marine conservation zones were introduced for nationally important species or habitats. We hope that we will learn from the process of designating the European sites, which are immovable, so we could not change the boundaries, objectives, or species within them except to add to them. This is a much more flexible regime. You are right that it takes into account changes in circumstances. If protection levels need to be changed, they will be. If another activity happens, which was not happening at the time of designation, the area could become highly protected, or vice versa. That is the flexibility that we have built in.
85. **Mr Weir:** If I understand correctly, highly protected is almost a continuum, rather than simply a question of some level of protection or high protection. It is a matter of where it potentially goes along that continuum.
86. **Mr K Bradley:** That is right.
87. **The Chairperson:** I would like to follow up on what you were saying. If another Department, in exercising its duties, has to infringe, or do something that might harm, the protection zone, can its duty to carry out its responsibility override the protection zone?
88. **Mr K Bradley:** There is nothing like that set out in any legislation. However, with this flexible regime, we could designate a site today and, in five years' time, there might be a wind farm on that site. It might be beside an MCZ to which the activities involved in setting up that wind farm are detrimental. We would have to take account of something like that and perhaps change the boundaries. If something is detrimental, we would we have to try to reduce or negate its impact.
89. **The Chairperson:** If that is to be a matter between DOE and, say, DARD, will someone, somewhere, referee all of that?
90. **Mr K Bradley:** Again, it is probably up to Ministers to come up with some consensus so that the remit of both Departments can be met.
91. Mr Kinahan made a point about clause 17, which was that, if we receive representations from Scotland or from the Secretary of State, we can change or repeal an MCZ. We have to get the Secretary of State's approval for our designation of an MCZ, because marine, nature and conservation matters are not devolved. Clause 17 was included because, potentially, an MCZ in Northern Ireland will be beside, most likely, a Scottish MCZ, or perhaps an English offshore MCZ. The inclusion of clause 17 ensures that we bear in mind that an MCZ, its boundary or something else could change as a result of that. It is really just a mechanism to ensure that our Scottish, English and Welsh colleagues know what we are doing, and vice versa, so that we can take account of that.
92. **Mr Kinahan:** If it is just the original designation of MCZs that you are talking about and they see us not doing something correctly or not enforcing something properly, does that clause allow them, or could it be changed to allow them, to come in and pull us on that?
93. **Mr K Bradley:** No; it is [Inaudible.] the designation.
94. **Ms Cunning:** It means only that the Department has to review the order, not that it has to revoke it. It can be suggested only that we amend or review it.
95. **Mr K Bradley:** That is under clause 11 on designation.
96. **Mr McGlone:** The designation of MCZs leads me neatly on to other issues. I noted that your first designation was Strangford, so, presumably, the Hansard

- report will be underlined in red and sent out to Brussels. That brings me on to modiolus, and we will hear from the Minister later today about the mess that that has become. The management, or lack of management, by Departments and the lack of cohesion and flow of information interdepartmentally and, indeed, between non-governmental organisations and Departments, has led to quite a difficult situation that might have been avoided. So how can you argue that an extension of the existing method is a good way of doing business?
97. **Mr K Bradley:** We learn from our experiences. This national designation process is different in that there is much more emphasis on consultation. When the Department was tasked with providing a suite of particular areas under the habitats directive, there was no requirement to look at other issues — only at ecological issues. There was no requirement to consult or take account of any other activity happening in that area, and that lack of discussion led to problems. This new process, which is much more open and transparent, should overcome all of those problems. It includes an area of consultation, informing stakeholders, hearings, etc, so we should not get into that state of affairs again.
98. **Mr McGlone:** I will just stop you there. Openness and transparency is one thing, and I am sure that letters ping-pong between all Committees and their respective Departments. However, what the Departments are really saying to Committees is “Just leave it with us.”
99. I have not heard anything really cogent from you. It is not a matter of the process simply being open and transparent. There can be all the openness and transparency we like, but that is no good if things are not being done. It is about how the process can be managed to ensure that things are done. I still have not got into my head yet how that will be done, because the experience that I outlined left us in a very difficult and complicated situation that will, potentially, cost a lot of money
- through fines for infractions. I hope that we will obviate that situation and that we will reach a point at which that does not happen. As I said, we must underline in red that the first MCZ would be Strangford lough, and I hope that some of our European colleagues take note of that. However, other than openness and transparency, which should exist at all times anyway, I still have not heard that there will be a better way of managing things.
100. **Mr K Bradley:** For the first time, the DOE will have an enforcement capability. Until now, we relied on other Departments to protect our sites through their legislation. As you say, that has not always worked in the past. This legislation will allow DOE, for the first time, to be an enforcement authority in the marine environment. That will require DOE to work very closely with our fisheries colleagues in DARD, the Agri-Food and Biosciences Institute (AFBI), others involved in research and DETI. I think that we have all learned from experience. New mechanisms have been put in place, and no one wants to go back to the way it was before. The DOE exists to conserve; others are there to do something else. If those two conflict, so be it. For an MCZ to be designated, other social and economic activities would have to be fully taken account of. Should it be felt that those activities were more important than the environmental considerations, the MCZ would be located somewhere else. You must bear in mind that our designation process is part of a UK-wide commitment to an ecologically coherent network.
101. **Mr McGlone:** I am not talking about making designations; I am talking about the management of designated areas that are already in place. With all due respect to you, Ken, we are getting away off the point. I am still not hearing how this will work or getting guarantees that what was in place before, which was a mess, will work better. I am not hearing that a definite form of management will be in place to ensure that interdepartmental work is coherent,

- joined-up and delivering what it should. I am still not hearing any reason why that is not in place.
102. **Mr Kerr:** I will add to what Ken said. The Minister recognises that integration is important, as, I think, does everyone. Across the piece, integration is important in how the marine environment is managed, how the Bill is implemented, and so forth. The Minister has asked us to look at ways in which that can be achieved. There are a number of ways in which such things can be made to work better in the future. Maybe the answer to your question is that it is an area that we are looking at. It is recognised that, as is often the case, the situation is not perfect.
103. **Mr McGlone:** I would not use that adjective.
104. **Mr Kerr:** OK, but we recognise that integration is important, and we are looking at it.
105. **Mr McGlone:** We are moving towards my getting a wee bit of clarity. At what point will we get details of how that thinking will become distilled into something tangible that we can look at in practice and say “OK. We could work with this. This could do well, or that could do well.” When will we hear that?
106. **Mr Kerr:** We are doing some work on that, and we need to talk to the Minister about it and take on board his views and those of others. He has asked us to do that work. You will know that the Minister favours an MMO, but there are other ways in which integration can be achieved. So we are working on that and will report back.
107. **Mr Campbell:** Is there any ambiguity about the Foyle and Carlingford issue?
108. **Mr K Bradley:** No.
109. **Mr Campbell:** On a completely separate issue, I notice that clauses 20 and 21, which detail the duties of public authorities, take up more than two pages. I presume that that is quite an important part of the Bill. Is it the case that public authorities will be clear on the progress of the Bill and how it will affect their likely duties?
110. **Mr K Bradley:** Yes, that is right. We will also bring out guidance for public bodies on the duty and how to adhere to it. You are quite right that it is an important part of the Bill. As I said, so many people have different responsibilities within the marine environment, and one responsibility has the potential to conflict with another. People need to know what an MCZ is about, what its features are, why it is important, which activities can be allowed and which are detrimental to it. We consult the public bodies, they are mindful of the duty, and I hope that the two activities can co-exist.
111. **Mr Campbell:** I can see the sense in that, but maybe you can allay my concern. If we look at the timeline over the next three, four or five years and then at the review of public administration, it becomes apparent that there will be liaison with a number of councils: the coastal councils, starting from the north-west, Strabane, Londonderry, Limavady, Coleraine and right round. However, some inland councils do not currently have a coastal section but will under the review of public administration. Given that the situation will change in the next four years, will those councils be consulted in the same way as councils that are currently coastal?
112. **Mr K Bradley:** At present, when we designate a European site, all coastal councils are consulted. That will remain the case, and there is no problem there.
113. **Mr Campbell:** Yes, but what I mean is that certain councils do not have a coastline now but will have under the review of public administration. I do not want to single out councils but, for example, Ballymena is currently an inland council that will become part of a council that has a coastline. Will it be consulted?
114. **Mr K Bradley:** I see your point. As stakeholders, yes, they would have to be consulted.

115. **Mr Kerr:** In moving from 26 councils to 11, it will become more and more the case that most councils will probably have to be consulted.
116. **Mr Campbell:** That is what I mean. Will the consultation recognise that?
117. **Mr Kerr:** Yes.
118. **Mr Dallat:** As I was sitting here, Chairperson, I cast my mind back to the weekend. Anyone who travelled round the Antrim coast last weekend could not have failed to recognise that we need a Marine Bill to protect its absolute beauty — it is beyond words. Yet, in its present form and because of the number of get-out clauses in it, the Bill strikes me as the type of legislation that would turn Alcatraz into an open prison. We talk about local authorities, but we do not even know what the local authorities are.
119. Earlier, there was light discussion, which I missed part of, on shipwrecks. There is the Girona, and HMS Drake, of course, off Rathlin Island, and other shipwrecks from the Spanish Armada are possibly out there. I raise this issue, because it is topical after all the Titanic exposure. There are big issues about war graves and about what should be left alone and what should not be plundered and so on. That is important.
120. In a nutshell, I am not convinced that the Bill will dominate other interests, particularly as it is spread over Departments. You mentioned, of course, the role of the politick. I do not think that this legislation is robust enough to deliver what it is supposed to.
121. I think that Gregory referred to this at the very beginning of our discussion, but what happens if some pig farmer, and I am not picking on pig farming, who just happens to be on one side of the border or the other decides to have 100,000 pigs and all the effluent flows into the Foyle or Carlingford lough? I understand that the Republic's Marine Bill is behind ours, but I am not sure about that. However, there has been no reference to that at all, yet I can bet my bottom dollar that the first major issue relating to pollution or some crisis will involve the Republic and Northern Ireland having to have some sort of commonality on how they enforce and protect the marine environment.
122. **Mr K Bradley:** The Marine Bill is, obviously, not the right mechanism to deal with an example such as that.
123. **Ms Cunning:** There is the marine strategy framework directive (MSFD), and, indeed, the water framework directive, which covers out to one nautical mile and the loughs. Lough Foyle and Carlingford lough are shared waters between us and the jurisdiction in the South. Therefore, they already have a duty to reach good ecological status under both directives. So, they would not want a pollution incident such as that to happen in their own jurisdiction. Therefore, it would not have an impact on us, and that works vice versa. We also have to work with them as another member state under those directives. That is the driver for environmental protection across borders.
124. However, you are absolutely right: working with them is key. We are adjoining regions. Co-operation is also key if we have any issues with Scottish boundaries. The marine environment cannot be separated out. Terrestrially, we are a distinct island, and that is fine. With the marine environment, however, we will create impacts from all the waters around us, and we can impact on them. So, yes, co-ordination with other jurisdictions is very important. That is why parts of the Bill deal with giving notification to the adjoining jurisdiction if, for example, we are doing a marine plan.
125. To come back to your point, however, any cross-boundary pollution would be captured by the water framework directive or the MSFD. At least, we hope that it would be.
126. **Mr Dallat:** I asked several other questions.
127. **Ms Cunning:** Perhaps we can touch on public authorities. You were a bit worried about that. It is actually defined.
128. **Mr Dallat:** It seems that we are being asked to embrace an act of faith because

- we do not know what the authorities are or what their responsibilities are. How on earth can you consent to a Bill when you do not know who you are sharing it with?
129. **Mr Campbell:** Ye of little faith.
130. **Mr Dallat:** I know.
131. **Mr Kerr:** This scrutiny process will, hopefully, get to the bottom of any issues that you may have. We hope that there will not be blind faith at the end of that process. You will have had an opportunity to dig into some specific issues and, hopefully, we can address them, including whether they need to be changed or amended. Indeed, they may have been already covered in some other way. Obviously, we are keen to do that.
132. **Mr Boylan:** Thank you, Chair. I think that Danny asked all the questions, but I will try to squeeze one or two in.
133. I still have concerns about the absence of an MMO. We were reactionary to the issues with Strangford lough, and the proactive approach would have been to designate, which is fine. The designations will come from the Department, but what stakeholder involvement will there be? I welcome the statement of public participation, because, although the terminology is “consultation”, with previous legislation I found that not much credence was given to information that was given and the contributions that were made. I think that we need to move away from that. Will the stakeholders have any part to play with the designation teams in making the designations? Will those decisions lie with the Department?
134. **Mr K Bradley:** Clause 14 will give the Department clear responsibilities. Before we can make a designation order, we must consult with anybody who is likely to have an interest.
135. **Mr Boylan:** It is not just about making designations, because it has to be managed. That will lie in the Department. As I said, the response to the issues in Strangford lough was reactionary. How do we ensure that that does not happen again? That is what I am concerned about.
136. **Mr K Bradley:** That is a valid point. Hopefully, we have learned from the Strangford experience and will not repeat it. However, I suppose that time will tell. There is no specific mechanism other than the duty to carry out public consultation. We also need to take into account socio-economics so that everyone knows what has been designated and why, whether some other activity is happening that is maybe more important or whether we need to change the location of an MCZ. I think that that is a better process. I do not want to use the term “openness” again, but it is definitely a more open and transparent process. There should be nothing from the Department that is a fait accompli. We will manage it by consensus. At the end of the day, we should not designate an area if someone is totally against us doing so.
137. **Mr Boylan:** Obviously, there are also the European designated sites to consider. How will we marry those up with the local sites? Will there be separate guidelines or timelines for doing all that?
138. **Mr K Bradley:** We will produce separate guidance on the designation process. You are right; the MCZs may be beside or even overlap existing European sites. In a way, that is not a bad thing, as people already know where those areas are. Strangford lough is a good example of that, but there are other European sites such as Rathlin Island. If we create an MCZ that is close to or even overlaps part of those sites, there should not be the same problem. We will set out guidance on the designation process, which will be available to all public bodies.
139. **Mr Boylan:** OK.
140. **Mr Molloy:** Mr Campbell asked you about Carlingford lough and Lough Foyle, and you seemed to indicate that we have total authority over those. Have I interpreted that incorrectly? My second question is about the Crown immunity, which is mentioned in clause 45. Are

- you saying that there are no measures for which the Crown is accountable? Is the Crown accountable under European law? Could it be charged under that?
141. **Ms Cunning:** I am not sure that we have time to get into the jurisdiction issue. The Bill applies to all the waters in the UK that are adjacent to Northern Ireland. What the extents of those will be in Lough Foyle and Carlingford lough — [Inaudible.]
142. **Mr K Bradley:** In marine nature conservation, we designate in Carlingford lough and Lough Foyle.
143. **Ms Cunning:** We also have marine licensing there. Therefore, we already have functions in those areas.
144. **Mr K Bradley:** We and our colleagues in the South designate in those areas.
145. **Mr Molloy:** Is it shared, then?
146. **Mr K Bradley:** Information is shared, yes.
147. **Mr Molloy:** The authority is obviously shared as well. Is that right?
148. **Mr K Bradley:** DOE manages what we designate, and the National Parks and Wildlife Service manages what it designates.
149. **Mr Molloy:** I was concerned that the legislation had changed and that we now had total authority over Lough Foyle and Carlingford lough. [Laughter.]
150. **Ms Cunning:** As far as the Crown is concerned, you are right: this is a standard clause. The Bill will bind the Crown. It cannot be held criminally liable, but the High Court can declare that an act carried out by an officer of the Crown is unlawful. In fact, officers of the Crown can themselves be held liable. So, within those constraints, it applies to functions of the Crown.
151. **Mr Molloy:** Is the Crown accountable under European legislation? That was my second point.
152. **Ms Cunning:** Yes, it would be, to the extent that it is as usual, so the status quo would apply in that regard.
153. **The Chairperson:** Thank you very much indeed for attending. We will see you again fairly soon.

19 April 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Danny Kinahan
 Mr Patsy McGlone
 Mr Francie Molloy
 Lord Maurice Morrow of Clogher Valley
 Mr Peter Weir

Witnesses:

Miss Suzie Cave *Research and
 Information Service*

154. **The Chairperson:** I welcome Suzie Cave to the meeting. She will speak for 10 or 15 minutes on the Marine Bill, and then we will have members' questions.
155. **Miss Suzie Cave (Research and Information Service):** The purpose of this piece of research is to highlight the main differences between the Northern Ireland Bill, the Marine (Scotland) Act 2010 and the UK Marine and Coastal Access Act 2009. I have provided the Committee with a summary table of the main points in the paper.
156. I will begin by looking at the differences between the Northern Ireland Marine Bill and the Scotland Act. The Northern Ireland Marine Bill does not contain provisions for the protection of historic assets within a marine zone similar to that in the Scottish Act, which specifies six categories of historic marine protection areas (MPAs). There is more detail about that on page 9 of the paper. The Scottish Act sets out provision for marine management schemes for nature conservation in demonstration and research MPAs. They are intended to define the roles and responsibilities of local authorities and relevant parties. The Northern Ireland Marine Bill does not make provision for marine management

schemes, and it is not clear how the roles and responsibilities of relevant public authorities, including district councils, will be taken into account in the management of marine conservation zones (MCZs). However, schedule 1 to the Bill states that the Department is to have regard, in forming a marine plan, to any plan prepared by a public authority in connection with the management or use of the sea or the coast.

157. I move now to roles and responsibilities. Clause 20 simply places a general duty on public authorities to carry out their functions in a manner that they consider best furthers or least hinders the conservation objectives set for MCZs. The explanatory memorandum for the Northern Ireland Bill implies that the policies and roles of other public authorities will be stated not in a marine management scheme but in the text of a marine plan. Clause 2 defines a marine plan and requires that such a plan must state the policies of the relevant Northern Ireland Departments.
158. As far as seal conservation measures are concerned, the Marine (Scotland) Act makes it an offence to kill a seal without a licence and makes provision for the licensed killing of seals under certain circumstances. Some 24 clauses deal with that issue, including details of licensed conditions, methods of killing, protection of seal haul-out sites, powers to enter land for the purpose of killing seals, protection of fish farm stocks and other related issues. The Northern Ireland Marine Bill does not make provision for seal protection or licensing. The UK Marine and Coastal Access Act makes some provision in section 9, but it appears that that extends to England only.
159. I move now to common enforcement powers. The Northern Ireland Marine Bill largely refers to the provision of the UK Marine and Coastal Access Act for common enforcement powers

- in relation to enforcing requirements across licensing, nature conservation and fishing, but the Scottish legislation makes its own provision for such powers set out within 27 sections in Part 7 of the Act. However, there are no major differences in the provisions for the common enforcement powers.
160. I move now to territorial coverage. A map on page 7 of the paper shows the boundaries. Both pieces of legislation state that it is in relation to the inshore region, from nought to 12 miles. However, the Scottish legislation covers all of the waters in its inshore zone, while the Northern Ireland legislation omits the areas currently overseen by the Loughs Agency, which is Carlingford lough and Lough Foyle. Although the Marine (Scotland) Act 2010 contains a stipulation in schedule 1 that Scottish Ministers will notify relevant and neighbouring jurisdictions, including the Department of the Environment in Northern Ireland, the Northern Ireland Marine Bill does not refer to the Loughs Agency. The explanatory memorandum makes it clear that the Northern Ireland Bill is intended to:
- “establish a strategic system of marine planning in Northern Ireland’s inshore region”.*
161. However, it is not clear how the agency will be consulted or included in the Northern Ireland marine plan.
162. The Marine (Scotland) Act 2010 does not provide specifically for a marine management organisation (MMO). However, Marine Scotland was created as a directorate of the Scottish Government in advance of the enactment of the legislation. Its role includes oversight of marine planning and licensing, promoting economic growth for the marine renewables industry, managing fisheries and the aquaculture industries, ensuring a sound evidence base to inform the development of marine policy and ensuring effective compliance and enforcement arrangements. Marine Scotland is responsible for activities up to 12 nautical miles. The Marine Management Organisation, which was established under the UK Marine and Coastal Access Act 2009, is responsible for reserved matters in the seas beyond 12 nautical miles, including historic heritage, telecommunications, oil and gas and shipping. The Northern Ireland Marine Bill does not provide for an MMO, although the Minister of the Environment has indicated that he is committed to the principle and operation of an MMO.
163. The Northern Ireland Marine Bill provides for the establishment of MCZs. Clause 12 of the Bill states that the Department may make an MCZ designation for the purpose of conservation on three grounds: marine flora or fauna; marine habitats or types of marine habitat; or features of geological or geomorphological interest. The Marine (Scotland) Act 2010 instead provides for marine protection areas (MPAs). Those can take three forms: nature and conservation MPAs, which are similar to MCZs in the Northern Ireland Bill; demonstration and research MPAs; and historic MPAs. Neither the demonstration and research MPAs nor the historic MPAs exist as categories of designation in the Northern Ireland Marine Bill.
164. With the exception of a specific section on licensing for electricity generating facilities, the Northern Ireland Bill does not legislate for marine licensing. However, the Scottish legislation makes its own arrangements for marine licensing similar to those in the UK Act. Those include a number of activities such as the removal and disposal of marine-dredged material, deposition of substances, coastal and marine developments and wind, wave and tidal power. There are a few other differences highlighted in the paper, but, for now, I will move on to the UK Marine and Coastal Access Act 2009.
165. The UK Act establishes the MMO, which is a non-departmental public body, as the responsible authority for marine planning, environmental licensing, monitoring of marine developments, management and enforcement of fisheries and nature conservation with a designation of MCZs. There are no

- provisions for an MMO in the Northern Ireland Marine Bill.
166. The UK Act contains powers for the management of fisheries, shell fisheries and commercial and recreational fishing. It establishes inshore fisheries and conservation authorities that are responsible for fisheries and nature conservation. There are no equivalent provisions for fisheries in the Northern Ireland Bill.
167. Under the Wildlife (Northern Ireland) Order 1985, seals are protected at all times. Chapter 2 of Part 1 of the UK Act allows for licences to kill or take seals. There are no equivalent provisions in the Northern Ireland Bill. This is not a reserved matter, as the UK Act clearly states that that provision applies to:
- “the whole or any part of England or the English inshore region”.*
168. Part 9 of the UK Act introduces new powers to extend recreational access to the English coast, and to enable the creation, as far as possible, of a continuous route around the coast that is wide enough to allow unconstrained passage on foot and recreational space. The UK Act also provides a similar provision for Wales. However, there is no provision for Northern Ireland in that Act. Provision for Northern Ireland is contained in the Access to the Countryside (Northern Ireland) Order 1982.
169. The marine authority in England responsible for marine planning and the development of marine plans is the independent MMO. Under the Northern Ireland Bill, the Department of the Environment will be responsible for such matters and will have to consult with all Northern Ireland Departments that have marine functions and have the final version agreed by the Secretary of State.
170. Under Part 2 of the Northern Ireland Bill, the validity of a marine plan can be challenged by judicial review only by the person aggrieved by it. The grounds for challenge include the plan not being within the appropriate powers or that a procedural requirement has not been complied with. Any challenges are to be brought within six weeks of the adoption of the marine plan. However, that section of the Bill has been criticised for the draconian curbs it places on the ability to seek a judicial review of a marine plan, and it puts the UK in danger of breaching its international obligations to provide access to justice in environmental matters. The provisions of this section of the Bill do not differ from those contained in Chapter 5 of Part 3 of the UK Act.
171. As far as archeological and historical sites are concerned, there is very little provided in the Northern Ireland Marine Bill and the UK Act to allow for the designation of MCZs due to their scientific, historical or archaeological importance. However, similar to the UK Act, reference is made in the Northern Ireland Bill to those sites in relation to the social consequences of designating a site as an MCZ.
172. With little provision for them in the UK Act, some sites are covered under existing legislation in the form of the Protection of Wrecks Act 1973. Sites that are landscape features, covered by the fluctuation and change of the water levels over the years are not provided for in the UK Act. However, they are provided for under the Ancient Monuments and Archeological Areas Act 1979, which specifically mentions the seabed. At the same time, the UK Act clearly states that its provisions do not extend to Northern Ireland. Existing legislation in Northern Ireland, such as the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 fails to make any reference to the seabed or to underwater sites, monuments and objects. The UK marine policy statement takes historical and archeological sites into detailed consideration. However, that level of attention and detail does not appear to have transferred to the new Bill.
173. In relation to the MCZs, although the Northern Ireland Bill and the UK Act both provide for the designation of MCZs so as to contribute to a network of marine sites, Part 5 of the UK Act ensures a commitment to designating an

- ecologically coherent network by 2012 to meet international commitments and the 2013 reporting deadline on MPAs. However, the Northern Ireland Marine Bill does not appear to include a similar timetable to mark milestones for the designation of MCZs in Northern Ireland.
174. Finally, in relation to fines, it is worth noting that Part 3 of the Northern Ireland Bill has been criticised for the fact that in the event of a public authority causing harm or damage to an MCZ all that is required from that public authority is an explanation to the Department of the Environment. The only possible sanction is a fine for the breach of a by-law, which is limited to £5,000, whereas an individual who is guilty of causing damage to an MCZ can be subject to an unlimited fine determined by the court and a level 5 fine of up to £5,000 for the breach of any by-law. There are similar conditions provided for in the UK Act.
175. **The Chairperson:** Thank you, Suzie. It is very useful to have comparisons with the legislation in England and Scotland. There are some very obvious areas for questions, such as MMOs and seal protection. We have a lot of seals. I cannot understand why we do not have that protection in our Bill. Do you think that without the MMO we have enough safeguards for the administration and implementation of the Bill?
176. **Miss Cave:** Having looked at some of the responses, I see that the main issue is the fact that so many different functions are spread across different Departments. That seems to be the main issue and reason why a number of people are pushing for the MMO.
177. **Mr Kinahan:** Most of my questions will be for the Minister when we get the chance to meet him. However, I have one query on something that you mentioned at the end. There will be no fines sanction for inshore infractions, but that the public authority will be asked for an apology or an explanation. However, at the same time, are we liable for huge fines from Europe if somebody damages the same areas?
- Is the balance missing? We could be fined large sums of money, yet we have nothing in the Bill to allow us to take action against people doing the same thing.
178. **Miss Cave:** That is definitely something that would need to be looked into, and I can certainly do that. It is an important issue.
179. **Mr Campbell:** That was a very interesting presentation. My question revolves around the initial piece. It is not so much about the jurisdictional issue but about the exclusion of Carlingford lough and Lough Foyle, vis-à-vis, the North/South Ministerial Council issue. At some point, we will end up with a Marine Act, and there will be difficulties when it comes to things such as species protection, pollution or whatever the issue might be. There is very clear delineation when we are talking about a land problem because the jurisdictions are very clearly defined. How are we going to deal with a problem that emerges close to, or overlaps in, Carlingford lough or Lough Foyle, where there are areas that are excluded from the Act and where the problem crosses both jurisdictions? Will there be a memorandum of understanding (MOU), or how will it work?
180. **Miss Cave:** It is my understanding that there is an MOU at the moment, but that is something that, I hope, the Department will be able to go into a bit more detail with you on.
181. **Mr Campbell:** I suppose that anything could happen, but say there was some sort of massive angler pollution issue at or close to a particular point in Carlingford lough or Lough Foyle. There would need to be very close liaison, because we could not have a position in which somebody said that they could deal with the issue up to the point at which their jurisdiction ends but that they have to enter into discussions so that others can deal with the issue on their side. There would need to be a very systematic approach that would allow immediate responses. I presume that nothing like that has happened to date, but things that we thought would not

happen five years ago have happened.
Can we take it that whatever MOU exists
at the moment will be replicated in the Act?

182. **The Chairperson:** Gregory, I suppose that we could ask the officials those questions later. Suzie has provided a very good piece of work giving the comparisons and differences. It is, perhaps, unfair to ask her that.
183. **Mr Campbell:** That is OK.
184. **The Chairperson:** There are no more questions relating to the research paper, so thank you very much, Suzie. I am sure that we will see you again.

3 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Cathal Boylan
 Mr Tom Elliott
 Mrs Dolores Kelly
 Lord Morrow

Witnesses:

Mr Peter Archdale *Council for Nature
 Conservation and
 the Countryside*
 Mr Patrick Casement *Council for Nature
 Conservation and
 the Countryside*

185. **The Chairperson:** We move now to a presentation from the Council for Nature Conservation and the Countryside (CNCC). A written submission has been made available to Committee members. We welcome Peter Archdale and Patrick Casement from CNCC. We are running a bit behind time, so, if you could make your presentation in about five or 10 minutes, members will then ask you questions.
186. **Mr Patrick Casement (Council for Nature Conservation and the Countryside):** Thank you very much, Chairperson, and thank you for inviting us. I am going to ask Peter to lead off. He is chairman of our marine working group. I will then fill in a few more details.
187. **Mr Peter Archdale (Council for Nature Conservation and the Countryside):** Thank you very much for the opportunity to give our views. You will have received our written submission, which deals with the Bill on a clause-by-clause basis. We felt that this was an opportunity to talk about the wider issues, because, of course, the Marine Bill is merely the vehicle that Northern Ireland is using to enact the wider responsibilities under the marine strategy framework directive (MSFD). Within the MSFD is the requirement for member states to achieve good environmental status of waters by 2020. That involves the ecosystem approach. In that, member states must develop the marine strategies. Indeed, there is a UK-wide marine policy statement, out of which the recent position paper has been drawn, so that is the context in which the Marine Bill must be seen.
188. There are a couple of points that I would draw the Committee's attention to. The assessment of the current state of marine waters is to be completed by 2012, which will include the economic and social analysis of those waters. That thread runs through the whole Bill, but the economic and social analysis is a long way behind the environmental analysis. It is a tight deadline. Also, the characterisation of what constitutes a good environmental status has to be completed by 2012. That means that we have to hit the deadline for the development of the monitoring programme by 2014 and the deadline for the development and implementation of the programme of measures by 2016. In other words, those deal with how we will get there and how we will achieve it. It is in that context that we have looked at the Marine Bill.
189. There are lessons to be learned. I picked up the point about marine management organisations (MMOs) and there is obviously a breadth of views. There are lessons to be learned about what has happened with the process of departmental co-ordination in, for example, Strangford lough. The situation there has been difficult, as the Departments have had different views. We support the creation of an MMO, as it is a vehicle to achieve that co-ordination. However, a political decision has been made that an MMO will be not established by the Bill, and I ask the Committee what mechanism will be put in place to deliver that necessary co-ordination and to avoid making the mistakes that we have made in the past? Understandably, because of their different responsibilities,

- Departments have put different values on the environmental, social and economic aspects and have not always been able to find a compromise or solution. Among the vehicles that will deliver a good environmental status are the marine conservation zones and marine protected areas, and the process through which their creation is conducted and delivered is worthy of quite a bit of focus.
190. Let me describe my view as that of an informed outsider of the lead Department, the Department of the Environment (DOE), and its agency, the Northern Ireland Environment Agency (NIEA). One of our considerable concerns is that the current Civil Service mechanisms make it extraordinarily difficult for the DOE to do its job and to deliver what is required by the MSFD and the Marine Bill. A particular difficulty is in the area of recruitment, and, for example, all member states in Europe with a sea responsibility are competing for marine scientists. At the moment, the wretched DOE has to go out and use a common approach and anyone can apply for a marine post. However, that means that the recruitment sessions are fairly infrequent and it is difficult to get the right people. They are also in a competitive market and have to pay for those individuals. So there are, let us say, structural problems. Without trying to solve the problem, all I would say is that if I had a clean sheet of paper, the result would not look like the thing that is going to come forward to try to deliver the MSFD. I will leave it at that.
191. That is a setting statement or comment from me.
192. **Mr Casement:** I will make a few more detailed points, if I may. First, Peter has pointed out that we are enacting European legislation. Unfortunately, because of the way in which the Marine Bill is framed, all too many clauses are stated in a discretionary form rather than a statutory form. Duties need to be statutory because we are talking about European legislation. Words such as “may” should be replaced by “must”. Almost invariably throughout the document there are whole series of such cases.
193. The second issue has also been touched on by Peter, and that is the need for an evidence-based approach to all of the activity that goes on. Unfortunately, there seems to be an uneven playing field with regard to evidence. Scientific and environmental evidence is being scrutinised more carefully and in much greater depth than some of the economic and social data that comes forward. We want to see a much more level playing field with regard to the various sorts of data that come before the bodies that are making decisions. In the previous presentation to the Committee, there was a veiled suggestion that economic consideration should take greater weight. However, if evidence of poorer quality is given greater weight, then there is not a level playing field.
194. Thirdly, and this is a crucial point, how do we go about the actual designation process for marine conservation zones (MCZs)? Two different models have been developed on the other side of the Irish Sea — one in England and one in Scotland — and they have had very different ways of going about it and different degrees of success. The English model is very much a bottom-up approach with stakeholder involvement and the Scottish model is a much more evidenced-based, top-down approach, which involves stakeholders at a later stage. The English model seemed to be very successful in that it engaged very large numbers of people, but it has led to complete confusion, and the process is now in disarray. The Scottish model seems to be moving forward much more successfully. The history of designation tends to suggest that a more top-down but very careful, evidence-based approach is a better one.
195. Peter has touched on the lack of adequate resourcing and the organisational structure inadequacies.
196. The next point is about what has been entitled the fishing defence. Because of historical fishing rights for foreign

- vessels, there is the defence of damage to a marine conservation zone. If it is stated that it has been done for purposes of fishing, then that is an adequate defence. We believe that that defence should apply only in the six- to 12-nautical-mile region. The nought- to six-nautical-mile region, which is restricted for local fishing vessels, should be subject to the full weight of the law, and fishing should be no defence for damage to marine conservation zones. That is a very important point.
197. Northern Ireland has a very small offshore area to the south-east of the Province, and there is not great clarity in the document as to who will be responsible for it. Strictly speaking, it is part of UK waters. However, as it is such a small area, how will the two work in? Is it not better to consider it all in one with the Northern Ireland inshore waters?
198. With regard to the level of protection for marine conservation zones, we believe that there should be a category of highly protected marine conservation zones where there is a much greater presumption in favour of virtually no other activity within them. However, we also believe that, at the other end of the scale, there should be the opportunity for research and demonstration areas, for example, that will enable some of the renewable energy technologies and, possibly, new fishing techniques, to be explored and looked at. There needs to be a good range of things.
199. One of the problems in this is the fact that there is frequent reference in the document to guidance provided by the Department for people who are going to be involved in various activities. There is the problem of the timing of the guidance and whether it will be up and running and ready to operate from the enactment of the Marine Bill or whether there will be a hiatus, and, if that is the case, what are we going to do in that hiatus. There is already a potential hiatus with regard to the marine plan. It will not be in place when the Marine Bill is enacted, but there will be, inevitably, applications for development within the marine area. The only document we will have is the UK-wide marine framework document, which is hardly a guide to local planning issues. We need some better guidance on that.
200. Finally, I make the plea that we remember that the marine environment is not two-dimensional. It is three-dimensional. Quite a lot of what is being looked at regards it as just another extension of the land; a flat surface. There is all that body of water sitting on top of the flat surface on the bottom. That has to be considered at all stages and in all debates. It is all too easy to forget it when we look at it from a terrestrial point of view.
201. **The Chairperson:** Thank you very much, Patrick and Peter. As usual, that was a very informative presentation.
202. I would like to take you back to the structure. I see what you mean. I am quite concerned about the possible lack of expertise in the Department on marine governance and the implementation of Bills and their management. When we went to Scotland, on what was really a very useful trip, we saw the different branches in Marine Scotland — the scientific and research department and so on — and the amount of expertise that they can call upon. That certainly impressed us; it impressed me very much. How can we address that issue? By advertising more widely?
203. **Mr Archdale:** There are two halves to the issue. One is the expertise available. The second is the administrative structure of Northern Ireland Departments. I will even set aside the MMO question, and say it is a clean sheet of paper. Within the NIEA, I am aware that the strategy unit has considered this and the board has looked at it. At the moment, I know that five directors are involved in the delivery of the Marine Bill. That does not seem to be a good recipe for co-ordination. I think that the strategy unit output is designed to improve that. To then answer the question of how we bring in the expertise, I would say that there are difficulties with contracting because of the Northern Ireland Civil

- Service recruitment process and the Department of Finance and Personnel's (DFP) contractual bans. Essentially, there is difficulty in making a case. In the short term, there are ways around it. Indeed, I think that some of the solutions have been found by drawing money from the plastic bag levy and things like that. Again, one of the key points that we have noticed is the need for continuity here and a long-term understanding of the environment. To put it in simplistic terms, it is no different from having agricultural advisers who are looking at things from, frankly, a text-based point of view, versus farmers who are practitioners. They both have their merits, but there is a breadth of view that somebody who has been doing the job all their life can bring to it. That is the difficulty when you are contracting in services and so forth.
204. As to what the Committee can do, it can ask stiff questions of the Minister. However, I am fairly confident that the Minister is aware of the problems.
205. **The Chairperson:** I think that an independent MMO would be able to attract more of that expertise more easily than the Department.
206. **Mr Casement:** At the start of his presentation, Peter made reference to the Strangford lough issue and the problem that we have already had with European legislation with regard to the difference between competent authorities and responsible authorities and the fact that there seems to be a failure of mechanisms, whereby competent authorities have to be held to account by the responsible authority. I think that that will be another issue that will rear its head again and again if we do not have some sort of hierarchy or system of governance sorted out for this matter at a very high level of government.
207. I also think that there is a lower-level governance issue if we do not have an independent MMO that is about some sort of independent scrutiny of what is going on. Currently, we in CNCC are tasked statutorily with overseeing and looking at the designation of terrestrial sites that are areas of special scientific interest, such as marine nature reserves, national parks and national nature reserves. There is no provision in the Bill for that sort of independent scrutiny. If there were an MMO, there would be no need for that, because it would be at least semi-autonomous, but at the moment, there is no independent scrutiny of what is going on. I think that that is an oversight and a problem with this. The public need assurance that there is someone looking at the issue independently of government and that the approach is not entirely top-down.
208. **The Chairperson:** Would that create the potential for infraction cases being brought against us in the future?
209. **Mr Archdale:** Although it was before my time, our experience with terrestrial ASSIs was that, where the Department brought a proposal to us, its case was actually strengthened. That was a judicial matter rather than something that was going through the Brussels infraction process. Ultimately, however, when it goes for reasoned opinion and so forth, it is also judicial.
210. My first impressions are that, because NIEA is a government body, we do not have that independence built in to the Northern Ireland environment process. That is exactly why CNCC carries the statutory role of providing independence. It strengthens rather than weakens the system.
211. **Mr Casement:** I think that that is absolutely right.
212. **Mr Boylan:** Thank you, madam Chair, and thank you for your presentation. I suppose we need to start getting away from this European infraction stuff and start getting our own legislation in place.
213. What are your views on the Bill? Clearly, you support its broad principles, but the devil is in the detail of how we roll out the marine licensing and all the rest of it. I went to Scotland, which was interesting, and you are right about the scientific evidence. I know that I will have to ask the Department about this,

but do you have any idea of where are we across the board? There are so many views here, and we have a good and unique opportunity, because this is the first time round in trying to co-ordinate and gather all the evidence. You talked about the situation with the scientific and environmental analysis as opposed to the social and economic. How do we marry all that up?

214. **Mr Archdale:** It is difficult.

215. **Mr Boylan:** This is the starting point for us, and a lot of groups are going to come over. We cannot designate anything unless we have the evidence to do so, and you cannot just say that the ASSI is a slightly different issue, but, specifically, how do we go about getting that? Where do we get the resources, for a start? Besides all the marine planning and everything else that you want, that is a starting point in the designation of the MCZs.

216. **Mr Archdale:** The simple answer is that the Government need to make the money available. By not doing so, they are not recognising not just the value of the environment in the broadest sense but the marine environment as a subset. Having said that, there are mechanisms for drawing down significant funding from other areas. I would flag up the great work that the Department did on the INTERREG project, which was the joint Irish bathymetric survey (JIBS). Other Administrations are green with envy over the quality of the data that came out of that, and the son of JIBS, which is the integrated aquatic resource management between Ireland, Northern Ireland and Scotland — IBIS — also came out of it. There are opportunities, and it is particularly worth stressing that the directive requires us to co-ordinate with our neighbouring states, which immediately puts us into INTERREG territory. However, this is a capacity issue for the Department. It is the old story: if you do not have the people with the time to sit down and go through the very laborious processes, it is difficult. I am sure that you will be well aware of that. To put it bluntly, I do not think that the Government have been

very businesslike about it. If you were running a business, you would identify an opportunity and put resources into moving into that field or opportunity. They have been reluctant, shall we say, to put the necessary resources into the environment generally and into the marine area in particular. However, it is expensive.

217. **Mr Casement:** We have some good databases to build on. Peter mentioned JIBS and the other sea mapping projects. We also have the sublittoral survey. It is a long time since that was done, but, fundamentally, there is still a lot of good work in it. The Ulster Museum has also done a lot of good survey work, particularly in what I would call biodiversity hotspots, so we have a fairly good idea of where some of them are. In addition, a lot of information is held by the Agri-Food and Bioscience's (AFBI) fisheries and aquatic ecosystems division, and I think that a new concordant is about to be signed that means that it will share information with the Department of the Environment. That is very much to be welcomed, as we will see a much better exchange of information and data. A lot of that division's work is commercially based and deals with fisheries, but it also covers other aspects of the marine environment.

218. So, there is the potential for great co-operation and working together. We very much welcome that and look forward to it being carried forward. There are other databases.

219. **The Chairperson:** Can we stop there? I know that Tom Elliott has to go, so I am afraid that we may lose our quorum. However, please stay with us. I need to deal with a number of items while we still have a quorum.

Committee suspended.

On resuming —

220. **The Chairperson:** Thank you for bearing with us.

221. **Mr Archdale:** I thought of another point as Patrick was speaking. There

- is a great opportunity to gather data at a reduced cost. Developers in the renewables industry have to supply data anyway. That is often commercially sensitive, but a mechanism should be found to make those data available to wider stakeholders, particularly the Government, so that they can be used to inform the process.
222. **Mr Boylan:** Lord Morrow mentioned flexibility. Our starting point is that we are bringing in a piece of legislation, but we cannot do that without the budget. When we visited Scotland, we saw their marine atlas. Those data provide a good baseline for starting. Before we can do anything, such as introducing and passing the Bill or putting the timelines in place, we need to gather all the information. You said that there are avenues for that already.
223. **Mr Casement:** There are good starting points, but the problem with a lot of those data is that they are not recent. However, they give us a clear picture of where we should be looking for better data. Effectively, we have a better idea of where the gaps are than we would if we were starting from scratch. One of the problems is that many of the areas have been damaged, as we know from the experience of Strangford lough. However, other parts of the seabed have also been damaged. The surveys that were done before the north Antrim coast was made a special area of conservation showed clear evidence of dredging in the inshore area between the Skerries and the Whiterocks beach. As a result of that activity, that habitat has substantially changed since it was surveyed in the sublittoral survey.
224. So, we cannot rely on those data, but they give us a guide for where to start. The JIBS project gives us a picture of the seabed, which will also be indicative of where the most interesting areas may be.
225. **Mr Boylan:** We are going to see a lot of presentations over the next couple of weeks, and everybody is going to have their say on it. One thing that I personally would like to do — this is something that I will be bringing forward on behalf of the party as well — is to support everybody being given an opportunity to play their part through proper participation, as opposed to having something like the consultations of the past that resulted in documents sitting on the shelf.
226. The management of this is a big issue. As we move forward with RPA, some councils are going to be amalgamated with others that have never dealt with marine issues. I cannot name specific councils, but I am sure that that will happen. Local authorities play a big role in this as well. I am concerned that maybe some councils will want to go in different directions from others.
227. **Mr Archdale:** You have really put your finger on one of our concerns. It is a concern not just about the Marine Bill but for terrestrial planning. The marine spatial plan has been likened to the regional development strategy. However, it bears no resemblance to it. The regional development strategy does not serve, frankly, that level of detail. You then have the next layer of detail down in terrestrial planning. As for area plans, well, they run out in 2015. Coming from the west, I have a very jaundiced view of area plans. The resourcing and skills that councils will need to deal with these issues are fully understood for the area plans. However, as you pointed out, it is a real concern to know how to grow that expertise for the marine area. How do you support that? Ultimately, it is going to take money. Anybody who tells you differently is not talking about the right problem.
228. **Mr Casement:** The other issue, of course, is the co-ordination of the terrestrial and marine planning. I think that the need for close co-ordination is the point that you are slightly making. However, if you get two different councils that take a different line on how that should be achieved, you could have two different results on adjacent bits of our coastline extending into the marine area. I think that that is another concern. The co-ordination and management of the coastal strip is going to be key to all this. Marrying the two plans together —

- the area plan for the terrestrial habitat and the marine plan — to produce a unified approach to the coastal strip is going to be key to the process. At the moment, it is a little difficult to see how that is going to be achieved, because the various phases are out of step at the moment and getting them into step may be quite difficult.
229. **Mrs D Kelly:** I have just come back to the Committee; it is good to see you both again. You touched on planning and capacity. In the context of RPA, I am not too sure about the Department's intention with the devolution of marine planning powers to local authorities. Do you have any comments on that?
230. **Mr Archdale:** The Bill picks local authorities up as competent authorities and mentions them as the bodies that would have responsibilities for marine planning. When we looked at the RPA plans — Lord knows when that was; two or three years ago — we saw that there was a logical disconnect between the idea that, at the moment, the Department is doing one level of that work. How is the Department going to provide that level of advice to the planners — I will leave it as general as that — about whether they are marine or terrestrial? There has been a general acknowledgement that that is a difficult question and that we will be told what the answer is when we have worked out what it is. Nothing has come in stern reply so far.
231. **Mr Casement:** Yes, we have a real concern about the role of NIEA as an adviser to planning, because at the moment, it sits in the same Department. It is very straightforward. The Planning Service can turn to NIEA for advice, but when responsibilities are shifted and at least some of the responsibility lies with local authorities, what then is the position vis-à-vis seeking advice on, say, environmental matters from NIEA? We raised that again and again without getting any clear view on whether planning authorities will in future have to employ their own expertise or buy it in from elsewhere.
232. It will probably be clearer in the marine environment, because that will be the responsibility of the Department of the Environment, so it can still legitimately turn to NIEA. However, there is a very grey area there, and we are very concerned that local planning authorities will have difficulty in finding genuine environmental advice without either having to buy it in or employ specialists. I do not think that has been factored in. We raised that again and again, and it does not seem to be.
233. **The Chairperson:** There is also the problem of inconsistency in planning approvals.
234. **Mr Casement:** Yes, indeed. There is all that.
235. **Mr Archdale:** To bring out Patrick's answer, a real difficulty with coastal planning is that coastal processes are involved. In simple terms, you do something in Newcastle, and it affects the coast the whole way up, but, hopefully, it does not go into a different council area. We have mucked about with those processes a lot anyway, so it is not simple.
236. **Mrs D Kelly:** If we have not already done so, Chair, could we seek further clarification from the Department about that matter and also about whether it would be the Department's intention to retain marine applications at a departmental level as part of a strategic responsibility rather than to devolve it?
237. **The Committee Clerk:** The intention is to bring functions together, so that makes sense.
238. **The Chairperson:** Are they not going to give it to local councils?
239. **Mr Archdale:** If you would like to hear more on coastal processes, Professor Alford, one of our members is an expert on that.
240. **Mrs D Kelly:** We could look at that at a later date, perhaps.
241. **Mr Casement:** Climate change introduces another issue into coastal processes and into the definition of what is the marine area, because with sea level rise,

- we will see changes in our coastline. Places that were dry land will become sea, I am afraid, and there is not much that we can do to stop that.
242. **The Chairperson:** From memory, I think that there is a definition.
243. **Mr Casement:** At the moment, it is the high water mark, but that will change. Obviously, it is not a fixed point.
244. **The Chairperson:** Is it not?
245. **Mr Casement:** As the sea rises, it will extend further inland.
246. **The Chairperson:** Yes, through climate change.
247. **Mr Casement:** So, we have to be aware of that. This is not a fixed line that we are talking about; it is a moveable or moving line that will continue to move. It always has done, whether the sea has risen or not, because of coastal erosion and processes. At the same time, however, this is an added issue that has to be considered.
248. **The Chairperson:** That is why we need to take adaptation to climate change into consideration and put it into the Bill.
249. **Mr Archdale:** Very much so. It is crucial.
250. **Lord Morrow:** Chair, before these gentlemen leave the Table, could I just ask one question about this whole category of expertise — or the lack of it? I was interested to hear you say that there was possibly considerable expertise available in a certain area. In your submission, you categorise risk. You go on to say:
- “Without definition these have the potential to lead to litigation.”*
251. You are using terms such as “significant risk”, “other than insignificantly” and “substantially lower risk”. This brings me back to an earlier point, but we all seem to be in new territory, and it is what you would call, I suspect, unchartered water. [Laughter.] You flag that up in your submission, and I suspect that you did not put that in lightly.
252. **Mr Casement:** No, indeed. The definition of these terms is very important.
253. **Lord Morrow:** The part of your submission entitled “Decisions relating to MCZs”, which deals with clause 21(7), refers to the three criteria that an applicant has to meet to satisfy a public authority. Your submission states:
- “The first criterion concerns choosing the lesser of two evils and prompts the question as to why it should be necessary to choose either.”*
254. “The lesser of two evils”? So, does that mean that we will be left with an evil? It comes down to choice, does it not?
255. **Mr Casement:** It does.
256. **Lord Morrow:** Are we going to go down this road?
257. **Mr Casement:** Coming back to the evidence base, our concern is that the decision should be made based on the very best available evidence and that all evidence should be subjected to equal scrutiny.
258. **Lord Morrow:** I can see that, and we will have to take great care and have expertise as we go through the process. I am getting a bit suspicious about whether we have that. I am not slating anyone, but I just wonder whether we have it.
259. **Mr Casement:** I think that there are particular areas of expertise that are probably not used at all at the moment. One such area is environmental economics. Very good mechanisms are being developed for valuing some of the environmental assets in terms of what they actually provide for us as people. We call them ecosystems services. We generally do not cost and take for granted what the natural environment provides for us. Through a variety of means, mechanisms for costing some of that are being developed. So, we may be able to put some economic value on it so that, in future, we can equate some of the economic data with some of the environmental data. That may help us to make some of the decisions.

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260. Other European legislation has demonstrated that there is experience of defining risk and significant risk. It is crucial that this Bill takes advantage of those earlier definitions so that litigation can be avoided. If we left it as vague as it is, it would be a recipe for disaster. You all know that when large sums of money are involved, which is potentially the case with developments in the marine area, just as it is on land, people will be prepared to take litigation at potentially significant cost to themselves but with huge potential gains. It is critical that we tie this down to avoid that. Otherwise, the processes become clogged up in the courts rather than being decided quickly and effectively. Everybody wants to move the process forward, not to clog it up.
261. **Lord Morrow:** With great care. *[Laughter.]*
262. **Mr Casement:** I am sorry, I should qualify “everybody”.
263. **The Chairperson:** Thank you very much, Peter and Patrick. I am sure that we will see you again.
264. **Mr Casement:** We have another appointment quite soon.
265. **Mr Archdale:** Thank you very much.

3 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr Tom Elliott
 Mrs Dolores Kelly
 Lord Morrow

Witnesses:

Mr Colum Delaney *Northern Ireland*
 Mr Richard Devlin *Marine Task Force*
 Mr Andrew Ryan
 Ms Marguerite Tarzia

266. **The Chairperson:** You are all welcome. With us we have Colin Delaney, Ricky Devlin, Marguerite Tarzia and Andrew Ryan. As I read the briefing paper last night, I realised that we had left out a few pages, so we may need you to give us an overview. We left out the bits with your recommended amendments, but we now have the full paper, so we can all read it later. Given the time limit, will you give us a brief five to 10-minute presentation? Members will ask questions after that.
267. **Mr Richard Devlin (Northern Ireland Marine Task Force):** With pleasure. Thank you very much. We will certainly try to keep to the time. I thank the Committee for the opportunity to present the position of the Northern Ireland Marine Task Force (NIMTF) on the Marine Bill. You already made the introductions, but I am Ricky Devlin, the marine co-ordinator, and we also have with us Marguerite Tarzia, Colin Delaney and Andrew Ryan. We will each take a short section and make our presentation as pointed and as brief as we can.
268. Through the eight organisations that are partnered with the NIMTF, we represent 100,000 people in Northern Ireland. We have come together to campaign for the Marine Bill, which we welcome and consider to be long overdue. To put it in context, the Bill has largely been driven by external forces, with the goal, as set out in the marine strategy framework directive (MSFD), of reaching the state of good environmental status by 2020. So, the clock is ticking on that. We welcomed the Bill when it was introduced in February. Obviously, it contains clauses with which we are happy and others that we suggest need strengthening. We will deal with those in due course. Our submission identifies four primary areas of concern. I will touch on each of them briefly, and we can maybe explore them in more detail as the presentation wears on and as your questions come out.
269. First, we wish to see the Bill being given more of the overarching purpose that it requires but currently lacks. We feel that it would be greatly strengthened by the inclusion of a commitment to the principle of sustainable development and protection for the Northern Ireland marine area. We feel that such a commitment would inform and strengthen the Bill and its implementation as an Act.
270. Our second area of concern is the designation of a marine conservation zone (MCZ) and the ecological network of sites. My colleague Marguerite will go into that in more detail. However, it is a primary area that we want to raise a point of order about.
271. Thirdly, we looked at the need to integrate and synchronise the marine conservation zone process with the marine spatial plan (MSP), which is the marine plan for Northern Ireland. Marguerite may also touch on the issues that we have on that.
272. We are looking at the practical implementation of the Bill, specifically the current management structure. Marine governance has not been properly addressed in the Bill, and people other than just us recognise

- that it needs to be. The Bill looks at how the various Departments will manage the functions together. The existing governance model is much too scattered. We can point to Strangford lough as an indication of where a failed system has led us. The NIMTF's position is that a single unitary authority, such as a Northern Ireland marine management organisation (NIMMO), would be the most environmentally efficient, economically coherent and sensible direction to go. I certainly stress that.
273. Where governance is concerned, we have heard from departmental officials that there is much talk of the suggested interdepartmental marine working group. That would appear to be their preferred option as the forum for marine governance and cross-departmental co-ordination. In the absence of anything else, and, as I said, we are very much in favour of a NIMMO, which would be a single unitary authority. The Marine Task Force would like much greater detail on the composition of that working group, its terms of reference, its authority and the legal status that it may or may not have.
274. We also believe that the departmental group, such as it is, needs to be more transparent in its meeting, its working and its product, and there needs to be much greater accountability, a published membership, terms of reference, published minutes of meetings, etc. However, the Marine Task Force's preferred option is such a single unitary authority and, at best, a non-departmental public body (NDPB). Those points cover the initial four areas that we would like to address.
275. Related to all those is the fact that we need to take socio-economic factors into consideration. The NIMTF is very supportive of marine legislation, and it wants to ensure that the balance is right between environmental concerns and the proper socio-economic activity that takes place in our waters. That might partly relate back to marine planning and getting the co-ordination correct between those elements. We would certainly support as much stakeholder involvement in the process as possible. We support key interests, such as fishing, angling, and other recreational pursuits.
276. Other issues that we feel should be brought to the fore at this stage include resources. There is a lack of clarity about the Bill and how the activities and programme of work that will come from it will be funded. We need to ensure that we produce more than paper parks and that there is proper support for the staff and the other stakeholders who carry out the work.
277. Before I hand over to my colleague Marguerite, I acknowledge that we have been fortunate to have been called in front of the Committee. However, we are aware that other submissions have been supportive of the NIMTF's position. So, I am delighted to say that the likes of Northern Ireland Environment Link (NIEL), the National Trust, the Northern Ireland schools advisory group and the Northern Ireland Council for Voluntary Action (NICVA), to name but a few, have also largely endorsed the NIMTF's position on the Marine Bill.
278. That concludes my part of the presentation. I will now hand over to my colleague Marguerite Tarzia, who will take you through some of the other issues in a bit more detail.
279. **Ms Marguerite Tarzia (Northern Ireland Marine Task Force):** I will give you some background context. Northern Ireland's seas are really rich in marine life. There are iconic species, such as the basking shark and the harbour porpoise, sponge gardens, mill beds, valuable fish and shellfish species and spectacular habitats, such as sea caves. However, the seas are becoming increasingly busy with human activities, and threats, such as climate change and overexploitation of resources, have damaged our seas globally. Locally, however, 121 species, which can be classified as coastal or marine, are listed on Northern Ireland's priority species list. The Oslo and Paris Convention for the Protection of the Marine Environment of the North-East Atlantic lists 18 threatened marine species that occur in the waters around Northern Ireland.

280. Through binding international agreements and UK-wide policy, Northern Ireland is required to set up an ecologically coherent network of marine protected areas. We are also required to achieve good environmental status by 2020 through measures that include the establishment of a marine protected area network. A key timeline of the dates can be found on page 4 of our submission. That network will include EU sites, such as the habitats and birds directive sites, ASSIs and the new marine conservation zones. MCZs can be designated for nationally important species and habitats and can include a variety of protection levels, from lower levels of protection and management of human activities to highly protected areas, which restrict potentially harmful human activities.
281. Each of the other UK Administrations is designating MCZs to make up a local network in their seas. That will contribute to the wider UK network of sites. In the Northern Ireland Marine Bill there is a requirement for the network to improve only the UK marine area, which is in clause 18 and also in our submission. Although that clause is not different to the UK Marine and Coastal Access Act 2009 or the Marine (Scotland) Act 2010, there is the possibility that Northern Ireland might overlook the need to focus on the network in the Northern Ireland inshore region without an explicit requirement in the Bill to improve our local seas. That is particularly concerning, as we are years behind the other Administrations in designating MCZs and in achieving our network. The NIMTF believes that it is necessary to have a clause explicitly stating that the network needs to improve both the local Northern Ireland inshore region and the wider UK marine area. Furthermore, each of the Administrations is seriously considering including some high protected MCZs, or no-take zones, as part of their networks. Although the concept of no-take zones can sometimes produce concern among certain community groups, the NIMTF emphasises the potential positive impacts that those types of marine protected areas can have on the long-term sustainability of fishing and the restoration of previously depleted species.
282. No-take zones can also lead to some economic opportunities through improved fishing catch at the boundaries of the protected areas and through ecotourism. The NIMTF believes that highly protected areas should be included in the Northern Ireland network and that a specific clause in the Bill would facilitate their designation. Our suggested wording can be found on page 16 of our submission.
283. The next related issue that the NIMTF is concerned about is the apparent lack of integration between the future MCZ designation process and the marine spatial planning process. Other countries that have successfully carried out marine spatial planning have not had separate teams working on marine protected areas and marine spatial planning. In Australia, the Great Barrier Reef's zoning scheme is an excellent example of integrated marine spatial planning. The zoning and designation of conservation areas occurred alongside the designation of areas for fishing, resource extraction or tourism.
284. Based upon statements that Department of the Environment (DOE) officials made regarding the commitment to have a marine spatial plan in place by 2014 and to have the MCZ process synchronised with the rest of the UK only by 2018, it appears that those two processes will not occur in synchrony and will not be integrated under the marine spatial plan. How can decisions for the future use of our seas be taken when information on areas for conservation is not completed by the time that the plan is published? The NIMTF therefore believes that there should be an explicit requirement in the Bill for the integration of the two processes and for synchronisation and joined-up time frames.
285. I will now pass on to Andrew Ryan, who will outline the main legal issues of concern.

286. **Mr Andrew Ryan (Northern Ireland Marine Task Force):** As you will see, there is quite a detailed and extensive critique of the Bill in our submission. I do not think that anyone will thank us for going into that in any detail, but I would like to highlight a few key points. The first relates to the general duties of the Bill, which have already been mentioned. Section 3 of the Marine (Scotland) Act 2010 states:

“In exercising any function ...

(a) the Scottish Ministers

(b) public authorities

must act in the way best calculated to further the achievement of sustainable development”.

287. They must also:

“act in the way best calculated to mitigate, and adapt to, climate change”.

288. The task force believes that that would be an important addition to the Bill, because it would really set the whole scene for the purposes of the Bill. From a legal perspective, it would allow the Bill to be interpreted and implemented with those two issues — sustainable development and climate change — in mind. At present, climate change is not referred to in the Bill, and sustainable development is referred to only in passing. Therefore, we think that that change would be key.

289. A second issue relates to the formulation of marine plans, which are key to informing the use of the seas and the designation of marine conservation zones. Clauses 8 and 9 provide for how such a plan may be challenged in the courts. I am sure that some of you are very aware of the judicial review procedure. Essentially, the process of challenging a decision by a public authority must be started within three months. Judicial review applications can be brought on various grounds, such as that the decision is unreasonable or illogical, has procedural errors or failed to take material considerations into account. That is a standard procedure in public decision-making. However, clauses 8 and 9 seek to restrict that

challenge procedure in such a way that an application can be made only where the marine plan is outside the appropriate powers of the body or, more importantly, where a procedural requirement is not complied with. That procedure is very clearly set out in the Bill. Further, the application for a challenge must be made within six weeks, rather than three months, of the relevant document’s publication. We see that as significantly restricting the grounds on which to challenge the plan. Frankly, that should be of concern not just to the task force but to anybody who may be affected by such a plan.

290. Also, one of the criteria for mounting a legal challenge is:

“that the interests of the applicant have been substantially prejudiced”

291. by the procedural flaw. We see that as a limitation on the range of people who may be able to challenge a plan. If you cannot demonstrate that you have been “substantially prejudiced”, you would not be able to mount a challenge. That is very different to the judicial review procedure, which allows anyone with a “sufficient interest” in the issue to mount a challenge. So, unless you have an economic interest in the effect of the plan, it may be difficult to mount a challenge.

292. The final issue that we want to raise concerns the granting of authorisations by public authorities for activities that may impact on marine conservation zones. When granting authorisation for things directly linked to the sea, such as dredging, offshore renewables, fishing and other marine licensing, or even onshore activities that may impact on the sea, such as discharge consent, the public authority has to look at whether that consent is:

“capable of affecting (other than insignificantly)”

293. the marine conservation zone. The public authority cannot grant the authorisation unless it can demonstrate that there is no:

- “significant risk of the act hindering the achievement of the conservation”*
294. features of the MCZ.
295. We think that the wording is important here, because:
- “capable of affecting (other than insignificantly)”*,
296. and that there should be no:
- “significant risk of the act hindering the achievement of the conservation”*.
297. is, essentially, new. It exists in the UK Marine and Coastal Access Act 2009, but there is very little guidance on what that wording means and how the impacts are going to be measured. We think that concern over what that wording means will inevitably lead to delays, difficulties and possibly legal challenges to the granting of authorisations. It just seems to us that it introduces a level of uncertainty that is not necessary, because the wording in other environmental legislation that deals with “significant” impacts on protected areas could be utilised.
298. However, if a public authority’s granting of an authorisation causes significant impacts, the body can still grant that authorisation, provided that it can show:
- “there is no other means of proceeding”*;
299. that “the benefit to the public” outweighs the damage that would be caused; and if:
- “the person seeking the authorisation will undertake ... measures of equivalent environmental benefit”*.
300. The concern here is that there is no mechanism to secure how those compensatory measures of equivalent environmental benefit might be implemented or where they might be implemented. Also, if the authority grants an authorisation and then damage subsequently occurs, there is no mechanism for sanction against the public authority for getting it wrong other than a requirement to provide a written explanation to the Department. We see that as a significant weakness in the Bill that could allow activities to occur where damage will take place in the protected areas without any form of compensation.
301. So, really, that covers three issues in one, because this is untested wording in assessing environmental impacts. There is a lack of real accountability for the public authorities in granting authorisations, and there is the issue of enforceability once those authorisations have been granted to consider. Thank you.
302. **The Chairperson:** Thank you very much indeed. I read your submission with great interest last night. You have certainly given us food for thought. We will look carefully at your suggested amendments, and we will raise other issues with the Department.
303. Your first point was that the Bill lacks an overarching purpose to further sustainable development. The Department has been talking to us about that. It said that sustainable development is covered by other legislation in different Departments. How do you think that adding such a provision to the Marine Bill will help sustainable development?
304. **Mr Devlin:** I am sure that my colleagues will have opinions on this as well, but adding such a provision will strengthen and focus the Marine Bill, and people will know, in essence, what the Bill is there to do. You need, as we put it, that overarching goal or aim to know the purpose of the Bill and what it is meant to deliver. The Bill has been driven largely by two external forces — the overall United Kingdom aim and the overall European aim — to achieve good environmental status by 2020. Without that clear statement of intent, we feel that the Bill is weakened, so it should be strengthened and delivered on. We have suggested a form of wording that we feel would improve and focus it. For example, the Marine (Scotland) Act 2010 clearly states such an intent, and it has an overarching purpose. It is something that we recommend that the Committee and the Department carry forward. I wonder whether anyone else has any comments to make on that.

305. **The Chairperson:** Marguerite, can I ask you a question about the MCZs? You talked about the marine spatial plan. Are you saying that we need to do them together?
306. **Ms Tarzia:** Yes.
307. **The Chairperson:** Does that mean with the same team, not different teams? Normally, we do the planning policy statement (PPS) first, and other things come after that. Would it not make sense to have the marine spatial plan first and then to designate the zones?
308. **Ms Tarzia:** I gave an example from Australia, which is one that I obviously know quite well. Having the one team that designates the marine protected areas means that there can be liaison in the one team. It can make decisions about whether an area should be used for conservation and whether it could be compatible with other uses of the sea. So, it is a multiple-use zoning scheme, which, I think, is the essence of marine spatial planning. The NIMTF's position is that it would make a lot of sense to have the process integrated into the one large team. Even if there are two separate subgroups in the spatial team that works with the MCZ designation process, I think that it makes a lot of sense to have it joined up in that way.
309. **Mr Delaney:** I want to jump in on that very quickly. Marguerite is correct. Our concern is that, if they are not integrated and if there is not synchronisation, the marine conservation zone process will become a secondary consideration while other areas will be able to forge ahead. That is our concern.
310. **Mr Delaney:** I just want to add to my colleagues' comments. It is a point that we like to make quite clearly. All sea users need to know where the conservation zones will be placed. If you are planning activity, be it for the fishing industry, offshore renewables or whatever, people need to know where those areas are likely to be and what features they are likely to attend to. In the interest of everybody, those processes should be brought together.
311. **The Chairperson:** I invite members to come in with questions.
312. **Mr Boylan:** Thank you for your presentation. You will agree that the Bill is a good start?
313. **Mr Devlin:** It is very welcome.
314. **Mr Boylan:** We visited Scotland, and it seems to me that they have done it the right way. They had proper stakeholder engagement across the board from the beginning. They have created an atlas or a database of information, and, obviously, they are going on scientific evidence. Where are we with regard to our database? Have you any information on that? Surely there have been good practices and good management practices carried out up until now in relation to the marine issue?
315. **Ms Tarzia:** I believe that the Scottish atlas is a comprehensive look at their ecosystem and what they have around their seas. There has been a lot of good research done around Northern Ireland. You ask where we are with our atlas. That would be an excellent question to ask departmental officials. To have such an atlas for Northern Ireland would certainly be a very welcome addition.
316. **Mr Boylan:** I ask the question, because we are talking about putting in place a mechanism here for MCZs. They are called marine protected areas (MPAs) in Scotland. Key to having such a mechanism is the data. Maybe in the future, if we have the tool, we will need to do that. I know that you mentioned judicial reviews, but we are only at the start of the process. Let us not go down the line of judicial reviews; let us try to get this developed properly. A key element of designating any MCZ is a proper and informed database.
317. **Mr Devlin:** That is a fundamental point; we agree with you entirely.
318. **Mr Boylan:** You are a representative of a large body, but there are other groups. You mentioned fishing. I have received e-mails from across the board, from groups interested in wildfowl and the Countryside Alliance, among others. I

- would like to see more engagement with the likes of you. When we go to look at the process of designating, all of those bodies should be incorporated into that.
319. **Mr Devlin:** Even this week, we met with representatives from the British Association for Shooting and Conservation (BASC) and the Countryside Alliance. We acknowledge that they, alongside the other stakeholders you mentioned, should be brought into the whole process regarding the designation of MCZs. You made the fundamental point that it should be based on scientific data. We agree with that. You should not base it on anecdotal evidence, for instance; you base it on the data. Then you determine what the objectives of the conservation zone will be, but they have to be based on as much data and fact as one can get.
320. **Mr Boylan:** I bring it up because, as you know, Chair, my view on this is that there should be an inclusive approach from the start. We have an opportunity to do that. We have learned from other legislation in the previous mandate, when people came to us afterwards. I do not want to see that happen with this legislation. I think it is good legislation.
321. **Mr Devlin:** We think so as well. Such groups as angling groups should be involved. We followed with interest the way in which the Scottish model was brought forward. There are other examples of good stakeholder engagement from the Isle of Man, for example.
322. **Mr Boylan:** I would welcome that approach. Another issue that came up in Scotland was the Crown Estate. You have not mentioned that. Some of my party colleagues brought that issue up. Scotland has a coastal fund, which may be a suggestion for here. The local authorities, for instance, felt that they were not getting enough of a return. Have you thought of anything in relation to that? They felt that not enough resources were going back from the likes of the Crown Estate, and you mentioned resources earlier. They have mentioned the coastal fund.
323. **Mr Devlin:** We would need to investigate that further, but the principle sounds fine. We would need to ensure that the resources are there and establish how much we need. We need to determine exactly what is ahead of us. Securing resources from whatever proper means is available should be looked into.
324. As part of our stakeholder involvement, we would like to see local coastal communities drawn into this. These things affect local people, so we very much want that sort of approach.
325. **Mr Boylan:** It is grand looking at the Bill, but the devil is in the detail. Part of it is how it is then driven out on the ground. I was talking to people yesterday about Warrenpoint harbour and how it would like to develop further. You mentioned dredging and licensing and regulation with regard to leisure activity. That is welcome, but it needs to be inclusive from the start, and we need to understand exactly what that is.
326. **Mr Delaney:** I could not agree more.
327. **Mr Boylan:** I have one final question. In the absence of an MMO, obviously, you do not feel that there is anything there that can properly manage it. How will it be managed? I am putting it to you straight, because you have been lobbying for an MMO. Are we saying that the practice is there or not?
328. **Mr Devlin:** We are saying that the current practice — the current model — has failed and, therefore, it needs to be changed. Our much preferred option is to have an independent Northern Ireland MMO. If that is not to be the case, we would certainly like it to be a single unitary authority. However, we would much prefer an MMO. We have laid out the two, three or four options that we see in front of us, and each needs further investigation.
329. As we said earlier, when the issue of governance was brought up, the Department suggested that there should be a departmental working group. However, if that is to be suggested as the way forward by the Department, then we need an awful lot more detail around

- it. Transparency is paramount. The NIMTF position would be to push for the NIMMO.
330. **Mr Boylan:** In the absence of that, would you be looking at an amalgamation of local authority, someone with the knowledge base and departmental officials? Is that an alternative?
331. **Mr Devlin:** The devil is in the detail. However, a single unitary authority, which brings together the principle responsibilities under one heading is the preferred option. How and who that might be has yet to be determined. However, we cannot continue in the way that we have been, because it has not worked.
332. **The Chairperson:** You mentioned in your paper that a cross-departmental group has no legal status, and that is an important point.
333. **Mr Devlin:** What is its status? If it is being proffered as some sort of resolution to the issue of governance, it is beholden on everybody to find out and get a lot more concrete detail about the group. However, it is not the NIMTF position. We are not suggesting that that is the way to go. We very much support the MMO position of a single unitary authority.
334. **The Chairperson:** Marine Scotland is more or less like an MMO, and it is really quite independent, although it is still within government. However, it seems to have a lot more resources and authority attached to it. We went to Scotland last week, and I was quite impressed by what it has done. It has certainly invested a lot of time in implementing the Bill and in engaging with stakeholders. It was very interesting.
335. **Mr Devlin:** Stakeholder involvement is becoming loud and clear.
336. **The Chairperson:** The statement of public participation was mentioned in your submission. I presume that you support it.
337. **Mr Devlin:** Yes.
338. **The Chairperson:** Do you think that there is any need to strengthen even further the statement of public participation that the Department needs to produce and to act on it?
339. **Mr Devlin:** Yes. It certainly should. We are very much engaged with the idea of having as broad a church as possible and getting people from all walks of life and from all areas of interest to take part in the process and to be included. I think that the Department would certainly wish for that to be the case, but how will it be managed and overseen? Nevertheless, it is something that we support.
340. **Lord Morrow:** Thank you for your presentation. I note in your paper that you consistently had concerns about the degree of flexibility that is integrated in the Bill. Bearing in mind that we have never been here before and that this is new territory, do you not think that that is a good thing? Furthermore, you also state that there are too many get-out clauses or qualifications and lack of words. You highlighted one:
- “However, the language ‘seek to ensure’ is still not an absolute requirement.”*
341. You also talk about a review every five years — maybe you do not say every five years, but you say in five years. Area plans, which many of us work with, seldom have reviews in 15 years. Indeed, in one case, I recall that it was 20 years. Taking that on board for a Bill of this size with its magnitude, its implications and its ramifications, do you not think that that five-year term is much too short a period to try to drawn on it and ascertain just where all its deficiencies might be? Would you not accept that there should be those flexibilities to allow the Bill to get grounded? People could come to the conclusion that the Bill is ineffective, it should not exist and, therefore, in five years we will dump it out. Is that what you are saying here?
342. **Mr Devlin:** Andrew would need to comment on some of the specifics. However, this is a general point: we want the Bill to succeed. A Bill would only be thrown out or be subject to significant change if it is

- seen to have failed. Obviously, we do not want that to be the case.
343. Some of the language that is used in the 48 clauses is ambiguous and, as someone said earlier, the devil is often in the detail. To decide what a word means — for example, “to seek to do” something — you need to look at each, as we have done. Without going through it line by line, we have picked up on a number of issues. As a general point, we would like the language to be tighter so that there is more clarity. Again, with clarity, you get certain details; you are certainly more likely to get a much more sensible feel for direction.
344. **Mr Ryan:** I am looking at this through the lens of a lawyer and my experience of the way in which other environmental legislation has been implemented, which has, subsequently, led to numerous challenges. You only have to look at the environmental impact assessment directive and the number of challenges and major projects that have been hindered; for example, the North/South interconnector to a certain extent, because of the vagaries and flexibilities in the legislation. Precisely because this is new legislation, it is a whole new area. It is not so much the fact of it being inflexible but of it being clear, appropriately worded and having appropriate guidance, so that people know how it is intended to be implemented which, on the one hand, will allow people with issues to deal with them in a straightforward manner and, at the same time, it will give everybody more certainty about how the legislation will be implemented.
345. With regard to the review period, it will be important to set the nature and scope of those five-yearly reviews. Again, because it is new legislation, there is something to be said for having a shorter review period. If significant difficulties are found in that shorter period, they can be dealt with quickly, rather than waiting for 10 or 15 years until they can be revised. It is not necessarily a wholesale review of the legislation; it is how it is implemented.
- Perhaps focused reviews on particular areas would be valuable.
346. **Lord Morrow:** If you were coming from a lawyer’s point of view, I could understand that you would want the word “shall” instead of “maybe” or “might” or something like that. Furthermore, in referring to the duties of public authorities for MCZs, you say that there is:
- “no substantive sanction in such circumstances”.*
347. Is that not a bit tough?
348. **Mr Ryan:** It could be. However, you may be looking at areas that are specifically designated as marine conservation zones and as specific habitats of species that require protection, and if there were no form of definite sanction other than to have to write a letter to the Department explaining where things went wrong, that would seem to allow public authorities to make errors that could lead eventually to significant damage of protected habitats.
349. **Mrs D Kelly:** Thank you for your presentation. I have just a couple of observations to make and one or two questions to ask. When you mentioned the Great Barrier Reef and marine protection zones, the majority of people would understand why and where they would be designated. Unfortunately, I do not think that the same level of public knowledge exists about what is native to the coastline of Northern Ireland and why it needs protecting. That may then be part of the reason that there is less public participation in the Bill. It is a challenge to you, as well as to the Committee, to develop some interest in that and to educate us and the public.
350. Your presentation centres quite a bit on governance. It states:
- “The DoE has suggested the Inter-Departmental Working Marine Group (IWMG) as an alternative forum for marine governance”.*
351. You then go on to suggest that very few people have any knowledge either of that group’s membership or terms of reference. I think that that is something that we could pick up on, Chair. Perhaps

- you could give us some indication of your experience to date of your relationship with that group.
352. Finally, you also mentioned Foyle and Carlingford, which have a cross-border dimension. I know that, under the EU directives for marine protection, the South of Ireland will also have to have a marine task force. Have you made an assessment of how the two sets of proposals are going to work collaboratively for the protection of those two loughs in particular?
353. **Mr Devlin:** There are cross-border issues with Carlingford and Foyle, but both Administrations have been working well together, and there is a memorandum of understanding between the two. Rather than being trite, it is true to say that nature does not recognise political boundaries, so the island of Ireland and the waters around it are ecologically coherent. Therefore, yes, the NIMTF certainly supports any steps that would allow the two Administrations to work more closely together. There is clear evidence that that has been happening, so we will be fairly sanguine as that process moves forward. However, that is an important issue to raise.
354. As to our knowledge and work with the interdepartmental working group, we have never had any direct interaction with it per se. We have worked with individuals from each of the Departments that are represented on it, and we have very good relationships with them. They have been working towards trying to deal with some of these issues, but our concern with the interdepartmental working group is exactly as you say: its terms of reference and what it is. We know that it is there, we know that it has met, and we know that the individuals on it are working hard, but there are further questions to be asked in moving forward this marine legislation and the issues that are causing concern. If it is going to be suggested as some sort of management authority, we believe that that is not sufficient. As I said, there is such a lack of detail on it that it is very hard to put your finger on any particular issue, because I cannot find it to put my finger on, if you know what I mean. So, there is that point to consider.
355. **Mrs D Kelly:** Chair, perhaps we could ask the Department to clarify some of those points for us. That would be useful.
356. **The Chairperson:** Perhaps we could have the membership details of the group.
357. **Mrs D Kelly:** It is just so that we can get clarification of the points that are raised in the final paragraph of the page I am referring to and answers to some of those questions.
358. **Mr Devlin:** For us, it is of importance, because it is a governance issue and it is about delivery. All sea users or any stakeholder should have questions on those issues. I do not think that we will be alone in that.
359. **The Chairperson:** It looks as though that is all that we have at the moment as a memo. Are there any more questions?
360. **Mr Elliott:** Can I just ask one question? Thank you very much for your presentation. You refer to:
“the degradation and mismanagement of our seas is ultimately leading to a reduction in the benefits”.
361. You highlight the loss of revenue for the fisheries. Is there any other loss of benefits that the Marine Bill would change?
362. **Mr Devlin:** We are hoping that the Marine Bill and the clauses that it will bring in will add to all the flora and fauna issues around our seas and all other interests. Maybe we will come back to the marine conservation zones. For example, we support the fishing industry, which is a sustainable fishing industry, so we want to ensure that the conservation zones are selected and that the features etc to be protected take all those things into consideration. We are trying to be as inclusive as possible in what you are looking to conserve for local waters.
363. **Mr Elliott:** As a matter of interest, there are no representatives of the fishing

- industry on your body, the Marine Task Force.
364. **Mr Devlin:** No. Having said that, I met with representatives from Seafish last week to discuss some of the issues. So, the door is always open. We would welcome conversations with —
365. **Mr Elliott:** But not being part of it.
366. **Mr Devlin:** We have never been approached by them formally to be part of the NIMTF.
367. **Mr Elliott:** Have you ever asked?
368. **Mr Devlin:** If fishing industry representatives wish to become involved with the NIMTF, we would be more than happy to talk to them.
369. **Mr Delaney:** To add to that, the Marine Task Force was set up after collaboration with the environmental NGO sector. More recently, we held a workshop event at Castle Espie and invited stakeholders from all the areas that have an interest in marine issues. Indeed, some Committee members were at that event. Certainly, we want to work as closely as possible with as many people as possible to get the Bill right.
370. **Mr Elliott:** Do you think that it would be helpful if somebody from the fishing industry were part of the group?
371. **Mr Devlin:** We welcome continuing dialogue with the fishing industry —
372. **Mr Elliott:** I asked whether you thought that it would be helpful if there were a representative from the fishing industry on the task force.
373. **Mr Devlin:** If the fishing representatives were to agree with the NIMTF position, I am certain that they would be very welcome.
374. **Mr Elliott:** You are saying that they must come on board on your conditions and not on their own.
375. **Mr Devlin:** There is always the opportunity for ongoing dialogue between the two. It is often presented as though there were two different schools of thought on these sorts of issues. Quite often, it is found that there is an awful lot of common ground between not just the fishing industry but other interested stakeholders whose position we might not necessarily agree with 100%. However, as I said, we have already reached out to as broad a range of interests as possible, and that very much includes the fishing industry. If it wants to come and talk to us on that, we would be more than happy to do so.
376. **The Chairperson:** Thank you very much for your presentation and for coming along.

3 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Lord Morrow

Witnesses:

Ms Meabh Cormacain	<i>Northern Ireland</i>
Mr Mike Harper	<i>Renewables Industry</i>
Mr Grant McBurney	<i>Group</i>

377. **The Chairperson:** You are very welcome Mike, Meabh and Grant. Can you give us a presentation? I know that you have already given us a submission, so perhaps you can give us a short briefing, and members will ask questions afterwards.
378. **Ms Meabh Cormacain (Northern Ireland Renewables Industry Group):** I thank the Committee for inviting us to present today. I also apologise, as Paul Reynolds, my colleague from RenewableUK, has been diverted to Glasgow to refuel, so he unfortunately cannot be with us. We aim to keep this as brief as possible.
379. As a short introduction for those members who may not be familiar with the Northern Ireland Renewable Industry Group (NIRIG), it represents the renewable energy industry in Northern Ireland, covering wind, wave and tidal energy. It is a collaboration between RenewableUK and the Irish Wind Energy Association (IWEA). It is, effectively, a joint voice for those two trade associations in Northern Ireland. Our membership, which is growing, comprises onshore and offshore developers, as well as large- and small-scale environmental planning consultants and so on. I should say at this point that one of NIRIG's key aims is to meet and exceed renewable energy generation targets in Northern Ireland through responsible development.
380. NIRIG members are companies that will be delivering on the targets as outlined in the Programme for Government and the strategic energy framework. The ability to do so will require a supportive policy environment, and, in that regard, we are delighted that the appropriate policy framework is coming forward. We appreciate that the Committee has been supportive of renewable energy and of the industry in general. We are appreciative of the work that is being done to bring this Bill forward. We think that it is extremely important, and we are aware that there are a number of policy issues ongoing at the same time, such as marine conservation zones (MCZ) and marine planning. I am sure that there is a fair amount on the desks of the Department, apart from anything else, but we are keen to ensure that the Bill is prioritised. We welcome proportionate, well-balanced and sound marine management. I do not think that we have any issues at all with that.
381. I just want to pick out a few high-level messages from our written submission, starting with marine planning. I suppose that we would like to ensure that, in its final form, the Marine Bill will facilitate sustainable development and will have due regard to the marine policy statement and the high-level principles in it, particularly those on supporting and promoting safe, profitable and efficient marine businesses and maximising sustainable activity and prosperity now and in the future.
382. The second high-level point that I would like to pick out concerns the designation of marine conservation zones. Obviously, marine conservation zones will have different levels of protection. We are aware of that, and we also know that detailed guidance notes that will be added to the Bill are yet to be produced.

- We would really like to see the marine conservation zone designation process, as well as the management measures, not conflicting with the construction and operation of renewable energy. We are aware that there is the possibility of marine conservation zones being compatible with renewable energy installations, and we would like to ensure that that is kept in due regard.
383. The third point that I would like to raise, again on marine conservation zones, is that the Bill states that there is a duty on authorities to advise against activities that may interfere with the conservation objectives of an MCZ. We would like to ensure that there is some flexibility on those points. We would particularly like to ensure that there is an ability to implement an effective deploy-and-monitor approach.
384. I have two more points that I will make very briefly, and my colleagues will then add a little more detail. The first point is on streamlining of the consenting process, which Mike Harper will pick up on. It is not in our submission, but a further consideration has come to light on the common-law rights of navigation and fishing. I hope that my colleague Grant will be able to provide a little more information on that as well.
385. **Mr Mike Harper (Northern Ireland Renewables Industry Group):** Streamlining the process for consent applications for projects is very important. The industry welcomes that there is provision in the Marine Bill for streamlining. However, we feel that there is a missed opportunity for streamlining to the extent that consent is required under article 39 of the electricity order and marine licensing is provided for in the Marine and Coastal Access Act 2009. We feel that all the onshore infrastructure that might be needed and that would require consent under the Planning Act (Northern Ireland) 2011 also needs to be taken in to account so that there is genuine streamlining across all three consents, which require essentially the same environmental impact assessment.
386. At the moment and as manifested in the Marine Bill, the memorandum of understanding that is under discussion between the Department of Enterprise, Trade and Investment (DETI) and the Department of the Environment (DOE) deals only with the streamlining between the two marine elements. As is the case with Scotland and with England and Wales, we think that it might be more appropriate to pull all the aspects together in one streamlining effort.
387. **Mr Grant McBurney (Northern Ireland Renewables Industry Group):** The last major point that we wish to raise is a matter that has arisen just over the past couple of days. I apologise, because it is post-submission of the report, but it concerns the common-law rights of navigation and fishing. We propose to submit a short written paper on that over the next week or so rather than go into detail on it now. The common-law right of navigation and fishing, which is expressly dealt with in GB legislation, is unfortunately not dealt with in the Marine Bill. It concerns consenting, and we propose to submit something on that, if the Committee deems it appropriate.
388. **The Chairperson:** Thank you very much for your presentations. You have quite a thorough submission for us, too. We will certainly consider it.
389. I really do not have any particular questions to ask. Are there any questions from members?
390. **Mr Elliott:** Thank you very much, Chair, and thank you for your presentation. Did I hear you say that your other colleague had to refuel?
391. **Ms Cormacain:** Yes, in Glasgow.
392. **Mr Elliott:** Was that a plane or a helicopter or something?
393. **Ms Cormacain:** No, we did not provide a helicopter for him. He is important, but he is perhaps not that important. It was a scheduled flight that was sent to Glasgow due to bad weather and refuelling needs.

394. **Mr Elliott:** That is hardly renewable energy.
395. I have one quick question to ask about the point on marine conservation zones. You recommended amending clause 12(7). That recommendation appears to almost indicate that economic and social consequences should have priority over other issues. Am I right in assuming that that is what you are saying?
396. **Ms Cormacain:** I do not think that it is fair to say that they should be given priority. I suppose the main message is to ensure that the Bill is not enacted in such a way that means that it will prevent sustainable economic development of the marine environment. We made the specific recommendation that, instead of “maybe” taking economic consequences into account, they “must” be taken into account. I appreciate that that is quite a strong ask, but I suppose that that really comes from the perspective of enabling sustainable economic development of the marine area.
397. **Mr Elliott:** I assume there could be conflict in some areas where you see an opportunity for renewable energy or maybe something else, but the environmental groups request that it be designated as a conservation zone. How would you see that being resolved?
398. **Mr Harper:** Ultimately, sustainable development, particularly in marine planning, is going to be a balance between economic, social and environmental considerations. Looking at the situation as one priority over another is not going to work in the long run. There is always going to be a debate between those different considerations, and the point —
399. **Mr Elliott:** Something will have to take priority in the end.
400. **Mr Harper:** It will, and it will be for the appropriate authorities to weigh up the issues. However, as far as your specific comment is concerned, the Bill says that the Department “may have” consideration for the economic and social consequences of designating MCZs. We think that that does not give the sufficient reinforcement that it should, as suggested in the national marine policy statement and the position paper in Northern Ireland, which is going through consultation. Therefore, we think that there is a mistranslation of intent in the wording of the Bill.
401. **Mr Elliott:** Ultimately, it could lead to fairly difficult conflict about which should take priority. In the end, something will have to take priority when a decision has to be made. I am trying to get your view about whether you believe that it would create difficulties at some stage.
402. **Mr Harper:** It is hypothetical. It could be the case. However, with regard to the offshore renewable energy strategic action plan that the Department has developed and that the Executive have approved, areas have been identified. They have gone through a strategic environmental assessment, an environmental report has been prepared and consulted on and an appropriate assessment has been undertaken for the strategy and has been consulted on. The conclusion of that whole two-and-a-half-year process is that there is a capacity target — 900 megawatts for offshore wind and 300 megawatts for tidal — that could be developed without adverse effects on European designated areas. You are right to say that it is not just renewable energy projects; it could be any activity, but, hypothetically, conflicts could arise. Our message is that, in determining those conflicts, we feel that it is important to bear economic considerations in mind.
403. **The Chairperson:** Strangford lough is highly designated, with many different organisations involved. However, that does not prevent SeaGen from implementing a project, and it does not mean that it is a no-take zone or that nobody can enter it. Is that right? MCZs could allow certain activities. It is not a total exclusion zone.
404. **Mr Harper:** That is a good example. As Meabh indicated, it is therefore very important that everybody is allowed to see what the precise management measures are and that they are part

- of the consultation process when an MCZ is proposed. However, our view is that it is not specifically the presence of an MCZ that is necessarily the issue of conflict; it is the details of the management measures that would be applied to the MCZ. In formulating those measures, it is important that they are not drawn up to conflict with renewable projects, either in their construction or operation.
405. **Mr Boylan:** Thank you for the presentation. Funnily enough, I was going to ask a question about clause 12(7). You mentioned timelines and the pre-application discussions. Clearly, this and the previous Committee supported the renewable energy sector through targets. Areas have been identified for wind farms, and you said that it took two-and-a-half years for one of them. Is that correct? Where are we with wind farms, and what applications have you made?
406. **Mr Harper:** The Department introduced the offshore renewable strategic action plan in March this year with Executive approval. Again, that was process begun two-and-a-half years ago with the commencement of a strategic environmental assessment of all the waters around Northern Ireland to identify areas that might be suitable for —
407. **Mr Boylan:** Potentially. You have talked with other bodies that have data on that. Is that correct? Scotland has its atlas database. Are you aware of that? What I am getting at is that, before they even decide to designate an MCZ, there may be an opportunity for your kind of activity there. You are right; even if an area is designated, the issue is its management. It may not interfere with what the MCZ is going to be designated for. In Scotland, they are talking about scientific evidence and scientific bases, and that is grand. I think that work has been done on that here already. We have to find the balance between allowing certain activities and the economic argument that Tom brought up. We cannot say one thing supporting renewables and then say another. There has to be an opportunity.
408. DETI, DOE, NIEA and other bodies are involved. You mentioned the land order, the article 39 consents and the different issues here. Do you feel that there is an opportunity in this Bill to marry that all together? Do you think that DETI has a bigger role in all that?
409. **Ms Cormacain:** Very briefly, just to pick up on your point about information, any designation should be evidence based. The offshore renewable energy forum, on which NIRIG sits and which cuts across a number of Departments and external stakeholder groups, is looking at the data gaps that exist in and around Northern Ireland's marine area. There is a subgroup of the offshore renewable energy forum that is identifying those data gaps. It is then identifying which are priorities and those that need to be addressed in advance of designation. That was the first point that I wanted to pick up on regarding an evidence base.
410. NIRIG's main concern about the role of DETI and DOE is that any processes and procedures that are in place should be appropriate, accessible and transparent, and that consultation and engagement takes place with relevant stakeholders at an early stage of any policy development.
411. **Mr Harper:** We agree with that. As regards DETI's consenting role, part 4 of the Bill draws the licensing requirements of DOE and DETI together. It states that the Department may require that both licensing requirements follow the procedures of the electricity order, which is welcome. We very much support the intent of streamlining these two licensing requirements. In NIRIG's experience, the co-operation between the two Departments in the whole strategic environmental assessment and offshore strategic action plan process, as well as DETI's contribution to the marine planning exercise, is working well. There is good co-operation between the two Departments. It is important, though, that we do not miss the opportunity, as I raised at the beginning of the session, to bring in the other element of the Department of the Environment's activities, which is the

- onshore Planning Service. We think that not developing a streamlined approach that addresses all three consents is a missed opportunity.
412. **Mr Boylan:** Just to return to the two points that I made at the start. The pre-application discussions (PADs) should be where it should all be ironed out. I am not saying that a planning application ought not to be granted permission, but that discussion provides an opportunity to bring suggestions to the table about what can possibly work. Do you know what I mean? We can cross-reference compliance to policy and everything else. There may be an opportunity for us to look at that in the PAD process, because it cuts across Departments.
413. **Mr Harper:** Yes.
414. **Mr Boylan:** There are obviously timeline issues; will you talk more about what we can do about that in the Bill?
415. **Mr Harper:** Part 4 of the Bill provides for the Departments to push joint applications through the electricity order process, so to the extent that any application for a renewable project is not progressed through the Electricity (Northern Ireland) Order 1992, applications will follow the marine licence application route, through what is currently NIEA's marine team. At the moment, there is a lack of clarity as to how that process will work.
416. You are sort of asking whether, if they did not follow the Electricity Order, there is an alternative system that would work. We do not think that the current NIEA marine licence system is sufficiently focused to deliver for major infrastructure projects of the nature envisaged in the offshore renewable energy strategic action plan. In fact, no distinction is made in marine licensing between a project of major regional significance costing £1.5 billion and a minor extension to a quay that is of lesser regional significance. There is no process such as that which exists in GB, which has the soon-to-be-changed Infrastructure Planning Commission, or in Scotland, under Marine Scotland, which treats the different projects in differing ways and has streamlining and advanced timetables for determining applications. Those do not exist in Northern Ireland in NIEA's procedures.
417. Although we support Part 4 of the Bill as an attempt to pull the two licences together and put them through the Electricity Order, if the Departments choose not to go down that route, there needs to be clarity on exactly what the route will be. Reference has been made to a marine management organisation (MMO), and Meabh may want to say a few additional words on that. What the industry is really looking for is clarity on this; clarity as to what the mechanisms and what the timetables are for consultation and determination. All of that is absent from this process.
418. Now, this is an enabling Bill in the sense that those details could be worked out. However, it is important that such details are provided at some point.
419. **The Chairperson:** We have that difference in approach to terrestrial planning applications. Through article 31, bigger projects would be considered by the Department. Are you looking for something like that?
420. **Mr Boylan:** Some of the issues that have been raised are obviously for the Department.
421. In the absence of an MMO, how do you feel marine management can be handled?
422. **Ms Cormacain:** I will probably end up repeating myself a little. We did not mention in our submission at the outset that there is an ongoing debate. The existence of the MMO is still being raised in different arenas.
423. The main concern of the renewable energy industry is that there is an appropriate process. In our submission, we indicated a preference for a one-stop shop in the form of an MMO equivalent in Northern Ireland while also recognising that there may be some limited bureaucratic justification,

- given the difference in scale between Northern Ireland and, for example, Scotland. The most important element is early, transparent and accountable engagement between whichever Departments are responsible for decision-making, and external stakeholders should be engaged early in that process. It is not really a question of who will do it but how it will be done.
424. **Lord Morrow:** Can you clarify this for me: are you advocating an MMO?
425. **Ms Cormacain:** We see the value of an MMO. We would like there to be a one-stop shop, and we have said that we would support the creation of an MMO if that decision were taken.
426. **Lord Morrow:** I will ask you another way. You do not believe that an MMO is necessary?
427. **Ms Cormacain:** An appropriate process is necessary.
428. **Lord Morrow:** I will try it another way then. *[Laughter.]* Do you think that this all could be delivered without an MMO?
429. **Ms Cormacain:** I believe that it could be.
430. **Lord Morrow:** That is fair enough.
431. **The Chairperson:** There would be complexities, and you want a simple and straightforward one-stop shop so that all the processes and decisions are in the one agency. Is that right?
432. **Mr Harper:** It will require co-ordination between the different Departments, and the vehicle for achieving that for consenting and licensing could be done through good co-ordination between the Departments or through a single agency.
433. **The Chairperson:** The Bill spreads out to five different Departments. That is the difficulty.
434. **Mrs D Kelly:** Thanks for your presentation. Could I get a bit of insight into the current value of renewable energy and your projected outlook on its economic benefit here for the next five to 10 years? Is that relevant to the forecast in the economic strategy that was published by the Department of Enterprise, Trade and Investment (DETI) recently?
435. **Ms Cormacain:** Yes, I can give some information. When we talk about future figures, it is not always possible to be accurate. Some work was done recently in looking, in the first instance, at job creation and at Northern Ireland meeting its 40% renewable targets. The construction of renewable energy projects, at its peak, is expected to create approximately 2,000 jobs in Northern Ireland in, to a large extent, planning and construction. 2020 was the point at which the research stopped because that was the target date. The likelihood of 584 full-time-equivalent jobs in renewable energy will, of course, depend on which types of projects are taken forward and whether timelines are followed. However, that is with the aim of reaching that 40% target by 2020.
436. If I recall correctly, the renewable energy industry has invested about £150 million in the past 18 months, of which approximately one third has been spent in Northern Ireland. When I say the renewable energy industry, I mean NIRIG members. That is a broad brush figure for the past 18 months. Again, in the future, it will depend on how many projects get built. I may be corrected here, but I think that there are another 400 megawatts of capacity in planning. We would be looking at a figure of — again, correct me if I am wrong; I can confirm some of these figures for you — approximately £1.5 million per megawatt of installed capacity. Those are some very general figures.
437. **Mrs D Kelly:** It might be helpful if you could provide us with further information after the meeting. It is useful to set it in context.
438. Are any of the forecasted jobs engineering or manufacturing jobs or are they solely in the management and running of the industry or the sector itself?
439. **Ms Cormacain:** They would include manufacturing, construction and engineering jobs, as well as ongoing

operational and maintenance jobs. It is such a variable issue. We look at, say, an offshore development and the impact that it might have on a local environment — a local fishing port, for example — versus an area where there may be greater construction, such as Belfast port or Harland and Wolff and the facilities there. I can provide some more information after the meeting on the numbers and jobs. Is there any specific area for which you would like information?

440. **Mrs D Kelly:** I am just trying to set it in context. Although renewable energy has many facets, I am interested in the impact of marine and wave technology and offshore technology, as opposed to such renewable energies as incineration or solar panels. I am interested in energy specific to the area of inquiry.
441. **Mr Harper:** There are a number of areas in marine energy, particularly tidal and wave energy, where local companies are leading in design, development and research. There are certainly opportunities for local companies on the engineering side. Some of those companies are world-leading. The work by McLaughlin & Harvey for the OpenHydro tidal device is a good example of that, as is the work that Belfast harbour has done in attracting investment for the offshore sector. That demonstrates that there are certainly opportunities for local companies.
442. **Mrs D Kelly:** Thank you.
443. **The Chairperson:** Thank you very much for your presentation and submission.

10 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Gregory Campbell
 Mr Tom Elliott
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Tommy Mayne *British Association
 for Shooting and
 Conservation*

Mr Lyall Plant *Countryside Alliance
 Ireland*

444. **The Chairperson:** I welcome Lyall Plant, chief executive of Countryside Alliance Ireland, and Tommy Mayne, from the British Association for Shooting and Conservation (BASC). You are very welcome; thank you very much for coming. Members already have your written submission, so perhaps if you give us five or 10 minutes of a presentation, it will allow them more time to ask questions.

445. **Mr Tommy Mayne (British Association for Shooting and Conservation):** Good morning, Chair and members of the Committee. We would like to begin by thanking the Committee for extending the invitation to both BASC and Countryside Alliance Ireland to come along and highlight our concerns in relation to the Marine Bill. We are very grateful for the opportunity to represent our members' interests. My name is Tommy Mayne, and I am director of BASC Northern Ireland. With me is Lyall Plant, the chief executive of Countryside Alliance Ireland. Although we are separate organisations, we have come together today because we have mutual concerns in relation to some of the clauses in the Bill. We are keen to ensure that the views of the 61,500 firearms certificate holders in Northern Ireland are conveyed to the Committee.

446. We would like to make it very clear at an early stage that we are not opposed to the Marine Bill in its entirety, as there are parts of the Bill that will undoubtedly benefit marine life and biodiversity. As conservationists, we must welcome that aspect of the Bill. However, we have concerns in relation to other parts of the Bill that are ambiguous and, therefore, open to misinterpretation and potential abuse. Before we get to the individual clauses, I ask the Committee to note that we have also been asked to represent the views of the Northern Ireland Firearms Dealers' Association and the Gun Trade Guild Northern Ireland. Both organisations have submitted their own responses to the Committee's call for evidence, and both organisations share our concerns in relation to the Bill. We all feel that it has significant potential to negatively impact on a sport that contributes £45 million annually to the Northern Ireland economy and employs the equivalent of 2,100 full-time jobs. Shooting is already making a very significant contribution to the Northern Ireland economy, with £10 million spent annually on habitat improvement and wildlife management.

447. You will be glad to hear that we recognise the workload of the Committee and, as such, we intend to keep our presentation as short and concise as possible and focus on the main issues of concern. We are not in favour of a marine management organisation to manage our marine environment. We feel the responsibility for managing our marine environment should remain with the Department, which would allow your Committee to have oversight. That would help ensure full stakeholder participation and engagement, which, we feel, is of the utmost importance and crucial to the overall success of the Marine Bill.

448. Lyall will now highlight our concerns in relation to some of the individual clauses.
449. **Mr Lyall Plant (Countryside Alliance Ireland):** Clause 2 deals with the marine plans for the Northern Ireland inshore region. A marine plan will come into effect when it has been published by the Department, in accordance with schedule 1. We believe that a marine plan should come into effect 20 working days after being published by the Department, and not on publication. That would allow time for objections to be lodged and further consultation to be undertaken, if needed. It is easier and much less disruptive to amend the marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan should be postponed.
450. Clause 8(4) states:
“a person aggrieved by a relevant document may make an application to the High Court”.
451. We recommend that an alternative means of challenging a marine plan is provided; for example, the path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to the Northern Ireland Environment Minister or the Secretary of State for Northern Ireland. We feel that it is not acceptable for anyone who is challenging a plan to be forced to prove the plan’s faults to the High Court in the first instance. An individual who wishes to challenge a plan could be prevented from doing so due to the potential cost implications incurred by High Court action.
452. I move now to clauses 11 and 12. Clause 11 deals with the designation of marine conservation zones (MCZs). We recommend that clause 11(1) be reworded, with the insertion of:
“after consultation with key stakeholders registered with the Department.”
453. That must include Countryside Alliance Ireland and the BASC. If abused in its current form, those clauses could prohibit or seriously restrict wildfowling and access to wildfowling and other activities on or around the coast of Northern Ireland.
454. Clause 12 deals with the grounds for designating MCZs. Clause 12(5) refers to:
“conserving marine flora or fauna or habitat ... whether or not any or all of them are rare or threatened.”
455. We seek clarification on why that clause was included in the Bill, as we can only conclude that it was included to proscribe legitimate country sport activities.
456. We also recommend that clause 12(7) be reworded. It currently states:
“the Department may have regard to any economic or social consequences”.
457. We wish to see “cultural” included in that paragraph. In addition, irrefutable evidence must be provided to prove the necessity of an MCZ before one is designated. Furthermore, we contend that where protection of flora and fauna is already served by legislation, such as the Wildlife (Northern Ireland) Order 1985, as amended, that should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be taken outside the close season under schedule 2 to the Wildlife (Northern Ireland) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.
458. **Tommy will cover the next few clauses.**
459. **Mr Mayne:** Clause 14 deals with consultation before designation. I refer to:
“(4) The Department must consult -
(a) the Secretary of State; and
(b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order.”
and
“(6) In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an

- MCZ, the Department need not comply with subsections (2), (3) and (4)(b)."*
460. As previously stated, we recommend that the Department creates a register of interested stakeholders that must include BASC and Countryside Alliance Ireland and that those stakeholders must be consulted prior to any designation even in urgent cases.
461. Clause 15 relates to the publication of orders. I refer to:
- "(3) The notice under subsection (2) must—*
- (a) be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it;"*.
462. We recommend that the Department should be required to publicise its intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department.
463. Clause 24 refers to by-laws for the protection of MCZs. As the owner of fishing and shooting rights, as well as owning the riverbed of the Lower Bann, The Honourable The Irish Society shares our concerns in relation to this clause. We have grave concerns regarding the inclusion of clause 24 in the Bill. We have only to think back to June 2010, when amendment No 23 was submitted at the last minute to the Wildlife and Natural Environment Bill. That amendment sought to give the Department power to make by-laws for areas of special scientific interest (ASSIs). It had far-reaching and wide-ranging implications for country sports as it sought to:
- "prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description".*
464. We believe that amendment No 23 was a deliberate attempt to prohibit or restrict shooting and angling across Northern Ireland, especially when we take into account the underhand way in which it was tabled. Similar wording is included in clause 24 of the Marine Bill; therefore, we feel that clause 24 is completely unacceptable in its current format.
465. We have heard it said many times by those were behind amendment No 23 that it had been cut and pasted from English legislation. We do not believe that, just because a piece of legislation has been cut from English legislation, it should be pasted into a Northern Ireland Marine Bill. The Northern Ireland marine environment is unique and, as such, merits a Bill specifically tailored to suit our needs.
466. Clause 24(8) allows for the creation of higher-protected areas within MCZs without there being any requirement to justify the designation of such areas. In England, such areas are called "reference areas" and they prohibit wildfowling activities on the east coast of England. Wildfowling, the taking of a natural resource for personal consumption, is a sustainable activity that does not have a significant impact on the environment. As such, it should continue within MCZs.
467. Clauses 25 and 26 refer to emergency by-laws. Clause 25 sets out the consultation process prior to making by-laws and it also makes provision for consultation to be waived in cases of urgent need. The procedure for enacting emergency by-laws is contained in clause 26. Though we recognise that there could be a necessity for emergency by-laws — for example, in the event of pollution incidents — we recommend that there must be a form of emergency consultation prior to implementation and that a fast-track system, similar to the procedures for severe weather orders and special protection orders, be established.
468. Clause 27 refers to interim by-laws, and states:
- "(1) The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks—*
- (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and*

- (b) that there is an urgent need to protect the feature.”*
469. We are concerned that the wording “an area in Northern Ireland” could be misconstrued to include areas that do not fall within the NI inshore region, and we recommend that that should be reworded to avoid confusion. We seek a written assurance from the Department that proposals for interim by-laws will be proportionate, based on scientific evidence and subject to consultation with registered stakeholders. Furthermore, we recommend that, where the protection of flora and fauna is already served by legislation such as the Wildlife (Northern Ireland) Order 1985, as amended in 2011, that should take precedence over any MCZ by-laws. I will now hand over to Lyall, who will continue through the various clauses.
470. **Mr Plant:** Clause 39, which deals with interpretation, defines “seashore” as:
- “any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity”.*
471. We seek clarification in relation to that clause, as the current wording could potentially allow for the inclusion of large expanses of land that have little or no impact on the marine features that the Bill seeks to protect. We are particularly concerned with the application of that definition in regard to clause 24(4), and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of that interpretation implies that an MCZ could, in effect, be extended through restriction into any land adjoining the seashore. That raises this question: where would an MCZ stop? The proposed interpretation of seashore could lead to severe negative impacts on farmers, landowners, user groups and other local businesses.
472. Clause 45, which deals with Crown protection, ensures that there will be no exemptions for holders of Crown Estate leases. Both BASC and Countryside Alliance Ireland have members who are holders of such leases, and those members have asked for confirmation that the Department has consulted with the Crown Estate on that matter, because the owners of those leases have not been consulted whatsoever.
473. Schedule 1 is a statement of public participation. Schedule 1, paragraph (5) (8)(a) defines “interested persons” as:
- “any persons appearing to the Department to be likely to be interested in, or affected by, policies proposed to be included in the marine plan”.*
474. We propose that the Department retains a register of interested parties who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons or organisations being excluded or overlooked.
475. In conclusion, we believe that the Marine Bill is, in principle, a positive step aimed at benefiting marine life and biodiversity in Northern Ireland. However, our foregoing concerns have been raised in a genuine bid to ensure that unsympathetic parties do not use the Bill to unnecessarily prohibit or restrict legitimate rural pursuits, which, in turn, would result in adverse economic, social and cultural consequences for Northern Ireland. The Bill must be fit for purpose and recognise the needs of the country sports community, which depends upon and engages in sustainable management of the rich marine resources of Northern Ireland. Stakeholder participation is vital to ensure the successful development of the Marine Bill, and, going forward, we ask the Department for an assurance that both BASC and Countryside Alliance Ireland will be included at all stages throughout.
476. It should be noted that wildfowling are the original conservationists, and I mean conservationists in a practical sense: rearing and releasing birds; doing shoreline clean-ups, with the assistance of local councils; making and erecting nesting boxes for breeding ducks; carrying out predator control in

- order to protect the various species of ground-nesting birds; and supplementary feeding during times of severe weather, such as the winter of 2010, when temperatures reached a record low of -18°C. All those things contribute to the overall conservation effort. We feel that the Department and the Minister should recognise the efforts of the wildfowling and country sports community, who are very different people from the desktop protectionists who will seek to influence the Bill in order that wildfowling becomes collateral damage.
477. We sincerely hope that the Minister, his Department and the Environment Committee take our concerns into consideration. We are happy to work further with the Committee to ensure that our members' legitimate activities are not unduly curtailed. Countryside Alliance Ireland and the British Association for Shooting and Conservation are grateful for the opportunity to share our views with the Committee, and we thank the Committee for giving us the opportunity to make this presentation.
478. **The Chairperson:** Thank you very much for your thorough presentation and for your written paper. You raised a lot of issues. We will consider all those issues, but a lot of them centre on communication. You mentioned that you object to a marine plan being published and implemented right away. You asked for a 21-day consultation period after the marine plan's publication. Will you not be assured by the fact that the Bill includes the need for the Department to issue a statement of public participation? That will clearly set out who it is going to consult and how it is going to consult. It clearly says that the Department needs to do that during the process of developing a marine plan and the designation of MCZs. Will you not be assured by the criteria that the Department must meet?
479. **Mr Plant:** No, I do not believe so. Both our organisations have not been involved with the stakeholder group that set up the Marine Bill. That is a clear indication that we were excluded from the stakeholder process, which formulated and gained evidence from a wide range of organisations throughout Northern Ireland that the Marine Bill would impact on. Therefore, having not been included from the start of the process, we believe that this was another way to exclude us, going forward.
480. **Mr Hamilton:** Thank you for your evidence. The points that you raise prove the importance of the Committee Stage of a Bill. A lot of the points that you have raised are about seeking clarification. The Committee is here as a conduit to take your concerns to the Minister and the Department to seek clarification on the points that you raise, and we are more than happy to do that.
481. There are a lot of points on which you require clarification, and I understand why you want that. Some of the points that you raise were also raised by some of the other parties interested in the Marine Bill, particularly on the environmental side; for example, in respect of legal challenges and who has locus standi to raise a challenge. I do not know whether it should worry you or them more, but you have similar concerns. Therefore, there is a commonality in relation to some of the stuff that you are bringing to us.
482. I appreciate your concerns about clause 24 and the protection of MCZs. As the Committee does its work, it is important to clarify with the Department whether that long list of potential protections is an à la carte list from which you can pick things or whether it is an all-you-can-eat seafood buffet. You are probably looking at this from the same perspective as I am, which is that we should have no more protection than is necessary to ensure that the MCZ and whatever habitat we are protecting is protected. However, it is well worth clarifying with the Department the exact intention of clause 24 and that long list. It could be one or two rather than all those designations being slapped on every MCZ.
483. I appreciate the points that you made about the need for meaningful

consultation. The Committee returned from a visit to Scotland a couple of weeks ago, and one of the major points I took from that was that consultation there is long and painstaking, and, in some people's opinion, frustratingly slow. What we took from the visit was that that was the right way to go about it. They did not designate an MCZ today and enforce it tomorrow without talking to anybody. They are still in a process; they have pinpointed areas that they think might be designated, but they have not done anything with that yet. They are still talking to fishing interests, energy interests, shooting and conservation interests, as well as environmental interests. So, that is something worth clarifying as well.

484. Lyall, you mentioned that you have had no participation up to this point. Another thing that we took from our visit to Scotland was that all stakeholders were included in the room before, during and after the Bill was passed. If the Department has not involved you in the process, have you had any involvement with the likes of the Northern Ireland Marine Task Force (NIMTF), which is coming from the environmental side of the argument? Have you had any discussion with it? One thing we took from our visit was that those two interests, as diametrically opposed as they appear to be, had at least started to discuss points with each other, and even if they did not agree on nine out of 10 things, they did agree on some things. Have you had any sort of dealings or contact?

485. **Mr Mayne:** I will come back to that point. A few minutes ago, you talked about trying to ensure that MCZs had no more protection than is absolutely necessary, or words to that effect. I think that is crucial. We need to consider wildfowling and how heavily regulated it is at this time. Let us talk about Strangford lough specifically. We have wildfowling permits, issued by the National Trust, for a scheme that has been in place since the mid-1950s and has been permitted from the mid-1960s. Bag returns need to be submitted by

individual wildfowling, and if they do not submit bag returns for one season, they do not get a permit for the next season. That includes nil returns. So, we have wildfowling permits; individual bag returns; the Wildlife (Northern Ireland) Order 1985; the Game Preservation Act (Northern Ireland) 1928; firearms certificates with individual conditions on them; nature reserves and timeshare zones, which allow birds to roost and feed undisturbed; lead shot regulations, which came in in September 2009; and the proposed Strangford lough by-laws, which prohibit anchoring, mooring and diving, and to which we have already responded. We also have special protection orders that come into play when, for example, severe weather kicks in. Even before that comes into play, we have calls from BASC for voluntary restraint. From looking at that, I think that we would all agree that wildfowling is already a heavily regulated activity. I think that is a relevant point: we should not be looking to overprotect MCZs.

486. On your question about the Northern Ireland Marine Task Force, we listened very carefully to the comments made by its co-ordinator during his presentation to the Committee last week, particularly his claim that the task force represents 100,000 people. That may well be the case; however, that claim is not reflected in its web poll. On the Marine Task Force website, there is a web poll that asks visitors to the site to vote in support of the Northern Ireland Marine Task Force to ensure that the Marine Bill has wildlife at its heart. The web poll has been in place for some time; however, it only really got our attention on Sunday 22 April. At that time, the web poll stood at 97% in favour of the Northern Ireland Marine Task Force. However, our members were able to turn that around within a 24-hour period. As of this morning, that web poll stood at 20% for and 79% against, which we think is very relevant. It shows the depth of feeling in the country sports community. You may be asking yourself this question: why do organisations such as BASC and Countryside Alliance, which are so heavily involved in and

- focused on conservation issues, urge their members to vote against the work of the NIMTF? I think that we all agree that the Bill must have wildlife at its heart. However, we feel that the Bill must provide maximum benefit for nature conservation without impacting on the wildfowling community. We want to show the Minister, the Department, this Committee and our other political representatives that the NIMTF is not the only voice in town, that its way is not the only way and that the country sports community also has a voice that must be heard.
487. Unsurprisingly, there have been a few gremlins with the web poll, and some of our members have complained that when they try to vote no, they get a response saying that they have already voted, which was not the case. One of our members e-mailed the website administrator to complain and received an e-mail response, which I have with me. It was only at that point that the NIMTF made contact with BASC and the Countryside Alliance to ask for a meeting, which happened within the past 10 days or so, just prior to the NIMTF coming in front of this Committee. The main purpose of that meeting was to get us to call off the no vote campaign. However, it also provided an opportunity for the NIMTF to come in front of this Committee and say that it had reached out to BASC and the Countryside Alliance. We did consider calling off the no campaign, but, during our meeting, the NIMTF co-ordinator made it very clear that it fully supports clause 24, which, to us, is unacceptable.
488. We listened carefully during its presentation to the Committee last week, and we noted that the NIMTF co-ordinator told the Committee that it had reached out to a broad section of bodies. It had not reached out to BASC or the Countryside Alliance until last week. Despite the fact that most, if not all, of the organisations involved in the NIMTF know full well that we are key stakeholders and that the Marine Bill in its current form has the potential to significantly impact on wildfowling and other rural activities, neither BASC nor the Countryside Alliance was invited to attend the Castle Espie event in late March. So, we feel that, all things considered, it shows that the NIMTF is very much working to its own agenda, which does not include country sports.
489. **Mr Hamilton:** I appreciate what Tommy said about a lack of contact. However, if a means of communication is now established, I encourage you to work on that. The Committee is keen for that to happen. I appreciate that, on most issues, you will probably have very divergent views, but it would be encouraging to the Committee if that contact continues to happen. I appreciate the points that you make on that and on clause 24 in particular, and it is incumbent on the Committee, given the concerns that you raised — which will be shared, I am sure, by some of the other interests that we will hear during our evidence over the next number of weeks — to clarify exactly and precisely what that will mean in practice and what level of consultation there will be with groups such as yours.
490. **Mr Plant:** We left the meeting with the Northern Ireland Marine Task Force with a view that we will go forward. We had our differences, and its co-ordinator was fully aware of them, but we may be able to work together on some areas. It was a positive meeting, and it allowed the three organisations to sit down together for the first time. The NIMTF co-ordinator is fully aware of the impact that both our organisations can have on its work going forward.
491. **The Chairperson:** I am very glad that the meeting has taken place. It is important for the Department to hear views from all sides, in order to come to a comprehensive conclusion.
492. **Mr Plant:** My office received a call from the Department following that meeting asking us for our contact details. I hope that is a sign of good things to come.
493. **The Chairperson:** As Simon said, we were in Scotland, where the fishing

- industry talked to us through video link, and it was very useful to hear its views.
494. **Mr Campbell:** You are very welcome; it was an interesting presentation. My query is on the conservation zones and your suggested amendment to 12(7). I think that I can see exactly what you mean about changing “may” to “must”, because that at least gives you an assurance that there is an imperative that the Department must do that, rather a discretionary “may”. Do you accept that if the Committee were to look at changing “may” to “must”, the other word in that reference that would probably have to be looked at is “any”? At the moment, clause 12(7) states:
- “may have regard to any economic or social consequences of doing so.”*
495. If that is changed to:
- “must have regard to any economic or social consequences”,*
496. some could argue that we create an imperative that any economic impact whatsoever of any kind, should it be the most miniscule, will trigger the imperative of “must”. Do you accept that if we look at “may” becoming “must”, we would probably have to look at “any” becoming something slightly different?
497. **Mr Plant:** Yes, we agree with that.
498. **Mr Mayne:** I think that the Assembly widely recognises that shooting sports alone contribute significantly to the Northern Ireland economy, so I would be reasonably happy with that.
499. **Mr Plant:** We are also concerned about the Bill’s use of the word “cultural”, because wildfowling is steeped in the history of Strangford lough in Northern Ireland, in Lough Foyle and all over. It is an important part of our heritage and we must continue to recognise and value it as such, and not just have it excluded from the clause.
500. **The Chairperson:** Are you also suggesting that we add the word “cultural” to “social or economic consequences” to make the clause more comprehensive?
501. **Mr Plant:** Yes.
502. **Mr Mayne:** I want to ensure that the Committee recognises that fact that restricting or prohibiting wildfowling is highly likely to have a detrimental impact on the livelihoods of a significant number of firearms dealers in Northern Ireland. In the Strangford lough area alone, for example, I can count six such dealers off the top of my head, and there are another six or seven around Lough Foyle. We need to recognise the fact that, if the Bill impacts on shooting sports and angling, it will have an adverse knock-on effect on those people’s livelihoods.
503. **The Chairperson:** We need clarification on the restrictions that the Department will impose on MCZs. We do not know whether the Department is saying that there will be no wildfowling or anything. As you said, we need to clarify those boundaries and the conservation restrictions.
504. **Mr Weir:** To pick up on Gregory’s point: we may need to tease out some of the definitions. You made a fair point about including a reference to “cultural” consequences in the clause. This may be semantics, but instead of replacing “may” with “must”, should we instead consider: “shall have regard to”? That would tend to be more consistent with how legislation is drafted.
505. I heard what was said about the web poll and have seen the e-mails. I am not quite sure why any organisation runs a web poll, because, with the best will in the world and with no disrespect to you or the Marine Task Force, whether a web poll says 97% one way or 80% another, it would be mad of anyone to rely a great deal on a web poll, because it is easy to get large numbers of people to click a button in support of one thing or another.
506. I want to raise two issues. Your point about the first port of appeal being the High Court is reasonable. Given the experience of the issues in Strangford

- going to Europe, could taking your objections to the High Court end up being a double-edged sword for you? When certain proposals come up, you may want to appeal them, get them changed or whatever. Recently, there has been a strong tradition, particularly among environmental groups, of complaints being lodged quickly. By making it easy for people to complain, I wonder whether you will end up with quite a lot of people pushing for particular things to be strengthened against your interests rather than having something reduced. There is a reasonable point in that, irrespective of the end result, but I wonder whether you could make a rod for your own back.
507. **Mr Plant:** We believe that the first road of appeal should be to the Minister or to the Environment Committee so that they could look at the appeal. The matter could then go to the High Court. The first avenue must be to allow the people of Northern Ireland, who do not have the funds but genuine concerns, an opportunity that is not going to cost them their house and their livelihood.
508. **Mr Weir:** I think that that is a perfectly valid point, and what I am saying is that you may find that, under those circumstances, more complaints would go the other way and more results may worsen your position rather than —
509. **Mr Plant:** Yes, but the final one can go to the High Court to make the decision. If the Minister declined, you would then have the option to go to the High court.
510. **Mr Weir:** I am not denying that, but I think that, from your point of view, that may end up being counterproductive. However, that is by the by.
511. The Chair mentioned communication, and, from a practical point of view, the point is to get the by-laws and whatever else is there right. The issue of urgent or emergency situations has been raised, and you highlighted that you feel that implementation should come only after consultation. Can you spell out to us how you see that working in practice? I think that it was Tommy who referred to a situation where people may need to move in urgently, if, for example, there were an oil spill. Without knowing a great deal about it, I assume that very swift action may have to be taken, including prohibiting certain things or whatever, and people may need to move in virtually instantaneously. How would that be compatible with consultation ahead of something being issued? In practice, how do you see a consultation process happening in an emergency situation?
512. **Mr Plant:** I have worked in the marine environment for over 30 years, with 20 years in Her Majesty's Coastguard. One of my tasks there was dealing with marine pollution. Before an exclusion zone was established for an oil spill, consultation would take place, even if it was only a phone call or a notification that the zone was being established, so that everybody was aware immediately of what was going to happen. Everybody could then have their input to the proposed initial time, the area, the extent of what it was going to include —
513. **Mr Weir:** Does that mean that consultation could be fairly instantaneous under those circumstances?
514. **Mr Plant:** Yes. If there is an MCZ, there is bound to be an emergency plan to take into account of these situations. For instance, if there were an oil spill in Strangford lough, the plan would state what action would be taken and who would be involved. So, the emergency plans should be in place for designated MCZs.
515. **Mr Weir:** The weakness is that consultation can sometimes mean setting out what someone intends to do, but, irrespective of what they are told, they still go ahead and do it. So, consultation can sometimes be meaningless.
516. I do not know how this issue could be defined or restricted. I think that one of your concerns about an emergency or urgent situation is that someone in the Department may use it as somewhat of a Trojan horse, in that the label of "emergency" is used when

- it is not really an emergency. How do you see that problem being solved? If consultation is a tick-box exercise, that does not necessarily stop someone from taking a different and very wide interpretation of the term “emergency”.
517. **Mr Mayne:** I will try to answer that. We take your point, which is very valid. The consultation could be as simple as a phone call. I will draw your attention to a scenario that happened over the weekend up in Lough Foyle, where a fairly big cruiser ran aground, leaving oil and fuel pumping out of it. It was discovered by members of the Lough Foyle Wildfowling Association, who, as I understand, got in touch with the Environment Agency. Representatives of the Environment Agency went up and checked it out. I am not sure whether anything was done, but I do not think that it was for some time. The point that I am trying to make is that, if there were an oil spillage or a natural disaster of some description on Strangford lough, for example, you would usually find that our members had got there before you.
518. **Mr Plant:** An emergency is an emergency. If it was not an emergency, it would be —
519. **Mr Mayne:** Lyall is trying to make a valid point. If there were a genuine emergency, such as an oil spillage, fire or some natural disaster —
520. **Mr Plant:** Our members would be the first there to respond.
521. **Mr Weir:** If consultation were referred to in the Bill, you would not be seeking to define it, because, presumably, it could vary from occasion to occasion. It is a different situation if somebody is bringing forward the likes of a marine plan, because there has to be widespread consultation on such a plan, and it is a long-term issue. Under those circumstances, somebody making a phone call is not appropriate, but in the case of an oil spill, making half a dozen phone calls may be —
522. **Mr Plant:** It has to be looked at in the context of the definition of emergency.
523. **The Chairperson:** I suppose there needs to be a safeguard to allow the Department to take action very swiftly.
524. **Mr Plant:** Yes.
525. **The Chairperson:** Even e-mailing round would be very quick. Do all your members have e-mail?
526. **Mr Mayne:** Quite a large percentage of them do.
527. **Mr Elliott:** Thank you for your presentation. I listened to what you said about the Marine Task Force. Regardless of whether it is accurate, there is a perception in the wider community — there is for me, anyway — that the Marine Task Force is an authoritative organisation on marine issues. Although not exclusively, it by and large speaks for the vast majority of people who are involved in marine issues. I do not want to put words in your mouth, but, from what I am hearing from you today, it seems that you are indicating that you do not believe that the Marine Task Force performs that role or speaks for the majority of people who are involved in marine issues.
528. **Mr Mayne:** I think that we recognise the expertise in the various organisations that make up the Marine Task Force. I want to clarify one thing: we are certainly not at loggerheads, and we share a lot of common ground. However, we are disappointed at the lack of contact that there has been until this point in time. As Lyall pointed out a few minutes ago, it got in contact with us recently, but that was on the back of its website poll.
529. **Mr Elliott:** As other members and the Chair indicated, continuing discussions with the task force, yourselves and other stakeholders would be helpful.
530. I have a query about the marine management organisation. You said that you did not think that there was any need for it. If there is not, can you suggest any way in which the Departments could, at least, co-operate better and have a better understanding of how to deal with issues? In the past, my experience has been that some

- Departments do not always look on economic issues as a positive element and other things take precedence. Obviously, the Department of Enterprise, Trade and Investment (DETI) may take a different view. One of your suggested changes to the clauses is that there should be much more reliance on economic issues, social issues and, as you said, cultural issues. If that were the case, one Department might not necessarily be the best opinion-maker on that. I am trying to establish how you believe a grouping could work together better, if there is not going to be a single organisation.
531. **Mr Plant:** I believe that the Department should enter into a service level agreement with the other Departments. That would legally bind them into them taking the economic, social and cultural aspects of the Marine Bill into account. Therefore, the onus would be put on each Department to take account of what you are actually saying.
532. **Mr Elliott:** So, are you suggesting some sort of service level agreement between a number of Departments?
533. **Mr Plant:** Yes.
534. **Mr Elliott:** Do you think that that is workable?
535. **Mr Plant:** In the current times of financial austerity, it is the best way forward. It would focus Departments on delivering value for money and the needs of the Marine Bill on biodiversity and on what it hopes to achieve.
536. **Mr Mayne:** One of the general messages around the Table is the need for inclusivity and consultation, particularly when we come to the marine conservation zone designation process. However, it goes back to the very early stages, and it is about getting Departments to recognise the various stakeholder groups and to include them in discussions at that very early stage.
537. **Mr Elliott:** That will be a discussion for another day. I have one final question, which is about the designation of MCZs. One thing that is not in the Bill is that any designation of MCZs should be evidence based. Maybe it is in the Bill, and I have missed it, but I am interested in your views and in other organisations' views on that. Should the designations be evidence based?
538. **Mr Mayne:** Absolutely. They should be evidence based and supported with good scientific evidence. MCZs should not be designated just on a whim. We accept that there will be MCZs, but, as I highlighted, part of our concern is that the reference areas that are being designated in England are having a detrimental impact on our wildfowling on the east coast. The reference areas can be applied to all MCZs or part of the MCZ.
539. **Mr Elliott:** So, does that mean that you could have a conservation zone within a conservation zone?
540. **Mr Mayne:** That is correct.
541. **Mr Elliott:** That seems complicated.
542. **Mr Mayne:** The Bill does not use the phrase "reference areas" or "research and development areas", but I think that you have hit the nail on the head. We are talking about a conservation zone or a highly protected area within a marine conservation zone.
543. **Mr Plant:** One of the things that I highlighted was that the grounds for designation are about:
"conserving marine flora or fauna or habitat ... whether or not any or all of them are rare or threatened."
544. That allows the Department to designate an MCZ even if there is nothing rare or threatened in it, giving the Department carte blanche to do what it wants.
545. **The Chairperson:** I think that Tom is right. Designation needs to be evidence based. In Scotland, that is very much the case. They do mapping exercises and carry out a lot of scientific research.
546. **Mr Plant:** We would all like to know what we are actually achieving by designating an MCZ. For example, if the mussel bed in Strangford is designated, we would

- like to know why. We need to have something tangible so that we can say that it is an MCZ because of a, b, c or d.
547. **Lord Morrow:** I, too, commend both organisations on their presentations. They have been very frank and well presented. If you feel that, in the past, you may not have been treated as an equal or as an important stakeholder, I hope that that will change in the future and that you will not have to fight to get in. I think that the members of the organisations that you represent are among the best conservationists. Of course, I would say that, since I am an angler and a member of the shooting fraternity.
548. I have a great admiration for the work that you seek to do, although I am not a member of either of your organisations. You highlighted issues with the Marine Bill, and this is new territory for us all. I think that it is important that the points that you raised and the reservations that you highlighted in your reports and again verbally today are part of this Bill, whether by exclusion of some of the things that you highlighted or through the inclusion of some of the issues that you are bringing to the Committee's attention. I want to commend you on what you have done and said so far on all this.
549. I will bring you back to clause 24. Tommy, when you were speaking, I wrote down the word "unacceptable", although I am not sure whether you used it. If you did not use it, just say so. For clarification, I want to ask you whether you mean that the clause has to be reworked and reworded or whether you want it out of the Bill altogether because it will have a negative impact on the whole matter.
550. **Mr Plant:** We believe that there will have to be by-laws to protect an MCZ. However, prior to any amendment of the Bill, clause 24 needs to be reworded, explained and consulted on.
551. **Mr Mayne:** I will elaborate on that. Part of the reason that we are so concerned about clause 24 is that we have had previous experience, going back to 2010, with amendment No 23 to the Wildlife and Natural Environment Bill. We know why and how that was done. Thinking back to amendment No 23, the wording of clause 24(3)(e) of this Bill is pretty much identical:
- "prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants of any description".*
552. That gives us grave cause for concern, as does clause 24(4).
553. One other matter of grave concern for us is clause 24(2), which reads:
- "Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region".*
554. For some obscure reason, that is then followed by the words
- "or in any other part of Northern Ireland."*
555. We are struggling to our heads around that.
556. **Mr Plant:** Does that refer to Lough Erne, Lough Neagh or the Sperrins?
557. **Mr Mayne:** When we talk about a "marine environment" everybody is generally of the opinion that we are talking about a saltwater marine environment. The words:
- "or in any other part of Northern Ireland."*
558. were added. If that opinion is the case, why were those words added?
559. **Mr Plant:** How far does the tidal reach go up the River Bann or the River Foyle and so on?
560. **Mr Mayne:** I take your point, Lord Morrow. My answer is that we would be very happy to sit down across the table from the Department and look in detail at clause 24 in its entirety.
561. **Mr Plant:** We fully acknowledge that there will have to be by-laws for MCZs, but they will have to be fit for purpose.

562. **Lord Morrow:** I thought that I had it highlighted, but I did not. Did you say that there was already legislation in place for wildfowl. I thought that I had that marked, but I just cannot pick it up. Did you say that it was already in existence and that you felt that it was adequate? Am I misquoting you?
563. **Mr Mayne:** That is possibly where we talked about wildfowling being heavily regulated. We have the Wildlife (Northern Ireland) Order 1985, which was amended again in 2011, the Game Preservation Act (Northern Ireland) 1928, our firearms certificates, lead shot regulations and the proposed Strangford lough by-laws, to which we responded two or three weeks ago and which, as I said, prohibit mooring, anchoring and diving. There are special protection orders that prevent shooting during periods of severe weather and voluntary restraint.
564. I will also highlight another point. Take Strangford lough, on which we have four clubs, as an example. The National Trust issues in the region of 250 wildfowling permits a year. Those include private permits, not just permits for members of those four clubs. Some of those club members, who are BASC members, volunteer as National Trust wardens, policing timeshare zones and reserves. I cannot think of any other activity on Strangford lough that is regulated in any way, let alone regulated to this degree.
565. **Lord Morrow:** I will interrupt you to hear your views on this point; I have just picked it up from my papers. In your presentation, you state:
- “BASC contends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure.”*
566. **Mr Mayne:** Yes.
567. **Lord Morrow:** Are you content in your own mind and in those of your members that that is adequate and that it does not need to be added to?
568. **Mr Mayne:** We are cautious, because we have had our fingers burned before. We are happy to look at that and, as I said, to sit down with the Department and discuss it to see whether there is a requirement for that clause.
569. **Mr Plant:** Lord Morrow, the Wildlife and Natural Environment Act (Northern Ireland) 2011 also gave further protection to flora and fauna. Will the Marine Bill take precedence over that? What impact will it have on other legislation, such as that concerning rights of way and so on?
570. **Lord Morrow:** This is a new animal. It might come out in a funny shape at the end of the day, and it might come out uncontrollable. That is what we need to watch out for. I take fully the point that you folk make about the impact that the Bill would have on the shooting fraternity, particularly gun dealers and those in the angling world. I honestly think that that is overlooked and misunderstood at times. Sometimes, there is a thought out there that wildfowling and anglers are just conservation hooligans, and I think that that is grossly unfair. I think that you are right to make the point about the impact that the Bill will have on the economy. Very often, those things are not considered whenever legislation is being made.
571. **The Chairperson:** You raised a lot of concerns about clause 24. We will write to the Department with all your queries as soon as we can, rather than wait until the end of this process. We will wait for the Department’s response to us. A number of members agree with some of the concerns that you raised.
572. **Mr Mayne:** Thank you very much.
573. **The Chairperson:** Thank you very much for your presentation.

10 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Gregory Campbell
 Mr Tom Elliott
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Thomas McErlean *Centre for Marine
 Archaeology*

Mr Tim Howard *Institute for
 Archaeologists*

574. **The Chairperson:** I welcome Tim Howard from the Institute for Archaeologists and Thomas McErlean from the Centre for Maritime Archaeology. You are very welcome, gentlemen. Please give us a five-to-10-minute presentation. After that, we will ask questions.

575. **Mr Tim Howard (Institute for Archaeologists):** Thank you, madam. Mr McErlean and I have agreed that I will start the ball the rolling, and Mr McErlean will follow up. First of all, I thank you very much indeed for the opportunity to address the Committee. The Committee's engagement with the archeological sector is, if I may say so, most refreshing. If I may, I will make three general points before moving to the crux of both our cases relating to historic marine conservation zones (MCZ).

576. Although we raise specific concerns, we generally welcome the Marine Bill. That should not be forgotten. We recognise the importance of Northern Ireland's seas to its prosperity. Whatever may have been felt in the past about archaeologists, we do not come here seeking unnecessary constraints or fetters on legitimate development or activity. We are trying to place the marine historic environment centrally in sustainable development and marine activity.

577. As you will have noted from both our submissions, we are supportive of the marine spatial planning system. In a way, it is the final piece in the jigsaw for Northern Ireland. We have high-level marine policy objectives that are very good for archaeology, and archaeology is embedded in them. The Northern Ireland Executive are signed up to the marine policy statement, as are the other Administrations, with strong support for the marine historic environment. There is a coherent, consistent, and, as your colleague said, evidence-based approach to development and activity in the marine zone. It is a key mechanism to ensure that the marine historic environment and other interests are considered early, strategically and comprehensively, and, ideally, that activity is directed to areas that will do little or no harm to those interests.

578. We are strongly supportive of marine conservation zones as a mechanism to manage and protect the marine environment. I emphasise the word "management", which will crop up. It is not just about protection; it is about a more responsive management role. That is very important. That brings us to the crux of both our cases, which is our concern that the Bill has not taken the opportunity to allow for the designation of historic marine conservation zones, or, as Scotland has done, historic marine protected areas. I add immediately that I would not stand or fall over the terminology; the issue is that we should have a ground for designation on historic or archaeological grounds.

579. I understand that the Committee was briefed on 19 April by Mr Ken Bradley from the Department of the Environment (DOE). I will pick up on two points from the note that I saw of that briefing. First, Mr Bradley accepted that it would be possible to allow for designation in the Bill. It is possible, but, as a matter of judgement, it has been decided not to

pursue historic marine protected areas at this time. Secondly, it seems that the Department's view is that that is not necessary, because, in the light of the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995, there is already sufficient protection for the marine historic environment. The crux of our case is that those two provisions — the 1973 Act and the 1995 Order — are not adequate and that this is an opportunity to significantly better manage and protect the marine historic environment.

580. In the next couple of minutes, I will pick up on some points on where we feel — I am sure that Mr McErlean will reinforce these — that those two provisions are lacking. I will start with the 1973 Act. I am probably telling you things that you already know, but it was a private Member's Bill in Westminster, so it had no departmental budget. That is key, because I will come back to my point that management is important. We developed a system in which wrecks that were under threat were put forward for designation as a reactive measure to provide, in fairness, sorely needed protection from damage to those wrecks and loss of the heritage. However, we had no overarching strategy for identifying comprehensively what should be designated or for managing that designation. It was purely a means of designating a restricted area and saying that activities are prohibited, on pain of a criminal offence, within that area. What we have with marine conservation zones is, if I may say so, a much more thoughtful and responsive mechanism.

581. I heard the witnesses before us talking about clause 24 and the availability of by-laws. Again, that is something that we would be very supportive of, because the by-laws allow us to do things like restrict access, which neither the 1995 Order nor the 1973 Act does. Let me add that I am not talking about trying wholesale to make no-go zones. Responsible access is to be encouraged, but there may be circumstances where such zones are

needed. We could also, for instance, regulate activities through by-laws. Fishing is one example. Trawling, for instance, can cause great damage. We can regulate the speed of vessels. That is quite a subtle regulation, which is much more subtle than is allowed by either the 1995 Order or the 1973 Act. We could also prevent anchoring.

582. I should raise the problem of enforcement. I did some work, admittedly in relation to England, in 2005, about the enforcement of the Protection of Wrecks Act 1973. In the 22 years that, at that time, the Act had been in force, in England — and, to my knowledge, in the United Kingdom — there had only been one prosecution. It was in relation to the Hazardous off Sussex, when recreational divers were found making their way down the anchor chain of the buoy. You could say that they were caught red-handed.

583. We do find it difficult. To take the example of anchoring, when somebody throws an anchor overboard, within, say, 300 metres of the Girona, which is the protected wreck off County Antrim, how do we prove that that has caused damage so as to prosecute? Strictly, one might think that you would have to have a diver down on the floor contemporaneously, but if we had by-laws — I know we are talking about a level 3 fine of £500 — at least it would be a disincentive. The Protection of Wrecks Act 1973 also only covers vessels, so it does not cover aircraft, although we query seaplanes, or vehicles, again, query amphibious vehicles. It does not cover the wider things like submerged landscapes or artefact scatters. It is, if I may say, a piece of legislation very much of its time. I know that it has been described rather more rudely as strings and ceiling wax law. It has been criticised. It has served a purpose, but we now have an opportunity for something much more impressive.

584. I will move quickly to the 1995 Order, which is a little bit wider in its scope, but there are still difficulties when it looks at effectively scheduling structures about extending its remit to

- submerged landscapes and artefact scatters. We also have the issue that, really, the 1995 Order and scheduling were designed for a terrestrial setting — monuments on dry land. The 1995 Order extended it to the sea, and that is absolutely right, although, in practice — Mr McErlean can tell you better than I — not a lot of scheduling goes into the marine zone. There may be some in the intertidal zone, and we will come to that. Issues of access are not really issues for the 1995 Order unless the Department owns or is a guardian of a zone and has a direct interest in access.
585. What we are looking at is a much more flexible management regime, with a focus on management rather than enforcement. Finally, I will flag up a couple of provisions, which I commend. Clauses 20 and 21, for instance, place duties on public authorities, when taking decisions and making acts, to actually take into account the furtherance of — in ecological terms — conservation objectives. If we were looking at the historical environment, it may be preservation objectives, but that is only a difference in language. We can see with that example that we have got the means to integrate marine historic environment into marine spatial planning and actually move forward. I would say bluntly that the Scottish Government have got it right in this case. Perhaps it is wrong of me to say this, but I would respectfully say that perhaps Westminster missed an opportunity with the 2009 Act.
586. I am conscious of not overrunning on my time, and allowing you to hear from Mr McErlean. I am happy to take questions.
587. **Mr Thomas McErlean (Centre for Marine Archaeology):** Tim anticipated most of what I want to say. I am sure that you will be glad to hear that I will be brief and to the point. The maritime archaeologists had quite an emotional response when the Bill came out. We had assumed that maritime archaeology would be ranked the same as the other aspects of the maritime environment.
588. The background is that the Northern Ireland Environment Agency (NIEA), for example, has invested a lot of time and money in maritime archaeology since about 1999. It had dedicated maritime archaeologists. A head of steam had built up since the European Valletta convention raised awareness of the importance of maritime heritage. We were a bit disappointed with the UK Act, but it did make provisions. We were absolutely delighted with the Scottish Act. We assumed naively that we, here, would copy both Acts, especially the Scottish Act. However, when the Bill came out, we found that maritime archeology had been totally thrown out. Subsequently, we have found out some of the reasons why that happened, one of which was a feeling that it was adequately dealt with under other pieces of legislation. We argue strongly that it is not.
589. You said that the Committee has been to Scotland, so I am sure that you are investigating the Scottish approach. As you know, the guidelines for selecting their historic marine protection areas are out for consultation. I will not go into all its subclauses, etc, but I will just say that, if possible, we would like those to be subsumed in a redraft of our Bill. One of the fundamental statements that I would like to make is that our maritime heritage resource is as good, perhaps better, than the Scottish material. So, why do we not protect it as much?
590. **Tim mentioned the two main pieces of legislation that we work under:** the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. I will pass around some handouts that give you an idea of the resource and the shipwreck archive here, and, if we are to have protection zones based on maritime archaeology, the data sets that those would be based on. At the moment, the sites and monuments subsection of the maritime record for Northern Ireland indicates that we have approximately 2,600 wreck sites. That number is being increased all the time with further survey.

591. In theory, those sites are protected under the Protection of Wrecks Act 1973. Of course, they are absolutely not. We have only one wreck protected under that legislation, namely the Girona, the great Armada ship of 1588. One of the reasons why we do not have more designated wrecks here is that the conditions to get a wreck designated are very stringent. Wrecks have to be demonstrated to be of national importance. For various reasons, it is very difficult for us to demonstrate that. For example, because of the resources required to do research on individual wrecks and the fact that, although a wreck may be of tremendous regional importance to us in Northern Ireland, it may not be in a British context and cannot be demonstrated to be such, or, at least, it would be very hard to do so. It is all very cumbersome really.
592. As you know, Scotland has opted out of the Protection of Wrecks Act 1973. The Centre for Marine Archaeology's feeling is that we should do that too and take the responsibility under our own wing. In the provision for scheduling under the 1995 Order, the architecture was designed almost exclusively for terrestrial sites. There are various reasons for that, including the condition for monitoring, the definition of boundaries and the nature of that type of work at an archaeological site. The Centre for Maritime Archaeology advises NIEA built heritage on the scheduling of maritime sites. It is an expensive procedure and we are allowed to propose five a year. All are coastal edge intertidal sites. None is a submerged site. You can imagine that if we were to protect even a small proportion of our 2,600 wrecks by scheduling we are talking about another 300 or 400 years. There are just not the resources for that.
593. We need a mechanism or blanket protection of non-designated sites. We thought that the Bill would have that overarching effect and we were going to embed everything into that and into the marine protection zones. We hope that we will have as big a feed into marine planning as we already have through various bodies.
594. One aspect of legislation that I did not mention, and which helps us somewhat, is the new marine licensing agreement under the UK Act. A little subclause there mentions the removal of objects from the seabed, etc. So, potentially, we could use that. We have not used it yet. We have considered it and, again, there are big financial implications to using that.
595. The ideal scenario for us to protect this tremendous resource we have is to follow the Scottish route and have historic marine protection zones, and copy that clause into the Bill, with amendments for the local area. Failing that, and I hope that does not fail, we need maritime archaeology up there with the same status as the others.
596. After a reference to marine flora or fauna in clause 12(1)(a), clause 12(1)(c) refers to:
“features of geological or geomorphological interest”.
597. I am delighted they are there but I cannot see how they rank above us. If anything, man's interaction with the sea is even more important. Of course they should be there, but a phrase such as “or of archaeological interest” should be added. That would raise the status of maritime heritage and give it its proper place in the Bill.
598. To sum up, we feel that this approach is totally piecemeal. For us, it has left us out totally. There are very serious shortcomings in existing protection legislation. It leaves all our maritime archaeology at risk of being ignored and people being unaware of it.
599. **The Chairperson:** Thank you very much for your presentation. You are right: the Department told us that maritime protection is left out of the Bill because we already have the two pieces of legislation you mentioned. What you are saying, however, is that it is not adequate and you would like to add at least a phrase about maritime archaeology. What about Scotland?

- We went to Scotland and were quite impressed with their work and what they have invested. Do they not have the same two pieces of legislation? What was the argument put to the Scottish Department to add that into their Bill?
600. **Mr McErlean:** We work closely with our colleagues in Historic Scotland. Maritime archaeology is a very small community. They felt the same frustration as us with both Acts, if not more so. The Scottish are more proactive with regard to research into the maritime environment and have been doing intensive studies. They know better what the resource is. We are catching up and realising that ours is as rich. So, in a way, their sensitivity about the deficiencies in the legislation was acute. They had the information to act on.
601. **Mr Howard:** I will add a point of detail. The Protection of Wrecks Act 1973 applies in Scotland as does the equivalent of the 1995 Order. Interestingly, Historic Scotland and the Scottish Government had scheduled a number of high-profile maritime sites, the most famous of which is the remains of the German high seas fleet at Scapa Flow. It is a scheduled monument, rather than a protected wreck. Clearly, the Scottish consideration that was given felt that that site would be better protected through designation as a historic marine protected area. I am sure that you are aware that Scotland has been consulting on the mechanism, but when consultations are finished, it is expected certainly that the protected wreck sites will become historic marine protected areas.
602. **The Chairperson:** Would it be confusing if maritime protection were covered by three different pieces of legislation?
603. **Mr Howard:** I would respectfully suggest that you could recommend repealing section 1 of the Protection of Wrecks Act 1973. I choose my words carefully, because that Act also covers dangerous wrecks. That is not a heritage issue; it is a health and safety issue. It comes into play, for example, when toxic waste goes down. The well-known case is that of the SS Richard Montgomery, which was a liberty ship that went down, full of ammunition, in the River Thames during the Second World War and is still there. It would be a good idea to keep section 2 of the 1973 Act, but section 1, which relates to archaeological and historic matters, could be repealed. That is what the Scottish Government have done. It will be repealed once the mechanism is in place. We would not be adding a layer; in effect, we would be substituting one.
604. **The Chairperson:** OK. It is just making things more coherent.
605. **Mr Howard:** Of course.
606. **The Chairperson:** I am surprised to hear that we have so many known wrecks and recorded wrecks. What are they, mostly?
607. **Mr McErlean:** There are different zones of concentration, but most of them occurred on very well known and fairly predictable shipping hazards in the past, such as the Copeland Islands, the Maidens and the mouths of the River Bann and the River Foyle. However, there are unknown resources. We do not know the seabed yet, and we are legislating for the unknown. That is why the Bill has to be future-proof and why we would argue strongly for maritime archaeology to have higher status.
608. **Mr Hamilton:** This aspect of the Bill is quite interesting, not just because some of the stuff that you are dealing with is interesting, but because it raises questions as to why the Department is proposing to do something differently from the way in which others have. As the Chairperson said, we were in Scotland and asked them why they did what they did. The Department told us that it believed that current legislation was sufficient to cover this.
609. **In Scotland, they were very clear:** they said that they wanted to opt out of the UK framework. In the belief that most things have a political element, a cynic might say that a Scottish National Party Government would take any opportunity that it could to opt out of UK-wide legislation. Before the Committee would consider taking a similar approach — I

- am not making a political point — we would want to consider other aspects of opting out of a UK framework. The Committee, obviously, can do that.
610. Many of the sites on your map may be designated as MCZs, but not, perhaps, for historical reasons. As you will know better than me, they can become habitats for all sorts of species. You are talking about arguing a case specifically because it involves a wreck. I was going to ask on how many instances might this happen, but then you produced this map. I would not fancy going out in a boat on certain parts of the coastline after looking at the map. All of these are potential MCZs, arguably.
611. **Mr McErlean:** Yes.
612. **Mr Hamilton:** Are you arguing that all these should have some sort of special protection? That simply could not happen.
613. **Mr McErlean:** I thought you might ask me what our approach might be in designating an MCZ. For instance, the Copeland Islands or the Maidens would definitely be big candidates.
614. Your point that they would also qualify as MCZs as a habitat is exactly right. Hopefully, and it is within the ethos of the Bill, we will dovetail all those interests. In the arguments during and proposals from the public consultation on the formation an MCZ, hopefully our data sets and archaeology would be contributing factors towards a joined-up approach on the maritime environment. I do not see us working in isolation; we are very much integrated. Having the same protection conditions helps to protect archaeology as well as the nursery for fish, the maerl beds or whatever.
615. **Mr Hamilton:** I am very sympathetic to that point, and it is well worth the Committee pursuing it in more detail. I am almost playing devil's advocate and arguing against myself here, but whether they are called marine conservation zones or marine protected areas, "marine" is the operative word. So, an area has to have something more than a wreck; it has to have some marine feature.
616. **Mr McErlean:** To us, a wreck is part of our marine heritage.
617. **Mr Hamilton:** I can see how wrecks such as the Girona or a warship are at a completely different level and should have protection, even beyond the protection of a marine conservation zone or marine protected area. For a lot of the other examples, some special, distinct habitat will have to have developed around it because it is a wreck.
618. **Mr McErlean:** I disagree; the archaeological heritage value as an asset is equal to the habitat value. It is a finite resource, and it is one that we have to admit is under daily or weekly attack from certain elements among sports divers. We want to encourage sports amenity diving, because we get feedback from those who do it. However, that has to take place strictly on the grounds of, "Look, but do not touch". That is not really accepted yet, but if it is in the Bill it will be accepted more.
619. It is accepted to a certain extent, because most divers would not go down and chip away at coral or walk over maerl beds, but they still do it with the wrecks. If you go into any of their backyards, you will see beautiful brass portholes. That is everybody's heritage, yet we are not protecting it. It will be gone for our grandchildren.
620. **Mr Hamilton:** I understand the point you are making. However, it then gets into the realm of how many wrecks are designated for that purpose and whether we should be designating them for protection simply because they are wrecks. If we get into the scenario where you are protecting all, or even a substantial number, of the wrecks on the map, we are into the realms of being unrealistic.
621. **Mr McErlean:** I agree. However, at the moment, and this is not really reflected much in discussions, the issues are spatial planning and how many zones we are going to have. Because this is such a small region and so much of our

- inshore area has special qualities, most of it has to be under protection of some type or other. It already is. I do not know if the Committee has a vision for that.
622. **Mr Hamilton:** The Scottish are talking about 30, and they have 50% of the UK waters. These are not things that are going to be designated in every single instance. There are about 30 around one of the Copeland Islands. Taken in that context, not that we should be slavishly following what Scotland or anybody else is doing, these are not designations that are always going to be made in every instance. They are going to be made because of specific reasons; for example, because they cross a certain threshold.
623. Proportion is an issue. If the argument is on archaeological grounds, and the Department accepts that and puts it in the Bill, the rule will have to be applied proportionately. It will be used in exceptional circumstances rather than in every case.
624. **Mr McErlean:** I agree; that is realistic.
625. **Mr Howard:** I accept that as well. That will be a major issue for the guidelines. If this were accepted, what has happened in Scotland this spring would inevitably follow: there would be consultation on the guidelines and criteria.
626. **Mr McErlean:** On your question, I would like to list some of the wrecks that you might not know about, which maybe should be covered by the conditions. Peter, you are a Member for North Down, are you not?
627. **Mr Weir:** Yes.
628. **Mr McErlean:** For instance, in Belfast lough, we have the SS Appin, which was lost in 1913. With the use of very good sonar equipment, we can see that structure on the seabed. We have the SS Oregon, which was lost in Belfast lough in 1945. Its superb remains are on the seabed. There are loads around Rathlin, of course. For example, the Lochgarry, which was lost in 1942, and the Drake, which was lost in 1917. It was a beautiful battleship and there are great remains. Off Fair Head, we have the Santa Maria from 1918. Up at Portstewart, we have a very good U-boat, which looks to be very much intact. That is just a sample. We have information on them all.
629. **Mr Hamilton:** All of us want to protect those types of wrecks in the most appropriate way. However, it is about finding out whether this is the right way to do it. Do we weld something on to the Bill that provides that level of protection or do we need to do something entirely different? If we were to do something entirely different, we would have to consider the implications of that in a wider context. We are not unsympathetic towards this; we just have to find the best way to take it forward.
630. **Mr McErlean:** May I interject again? Sorry; I am taking up all the airspace here. If we do nothing else — although we would want you to do something else — it is essential for public awareness that “maritime heritage” be added to the clause and given recognition. I think that is a big omission.
631. Let us look at other jurisdictions. The legislation in the Republic, for example, is superb for submerged wrecks. All wrecks that can be demonstrated to be or are thought to be over 100 years old are protected. There are very strict laws, and they are implemented. If the guards think that a sub-aqua crowd are diving on a wreck, they can immediately lift their diving gear onshore. We deal with southern archaeologists daily to address cross-border issues in Foyle and Carlingford. The legislation here is totally inadequate.
632. **Mr Hamilton:** Other legislation may need to be amended to address some of those issues. You make a good point. However, this Bill is maybe not the way to do that. It would have a huge impact on that type of practice. However, other legislation would probably have to be amended to address that.
633. **Mr McErlean:** The vision for this Bill was that it would do that. That is what

- all us maritime people were told: this was it. Then, it comes along and hits us like a wet lettuce leaf. What is wrong with us here that we did not grasp the opportunity? It will probably be another 100 years before we get another maritime Bill.
634. **The Chairperson:** I think that you made a number of very good points. We will certainly look into that.
635. **Mr Elliott:** Thanks for your presentation. Had I not seen the map that you handed out, I would never have believed that there were so many wrecks round Northern Ireland. When you see the number of wrecks dotted on a map like that and then you look at a map of the amount of flora and fauna and other archeological sites that may have to be protected, you realise that there will not be much room for fishermen to fish or for wind turbines to be put in to generate electricity. There will not be much room on the seabed to do anything if all this is protected.
636. **Mr McErlean:** That is a very good point. You are talking about sustainable development. I sit on the alternative energy committee, which looks at the licensing of various areas. Because our information is so good, we have already designated areas where no restrictions are needed and where there is no conflict. We have done our strategic environmental assessments. So, we are well beyond that stage. We have designated areas that are not sensitive to maritime archeology in order to solve our sustainable development issues. Perhaps it is the size of the dots that is frightening you. The whole purpose of the Bill is to ensure that we all interact on the issue of marine environment and stop friction.
637. **Mr Elliott:** Earlier in your presentation, I noticed that you said you wanted a flexible management regime. From my experience of dealing with archaeologists and planning aspects, I know that they have a far from flexible management regime, if I could say that, unless they are planning something different for the marine environment.
- I have not witnessed that in the past. That is all.
638. **Lord Morrow:** Again, this question is about the issue of recorded wrecks and known wrecks. Is there a catalogue of all these here that one can consult?
639. **Mr McErlean:** We agonised over this, but it is open access because the public and the developer have to know where they are. Unfortunately, the sports diving community can plan their wrecking weekend from our archives. We know that it is used so that people can identify where to get a porthole from a 17th century vessel.
640. **Lord Morrow:** On a more serious note, some of the issues that you highlighted in your document would be quite insignificant or small, if that is the right word.
641. **Mr McErlean:** If we had a hierarchy, yes, but, as maritime archaeologists, we think that any evidence of the past is significant and must be preserved or recorded for future generations. It is a finite resource, and our great-grandchildren may look back and say, "What did they do? They let such and such be destroyed."
642. **Mr Campbell:** I think that Lord Morrow means something such a rowing boats —
643. **Mr McErlean:** Yes, and if the rowing boat is from the 18th century, we would regard it as very interesting. We have loads in Lough Erne, too, that is just the maritime objects. There are nice cots and dugouts and things.
644. **Lord Morrow:** Those who are angling and carrying out other activities might find that they are restricted for something that is maybe quite negligible, such as a rowing boat.
645. **Mr McErlean:** The anglers are fine; they are great friends of ours, because they want to know where the artefacts are for their nets and so forth.
646. **Lord Morrow:** They are supposed to be good friends of everybody.

647. **Mr McErlean:** They report their findings back to us. We have no conflict with them whatsoever.
648. **The Chairperson:** That was my earlier question. What are the artefacts mostly? Are they little boats or battleships?
649. **Mr McErlean:** There are Viking boats. There is a record of a whole Viking fleet being sunk in Dundrum Bay. We have not found it yet, but it could still be there.
650. **The Chairperson:** So, you are aware that there may something there. OK. That is interesting. Thank you very much indeed.

10 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Gregory Campbell
 Mr Tom Elliott
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Garry Gregg *Irish Federation of Sea Anglers*
 Mr Michael McClure *Sport Northern Ireland*

651. **The Chairperson:** Our next presentation is from Sport NI together with the Irish Federation of Sea Anglers (IFSA). A briefing paper has been supplied, which is in members' packs.
652. I welcome Mike McClure, outdoor recreation officer for Sport NI, and Garry Gregg from the Irish Federation of Sea Anglers. You are very welcome. If you could give us a five- or 10-minute presentation, members will ask you questions. We have your written submission already.
653. **Mr Mike McClure (Sport Northern Ireland):** Good afternoon. On behalf of Sport Northern Ireland and the Irish Federation of Sea Anglers, we welcome the opportunity to provide a briefing to the Committee on the impact of the Marine Bill on sport and physical recreation on the coastal and marine environment.
654. As stated, my name is Mike McClure, and I am the outdoor recreation development officer in Sport NI. Garry Gregg is the voluntary liaison officer in the Irish Federation of Sea Anglers, which is one of the recognised governing bodies of sport that could be impacted by the Marine Bill. We propose to give you a brief outline of the proposed impact of the Bill, and we will then welcome questions from members.

655. Sport Matters, which is the Northern Ireland strategy for sport and physical recreation, sets the policy framework for the work of Sport NI in developing sport and physical recreation. Sport Matters recognises the importance of the natural environment, including the marine environment, for providing opportunities for increased participation in sport. Recreational users of the marine environment are active proponents of the importance of keeping that environment as pristine as possible, and therefore Sports NI broadly welcomes the Marine Bill's aim of protecting our coastal and marine environment.
656. The Department of the Environment (DOE) has signed up to the implementation of Sport Matters, and it is therefore aware of the scale of recreational users' use of the marine environment and the importance of the coast to the general public. Over the past six months, in partnership with the Northern Ireland Environment Agency (NIEA), Sport NI has been holding a series of public consultations on the development of new outdoor recreation action plan for Northern Ireland to replace the 1998 countryside recreation strategy. Over 90 organisations have responded to that consultation, and one of the main recurring themes is the lack of access to the natural environment for physical recreation and the lack of rights of way on footpaths. We believe that the Marine Bill could have presented an opportunity to help to redress that situation by making a commitment to developing coastal access in line with that in the UK Marine and Coastal Access Act 2009.
657. The health benefits of walking are very well documented, and work by Walk England has highlighted that for every £1 that is spent on walking infrastructure, there is a £7 saving to health. The Welsh Assembly Government launched their coastal path last week

- on 5 May and have recognised the economic benefits that that will bring through tourism. The Northern Ireland coast is exceptional, with fantastic scenery and cliff paths on the north coast right through to the Drumlins scenery around Strangford lough. Sport Northern Ireland, therefore, urges the Committee to consider looking at the issue of coastal access as part of the Marine Bill, as per the UK Act.
658. One of the main concerns that landowners regularly bring up is occupiers' liability. However, that has been dealt with through provisions in the UK Marine and Coastal Access Act, and it can also be dealt with through the Occupiers' Liability (Northern Ireland) Order 1987, in which there is no duty owed to users for liability on a road and in which a road can be defined as a public right of way. Currently, there is a public right of navigation on the sea, and Sport Northern Ireland is concerned that clause 24 could enable the Department to create by-laws that could remove that ancient right. Sport Northern Ireland has concerns about other aspects of clause 24, including the restriction of sustainable and economically beneficial activities, such as sea angling. However, at this stage, it is difficult for us to say any more about that because, until any proposed by-laws are created, we do not know what will be in them. So, it is essential that the Department continues to liaise with the Department of Culture, Arts and Leisure (DCAL) and Sport Northern Ireland, as well as with the governing bodies of sport, as and when by-laws are being proposed.
659. I will pass over to Garry, who will outline the views of the Federation of Sea Anglers specifically on clause 24.
660. **Mr Garry Gregg (Irish Federation of Sea Anglers):** Good afternoon, Committee and Chair. I very much welcome the opportunity to address the Environment Committee. My name is Garry Gregg, and I am the liaison officer for the federation, which is recognised as the official body for sea angling in all of Ireland.
661. The potential for job creation in recreational sea angling in Northern Ireland is unrealised, even though studies that have been carried out by PricewaterhouseCoopers have identified the economic impact in Northern Ireland as almost £7.4 million in 2005, with an average annual spend by each sea angler of £1,459. Under the best projections from PWC, that is estimated to rise to £23.1 million in 2015. That survey was carried out in 2005, and we have moved a long way since that time, and we have seen our tourism increase greatly since then. The real social and economic benefit would be even more than the figures quoted in PWC's 2005 report. The Department of Agriculture and Rural Development (DARD) also carried out an inshore fisheries review in 2006, and the recommendations on improving and developing sea angling have not been acted on.
662. At a time when we need to attract and keep tourists, we have a great opportunity to achieve that through the full promotion of recreational sea angling. We have a beautiful coastline with many sheltered bays that suit recreational sea angling very well and that will provide a much-needed boost to sea angling tourism and the creation of new, sustainable jobs. We have serious concerns about the future increases in aquaculture in our waters, because that has the potential to damage our marine environment and reduce recreational sea angling availability in sheltered areas, which are often the only places accessible to sea anglers in bad weather. Clause 24 of the Marine Bill has the potential to allow the Department to prevent access to those marine areas by introducing by-laws that could stop recreational anglers collecting bait or even angling there. It is widely accepted that recreational sea angling has a low impact on the marine environment and on fish stocks. We request that we are included as stakeholders in the formulation of any new by-laws that the Department proposes for any marine protected area (MPA) in the future.

663. DCAL has responsibility to promote and develop our freshwater angling estate under the Fisheries Act (Northern Ireland) 1966. Our sea loughs that border the Republic of Ireland are being developed for all disciplines of angling by the Loughs Agency. However, the area of sea between Lough Foyle and Carlingford lough is not being developed or promoted for recreational sea angling by anyone, and that anomaly is an untenable situation. We believe that a legislative change to the Fisheries Act (Northern Ireland) 1966 is required to make a Department take on that responsibility. We suggest that the Loughs Agency is best suited to that role, as it is doing well in its current areas of responsibility.
664. Without an effective licensing process, the retention of by-catch species relating to the inshore, such as wrasses, dogfish, conga eel or rockling, to name but a few, are routinely retained in crab and lobster pots, to be processed as pot bait there and then. Those species, which are in rapid decline as a result of that practice, are important recreational sea angling species. Their absences for the recreational angler from the shore have had a direct impact on the tourist angler and those who supply from them local coastal verges as that form of retail support base falls into decline.
665. The uncontrolled and apparently unmanaged proliferation of pots, the frequency with which pots are laid along the coastline, with little distance from each other, and their depth and distance from the shore make them a frequent hazard to recreational users of small boats and shore anglers alike. An effective management framework would make a difference by enabling the local economies to benefit, through increased turnover, footfall and profitability.
666. For most recreational and tourist anglers, the sea angling season is a 12-month, year round season. The number of anglers fishing the coast has been moderating over the past few years as the result of reduced availability of sporting species, caused largely by commercial fishing. The immediate result would be negligible. However, the medium- to long-term importance would be the rejuvenation of small coastal villages' economies by injecting footfall and generating the associated coastal usage.
667. We believe that almost all the well-known areas of sea angling activity in Northern Ireland that used to be able to generate large incomes from angling-based tourism revenue have all but been destroyed through commercial fishing pressures. To redress the balance of depleted recreational fish stocks, protection should be introduced to the 0- to 6-mile offshore area that Northern Ireland has authority over. That would allow the repopulation of fish so that a healthy and thriving recreational sea angling tourism industry can be supported.
668. Labour's 'Charter for Angling' refers to England and Wales, but is relevant and stated:
- "A recent study of the sea fishing industry in England and Wales showed that recreational angling is worth £538 million a year (nearly as much as the commercial fleet at £600m)."*
669. That was in 2005. Since then, the figures for commercial sea fisheries have gone down the tubes, because the fish are not there. The charter continues:
- "Further studies by the Prime Minister's Strategy Unit (P.M.S.U.) indicated that Britain's 1.1 million sea anglers contribute £1.3 billion to the economy every year. This prompted the government to state: —*
- 'fisheries management policy should recognise that sea angling may, in some circumstances, provide a better return on the use of some resources than commercial exploitation.'*
- Put simply, there is a better economic return in limiting the over exploitation of the sea by commercial fishing and allow sea angling to develop and prosper."*
670. The charter also points out:
- "Angling in Britain is responsible for over 30,000 jobs with many more benefiting from the angling related 'revenues'. It also generates nearly £5 billion annually for the economy and makes a major contribution*

to tourism in the UK. There are huge social benefits to be derived from angling”,

which has:

“advantages in relieving stress and helping people relax and unwind.”

671. The charter further states:

“Angling is a sport, which can claim to be truly classless and meritocratic, and is especially popular with disabled people. The average angler can compete in angling competitions alongside national and world championship anglers whereas the average ... footballer will never get the opportunity to play in the same match as David Beckham or Wayne Rooney.

In recent years huge strides have been made in recognising the contribution that angling can make to divert young people away from crime and in promoting social inclusion.”

It explains:

“Labour has introduced the Countryside and Rights of Way (CROW) in such a way so as to ensure that there is a little or no impact on angling. The Act gives a right of access, in defined circumstances to walk over mountain, moor land or heath.”

672. That was Labour’s ‘Charter for Angling’ in 2005. Thank you very much.

673. **The Chairperson:** Thank you both for your presentation. Angling is a big tourist attraction here in Northern Ireland, and it has been for decades. It is a very important industry. Mike, you mentioned coastal access.

674. **Mr McClure:** Yes.

675. **The Chairperson:** What was formerly known as the Ramblers Association came to talk to the Committee about that, as well as about the general lack of access in the countryside. Your point concerned lack of access to coastal paths, from which the sea looks so beautiful. Northern Ireland has such long coastal paths, yet they cannot be accessed. That is certainly quite interesting and is something that I am keen to look into. You said that Wales has a strategy and an action plan to have a route right round Wales.

676. **Mr McClure:** They have actually launched it. They have gone beyond the strategy. The strategy ran for the past few years, and they opened their path last week. They are claiming that they are the first country in the world to have their entire coast accessible.

677. **The Chairperson:** You also mentioned that we have a lot of miles in private ownership. How will we get over that?

678. **Mr McClure:** That is a real difficulty, and our existing legislation makes it difficult for local authorities to deal with that. There is a similar situation in England, and they have made a commitment to work with landowners to create small corridors adjacent to the coast that are just 5 metres wide and that can be handed over to the local authority to manage as a coastal footpath. However, they have said that they are not going to rush through it and that it is not going to be something that they will do in the next two years. It is a 10-year programme to roll out a coastal path round England. So, it is a commitment to work to do that. We would welcome that commitment in Northern Ireland to work with private landowners. One of the ways to do that is to have some form of compensation or to make sure that private landowners are not impacted by recreational users by ensuring that liability issues are dealt with.

679. **The Chairperson:** The Ramblers Association suggested that councils should not implement the legislation on access because some of them are more committed to opening access than others. The association suggested that that should be put back to the Department. What is your view on that?

680. **Mr McClure:** Under the 1983 access order, councils are empowered to create public rights of way and footpaths. However, they are not required to, and that is one of the big issues that many users have with the existing legislation. At the same time, the legislation does not require the Department to force councils to do create rights of way or to force it to happen. It is more of an empowerment than a requirement,

whereas, under the Countryside and Rights of Way Act 2000 in England and Wales, which was a revision to their existing legislation, as well as under the Land Reform (Scotland) Act 2003, there is a requirement to open up land for recreation.

681. **The Chairperson:** If we updated our law, that may make it more enforceable. I am a very keen walker myself, but I am not a hugely ambitious walker. However, I love walking. It is a shame that a lot of the beautiful paths and scenery are not accessible.
682. **Mr McClure:** I will give you an example. We have about 130 miles of public rights of way in Northern Ireland, and England has over 200,000 miles of public rights of way. For every square mile in Northern Ireland, there is 0·29 miles of public rights of way. In England, for every square mile there are 2·2 miles of public rights of way. So, we are considerably behind other parts of the UK.
683. **The Chairperson:** It is a huge potential for tourism. There are walking tours all over Europe and America, and it could certainly increase the number of tourists.
684. **Mr Hamilton:** I apologise for missing the bulk of your presentation. However, I have read through your submissions. With regard to the angling side, your concerns with clause 24 seem to be very similar to those expressed in the first evidence session. Obviously, there is a lot of crossover of membership. You referred to clause 24(3), which deals with prohibiting or restricting the killing, taking, destruction, etc, etc in a marine conversation zone (MCZ). It goes back to the same point that those witnesses were trying to make. I think that it is incumbent on the Committee to seek clarification from the Department so that you can get the assurance that, if an MCZ is designated and, say, it is out at sea, just because there is something at the bottom of the seabed that is worth protecting and is worth designating, that does not mean that things cannot be taken above that. I appreciate that there is always a concern that the worst will

be done as a result of this, but I think that it is incumbent on us to try to get that clarification that it does not always mean that the most extreme restriction will be put in place. Is that fair? You are content with the notion of protecting habitats, because that adds benefit for angling and fishing in the longer term.

685. **Mr Gregg:** Yes, that is a great point. My colleague and the Chair spoke about the pleasure of walking. For anglers in general, be they involved in freshwater or saltwater fishing — I am involved in both — half the joy is just being in and enjoying the environment. We value highly the myriad of wildlife, flora and fauna that is there. We are not against protecting them. We are worried about is being prevented from angling somewhere where we have been going and maybe collecting bait for recreational angling, not for commercial purposes, and to enjoy that recreation as it has been enjoyed since time began when we were fishing for our dinner. We do not think that draconian measures against the recreational sea angling group are necessary in those by-laws. So, we are very encouraged to hear that that is the way you are going to go.
686. **Mr Hamilton:** That is probably what all of us are thinking about or are worried about. You could see the overly zealous interpretation of some of those clauses being restrictive of doing basically anything in the marine environment. That is not where anybody wants to get to. There may be some MCZs designated where, for legitimate reasons, nothing can happen. However, that should not be the default position. As the point was made earlier, there should be no more protection than is necessary. I can see a lot of areas where there will be protection, but that does not necessarily mean that you cannot fish or shoot over it. We have a responsibility to ensure that that clarity for the likes of you is in the Bill as it proceeds through the Assembly so that you can embrace the Bill and all its elements rather than see it as something that is there to stop you from enjoying your pastime.

687. **Mr Gregg:** All anglers, whether sea or freshwater, are custodians of the environment in their own mind's eye. They are highly involved now in monitoring pollution or reporting incidents. Conservation is also uppermost in their minds. They do not take home fish that they are not going to eat or use. That maybe happened decades ago but not any more. We have seen a massive reduction in the stocks that are available to recreational sea anglers in our inshore. That is purely because the commercial fleet is twice the size that it should be. They have now switched to prawns; that is the only fishery left.
688. Some sense needs to be made of the common fisheries policy. They are now looking at by-catch, but the real issue is that there are no fish to populate the inshore if they keep taking out. The way that it stands at the minute, any vessel that is under, I think, 15 metres that is registered in Northern Ireland, the Republic of Ireland or wherever has the ability legally to go inshore right to the dry sand and trawl if they want to. That is why we have no fish in the inshore and why sea angling is dying. People are walking away from sea angling in their droves. They are turning to other forms of angling. However, if the stocks were there, the anglers could fish.
689. I watch Assembly debates, and I know that they talk about how we are going to get tourism. The Florida nature reserves have thriving striped bass fisheries. Norway, Iceland and Scotland are going the same way. We need to follow, because there is tourist money there for supporting jobs and for developing as a fishery. However, we need to have the stocks of fish for anglers to chase. If the stocks are there, the tourists will come from everywhere.
690. **The Chairperson:** I see from your submission that you support a maritime management organisation (MMO) as a result of your experience of dealing with DARD and DCAL.
691. **Mr Gregg:** You can see that I am not filled with a lot of inspiration.
- Surveys were done that I took part in, and the recommendations came out the other side, but nothing happened. Nothing has happened with even PricewaterhouseCooper's recommendation. Now, DARD in its wisdom, whether it has no resource or just wants to keep things moving, has commissioned Dr Carrie McMinn at the Agri-Food and Biosciences Institute (AFBI) to do another sea angling survey. I met with Dr Carrie McMinn a few times and spent a lot of time explaining things to her, but we just seem to be beating our head off a brick wall.
692. If you look at any other developed tourism and recreational-based fishery, you will see that it is making a lot of money. The striped bass fishery in New York State is worth billions of dollars a year. If we had the stocks of fish in our inshore, we could be raking in a lot of tourist money.
693. **The Chairperson:** Thank you very much for your time and input.
694. **Mr Gregg:** Thank you very much indeed.

17 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mr Peter Weir

Witnesses:

Mr David Hill	<i>Anglo North Irish Fish Producers' Organisation</i>
Mr Alan McCulla	<i>Producers' Organisation</i>
Mr Dale Rodmell	<i>National Federation of Fishermen's Organisations</i>

695. **The Chairperson:** I welcome Alan McCulla from the Anglo North Irish Fish Producers' Organisation (ANIFPO), Dale Rodmell from the National Federation of Fishermen's Organisations (NFFO), and David Hill, a trawler owner and director of both NFFO and ANIFPO. Gentlemen, you are very welcome. If you give us a presentation of about five or 10 minutes, I will then let members ask you questions.

696. **Mr Alan McCulla (Anglo North Irish Fish Producers' Organisation):** Madam Chairperson, first of all, I thank the Committee for its invitation to allow us to follow up our written submission on the Marine Bill with today's oral evidence. My introductory remarks will take only a few minutes. As you said, our delegation comprises me, Dale Rodmell and David Hill. I am the chief executive of the Anglo North Irish Fish Producers' Organisation, and I am based down in Kilkeel. Dale Rodmell is the assistant chief executive of the National Federation of Fishermen's Organisations, which is the main representative body for fishermen in England and Wales and here in Northern Ireland. David Hill, as you rightly said, is not only a director of both organisations and a trawler owner but, last week, he retired as president of the National Federation.

697. I will say at the outset that we welcome the Northern Ireland Marine Bill. We know that some criticism has been levelled at legislators here for what has been called the "delay" in bringing forward the Bill. However, from our perspective, we believe that Northern Ireland has got the timing just right. I say that because it seems to us that, in other parts of the UK, the process has been somewhat rushed, which has resulted in less than perfect legislation. What some describe as the "delay" has, I am sure, provided Northern Ireland with the opportunity to learn from other people's mistakes.

698. Although television programmes such as 'Trawlermen' and 'Deadliest Catch' provide realistic and exciting pictures, the perception of the fishing industry in some quarters is of a traditional, historic industry in decline. That is not the case. Our commercial fishing industry, both at sea and onshore, may be facing significant challenges. What industry is not facing challenges? However, where there are challenges, there are also opportunities. Our industry is evolving to address the challenges and avail itself of the opportunities.

699. There was a significant increase in the value of all fish and shellfish landings into Northern Ireland in 2011 compared with 2010. Figures that the Department of Agriculture and Rural Development (DARD) released earlier this year show that, last year, some 23,601 tons of fish and shellfish were landed, with a value of £27.5 million. That compares with landings in 2010 of 23,902 tons valued at £22.1 million. The value of the landings in 2011 was the highest in over 10 years. Therefore, although the tonnage dropped by just over 1%, the value of the catch actually increased by 25%. It is worth noting that those figures exclude landings that the Northern Ireland fleet made outside Northern Ireland. The inclusion of those

- figures would conservatively add another £15 million to the total.
700. Prawns, or nephrops, remain by far the most important species. A 3% increase in the volume landed in 2011 over that in 2010 actually resulted in a massive 43% increase in the value of that catch to nearly £15.6 million.
701. So, in 2011 Northern Ireland's fishing fleet depended on a single species for nearly 57% of its earnings. For prawns, the scientific advice confirms that the stock is at least stable or indeed increasing, as is the case with the majority of commercial fish species in the Irish Sea. For independent confirmation of that opinion, I refer members to section 4 of the 'Northern Ireland State of the Seas Report', which was produced jointly last year by Agri-Food and Biosciences Institute (AFBI) and the Northern Ireland Environment Agency (NIEA). Trends show an increasing stock size even of cod in the Irish Sea, and there continues to be anxiety about management of that fishery.
702. We are pursuing Marine Stewardship Council (MSC) certification for several of our fisheries, including prawns, herring and, most recently, mussels. That accreditation will underline the increasing sustainability of fisheries off and around Northern Ireland's coastline.
703. Overall, fishing plays a key role in providing food security, with the vast majority of the catch landed into Northern Ireland exported to other parts of the UK, Europe and further afield. With its role as a food provider, fishing is probably the oldest marine activity. That fact cannot be lost as we progress the subject of marine planning.
704. Northern Ireland's fishing fleet operates in waters all around the United Kingdom and Ireland, but it is based in the Irish Sea. Indeed, 80% of the UK's fishing effort in the Irish Sea originates from the County Down coast. That does not mean that 80% of the Irish Sea is fished; far from it. With your permission, Chair, I will leave with members a copy of a map for their consideration. Based on satellite monitoring systems, the map shows the extent of Northern Ireland's fishing fleet in the Irish Sea. In simple terms, the areas shown in white have little or no fishing, while the areas in green, blue and yellow are where the prawns live. That is where the fishing is automated.
705. Fishing remains a vital industry to the County Down coast. Relatively speaking, the Irish Sea is a small area, and there is of course increasing competition from a variety of users who wish to avail themselves of the opportunities that the area has to offer. Gas installations, offshore renewable energy projects, cable and pipeline operators, as well as shipping and leisure activities, are facts of life that we in the fishing industry cannot and do not ignore. It is with that in mind that we welcome legislation that is designed to help rationalise those uses in the most efficient way possible.
706. Over the past 18 months, we have enjoyed extensive dialogue with offshore renewable energy developers, with not only those seeking permission to develop the opportunities around Northern Ireland's coast but those companies who are now about to embark on the third round of renewable energy projects in the eastern Irish Sea. As we speak, we have deployed several local trawlers to assist with the installation of new cables across the Irish Sea, as well as to conduct post-construction benthic surveys among the wind farms off the Cumbrian coast.
707. Turning to the Marine Bill and associated issues with the marine strategy framework directive (MSFD), earlier this week we were pleased to host a series of meetings in Kilkeel involving the NIEA, Natural England and the Joint Nature Conservation Council (JNCC). Those meetings were designed to explore the myriad issues that we are already faced with that resulted primarily from the Marine and Coastal Access Act 2009, which covers England. Most notable among those are marine protected areas (MPA).

708. We must state very clearly that we are not opposed to MPAs, and we have been seeking to engage constructively with all concerned to deliver a chain of ecologically sound and scientifically validated areas. With that in mind, we should take cognisance of the following points as we progress proposals for MPAs in Northern Ireland waters. We should allow for the appropriate application of real evidence in the decision-making process. We must take into consideration issues such as displacement resulting from MPAs or marine conservation zones (MCZ). There must be a case for strengthening cross-departmental consultation over the MCZ planning process.
709. We support the point that the Minister of Agriculture and Rural Development made when she said that the proposals that are being delivered through the Department for Environment, Food and Rural Affairs (DEFRA) should not be considered in isolation. Rather, they should be considered in parallel with what is likely to be proposed following the Northern Ireland Marine Bill. It is vital that a holistic approach is taken to these matters. That approach should seek to avoid consequences such as the displacement of fishing effort, which could contribute to an overall degradation of the marine environment. That would undermine the aims of the legislation and the marine strategy framework directive, as well as risk unnecessary socio-economic consequences.
710. There is a government responsibility to manage and to mitigate any losses. That should be reflected in the legislation, but, to date, it has not been. It is with that in mind that we advocated in our written submission three specific amendments to Part 2 of the Bill, which are aimed at giving primacy to existing activities. They are designed to make a presumption in favour of existing activities; guarantee consultation when decisions are taken that are not in accordance with the plan; and act upon new evidence when it becomes available. As is the case with our other amendments, those are made in the light of experience with England's Marine Act, as well as the parallel legislation in Scotland.
711. I will end my remarks with that and welcome questions from members.
712. **The Chairperson:** Thank you for your presentation. It was a very clear presentation of your position. From your map, we can see that you fish around the area near Scotland and England. You mentioned the MPAs, which we are going to call MCZs. Did you encounter any difficulties once the special protection areas in England were designated?
713. **Mr McCulla:** Yes, is the short answer.
714. **The Chairperson:** What type of difficulties?
715. **Mr McCulla:** Our frustration was that we very much wanted to be involved in the process from stage one. At the risk of getting into a long story, I will say that the first that we heard of the English-based process was by accident one evening at a meeting in Barrow-in-Furness. At that meeting, the Irish Sea conservation zone project explained to a group of fishermen in Barrow what they were about to do. They talked about the number of consultation meetings that they were going to have along the west coast of England. I asked whether it was their intention to consult with the fishing industry and others in Northern Ireland, given that most of the fishing activity in those areas comes from Northern Ireland. The simple answer was no, that that was not their intention.
716. To cut a long story short, we had to knock the door down to get fishing industry representation on the stakeholder forum, which eventually came forward with the proposals. The stakeholder forum consisted of between 30 and 40 members, reflecting all the sea users, but the fishing industry representation on that committee amounted to about four people. So, immediately, our views were in the minority.
717. You can impose the MPA proposals on that chart. We are not opposed to the majority of the MPAs that DEFRA is

- considering, but about four of them are critical and fall within the areas that are highlighted for our fishing operations. That is where we are at the minute. We are in dialogue with DEFRA, JNCC, Natural England and others, basically making the point, again, that we are not saying no to MPAs but that we need a bottom-up approach that takes into consideration the views of everybody and that will address the issues that we have at hand.
718. **The Chairperson:** As you say, we are the last to enact this piece of law. We must learn lessons from others. We were in Scotland, and, through video link, we talked to the Fishermen's Association. There seems to have been quite a lot of dialogue between Marine Scotland and the fishermen. It is a difficult issue. We are involved with the Department of the Environment (DOE), and our number one priority is to protect the environment. However, it is a balancing act. We need to take into consideration the economic and social elements of our communities and how the legislation will impact on those aspects. The part in the Bill about the publication of a public statement of public participation really means stakeholder engagement, so are you confident that that will ensure proper consultation with your organisation?
719. **Mr McCulla:** I will let Dale answer that question. Dale is based in England and has had direct involvement with the Marine Act and the Scottish experience.
720. **Mr Dale Rodmell (National Federation of Fishermen's Organisations):** Madam Chairperson, thank you for the opportunity to come here to put forward our views.
721. A public statement would certainly help in that regard. Of course, it gives no guarantee in practice. What happened under the English approach, initially at least, was that there was what I would describe as an England-centric view that did not necessarily account for the needs of multiple nations in this specific area of the Irish Sea. That was definitely a problem. There was also a problem with the pace at which the process was undertaken. A lot of evidence was brought into the process very quickly after the legislation was passed. We have only something like 18 months to carry out all this work. There have been improvements in how the Scottish approach has moved forward and with the time frame that they had to work with.
722. I will respond to the point that you raised about taking socio-economic factors into account. The design of the Westminster legislation, which this Bill follows, sees socio-economics and ecology as two ends of a spectrum. There is a trade-off between the two. We need to think much more in terms of synergies that consider the ecosystem. That is about not just the ecology itself but the interrelationship between that ecology and human use. That is why we propose a number of amendments to the Bill that are related to displacement. A poor selection could result in activities that actually increase pressures on habitats that may have been more pristine in the first place and less impacted. It may increase the amount of effort that has to go into fishing, which also has knock-on consequences.
723. We are seeking a broader, holistic approach. It is an approach that fisheries scientists have understood over the years, having experienced failings in particular spatial management measures in fisheries management and having learned those lessons. At the moment, the science of the planning of marine protected areas is based on principles that do not take those interrelationships into account. We are not saying that those principles are not important; we are saying that they need to consider those wider effects.
724. We think that it is important that the Northern Ireland Assembly takes this forward. We have come through the experience of the English process, which has so far ignored displacement. In fact, DEFRA recognised it subsequently in our discussions. The problem is that recognising it later in the process makes it much more difficult to deal with. It is far better to deal with it from the outset.

725. **The Chairperson:** It is important to consider long-term sustainability as well. Scotland invested a lot of time and effort to make its Bill not perfect but the best that it could be, and the approach to planning for the MPAs was very much evidence based.
726. **Mr Boylan:** Thank you very much for your presentation. From our point of view, you will not be in the minority in bringing forward your views and opinions. I think that it is important that we give everybody an opportunity. I want to see a balanced approach. We had a good visit to Scotland, and it seems that it has gone about it the proper way by going from the bottom up and by giving everybody an opportunity. The statement of public participation is the right way to go. It is about participation, as opposed to consultation, because there is no point contributing if there is no meaning to it and if, at the end of the day, the relevance is not listened to or looked. There are some good points in your submission, and we will go away and cross-reference it with the Bill. When you met the NIEA, what feedback did you get on the suggestions that you have made so far?
727. **Mr McCulla:** Thanks very much for your question, Mr Boylan. After I address your second point, I will ask David Hill to talk about the experience in Scotland.
728. We met the NIEA this week, and the focus of those discussions was the proposals that DEFRA is considering on the marine conservation zones in the western half of the Irish Sea. The point that we made to DEFRA, the point that the Minister of Agriculture and Rural Development has taken on board and the point that we made to the NIEA is that, with a Northern Ireland Marine Act, you cannot look in isolation at what we do in Northern Ireland without looking at what is being done in England and Scotland and at what will be done in the Republic of Ireland. I do not speak for NIEA — I would not dream of doing that — but I think that it recognises those issues, so together we want to come up with the best possible solution that we can all live with.
729. **Mr David Hill (Anglo North Irish Fish Producers' Organisation):** I will give you a little bit of my background. I was at sea for over 30 years. I was the man at the coalface, and I have fished pretty much all around the UK. Although a scientific picture is taken two or three times a year, I have lived with and always respected and appreciate the environment. I believe in sustainability, and the vessel that I own today gets added value in its product by doing certain things and behaving in a certain way. So, we bought into it.
730. The Scottish inshore process has only really started, and the offshore side has been up and running for quite a long while. I have been at a couple of meetings at Rockall and Stanton Banks, where things are going on. Fishermen came in with their information and worked with Marine Scotland on policy and devised the balance of areas that met the percentages in their criteria, as well as the features. They did that together. I was at a couple of meetings at which the NGOs were present, and everybody was able to sign up to that policy. That was the opposite approach to that that was taken at the meetings in England, where you were sat at a table and more or less told that you had to fill the squares in.
731. As fishermen, we are very passionate about our grounds. We understand conservation, and we offer areas up for conservation. However, it just seemed as though we were filling in a form en masse, and if you marked the four MPAs in the Irish Sea, you would find that it is no coincidence that they are in the middle of our fishing grounds. That would mean a reduction in earnings for us, because if you took the boats out of that picture and put them somewhere else, you would displace them. That would then offset any good that is being done in the area that is being protected, because the rest of the areas would be more heavily fished. That is a great concern to us, and it has to be thought about. So, we are concerned about the management measures in that area. Of course, they have been designated, and

- we do not know what the management measures are. If we knew what they were, it would ease the problems for us. There are all sorts of problems, and we are asking what the management measures are going to be. You have to designate first, but what is going to happen in this area? Nobody knows yet. It is a great problem that something is being imposed but you do not know what is allowed in and what is not.
732. To go back to the Scottish process, that work was done together with the fishermen. The fishermen sat down with Marine Scotland and came to an agreed position quite easily.
733. **Mr Boylan:** I have another couple of points, Chair. You mentioned “significant new evidence” in your presentation. That is a valid and key point. Scotland has its Marine Atlas, for which a lot of evidence has been gathered already. Where are we with our evidence gathering? That is key to this process. We are looking at MCZs — they have MPAs, which are the same thing — but we should not be designating an area unless we know. We do not want to talk about Strangford lough, because there are serious issues there, but the process has to be evidence based.
734. **Mr McCulla:** Absolutely.
735. **Mr Hill:** I just want to make one small point before I finish. Those of us who work in the sea, know that it is evolving all the time. It is not like a field where you put wheat or corn in; there are no gates. That change means that patterns come and go, and that is the reason that we need to update this evidence all the time. Every year, if there is a difference in the temperature or a different bloom, things act in a different way. That is why updated evidence is very important to us at all times.
736. **Mr Rodmell:** Thank you for the question, and, to follow on from that, a number of our amendments are related to evidence, which is recognised in the fact that our knowledge and understanding is so much less in the marine environment. That means that, in managing resources and the environment, we need to have a greater flexibility to allow that evidence to inform decision-making.
737. One key amendment that we would like to see is conservation objectives being set. That partly comes from the experience that we are seeing in England already. Having those objectives defined up front at the designation stage risks our not being able to have sufficient evidence to justify them in the first place. In fact, the evidence base for them could be rather tenuous. We suggest that, ideally, you want to have flexibility to allow evidence to inform that decision right up to the stage of developing the management measures. We think that the habitats directive is better in that sense, because it has greater flexibility on that issue.
738. **Mr Boylan:** Finally, you mentioned taking a holistic approach in discussions with NGOs, and you are correct about that, because this issue goes across leisure activities and everything else. Where are you with that? I agree with you, David, that not only the designation but the management of these areas is key, so we have to get that right from the very start. I just want to make that point. However, have you had any discussions with or sat down with NGOs and the other different groups that this is going to impact, such as the Marine Task Force and different groupings?
739. **Mr McCulla:** We have not had any specific discussions about these proposals with the Marine Task Force in Northern Ireland. The Marine Task Force has received two invitations to come to Kilkeel to discuss these and other issues that are of mutual interest, but, unfortunately, we have not managed to set the meetings up yet.
740. **Mr Rodmell:** In general, we in the fishing industry in England have had conversations with NGOs about MPAs, and we put forward the same views that we are putting forward today about taking that holistic approach to the relationship that exists between the resource and human use. That is very much consistent with the wider marine strategy framework

directive. That is its broader aim. Another issue with handling evidence is the way that the precautionary approach was applied in the past and how it is applied at present. Although it is not an unimportant principle, we need to see environmental management in the context of understanding the risk of pressures and their potential consequences. That is a much more attuned approach to learning about cause and effect. For instance, the marine management organisation (MMO) is trialing measures in Lyme Bay at the moment. So, the point is to learn more about the pressures, because we are not in the same situation as we were when it was initially applied in fisheries management, for instance. We are not looking at collapsing stocks and the doom that that would create, and we often do not know what the effects of that would be on marine protected areas. Of course, there are some cases where the effects are obvious and where there are very fragile habitats, such as cold water coral reefs, but, for a lot of it, such as high-energy sand habitats, we do not know what reducing pressure will do, or whether, in fact, that reduction in pressure would have a wider value for the marine ecosystem.

741. **Mr Boylan:** I will have to leave it at that.

742. **The Chairperson:** It is useful to have you here from England. You mentioned the differences in approach that the English authorities and Marine Scotland take. You said that Marine Scotland seems to be spending more time engaging with stakeholders. Is there anything in the legislation in those places that requires the bodies there to engage with the fishing industry to some extent?

743. **Mr Rodmell:** I am sorry, I did not hear that.

744. **The Chairperson:** Is there anything in the Marine Acts in Scotland and England that requires the bodies there to engage with the fishing industry? Why is there a difference in their approaches? Is there something in the legislation that says that they must do certain things?

745. **Mr Rodmell:** I believe that there is an obligation to consult. In the English system, the establishment of regional projects was, of course, about consultation. The problem in this case was that, as I said, it tended to be England-centric. The obligation for consultation was in that Act, I believe.

746. **Mr Elliott:** Thanks for the presentation, folks. Your submission states that marine planning:

“has the potential to affect the fishing industry in many ways”.

747. Will all those ways be of negative consequence to the fishing industry, or are there positive aspects to it?

748. **Mr McCulla:** Mr Elliott, thanks for your question. DEFRA is considering proposals at the minute, and the Irish Sea Conservation Zones project has estimated the likely loss to the fishing industry from its existing MPA proposals equates to something like £4 million per annum, £3 million of which would be a direct loss to the Northern Ireland fishing industry. That information has been verified by consultants who the fishing industry here has employed, and that, in turn, has been verified by economists from the UK's Sea Fish Industry Authority. That is the estimated monetary loss per annum. Davey said that the management measures need to be clarified, but one argument is that, by having MPAs or marine conservation zones and by ultimately taking them to a no-take zone, as a result of setting an area side — for want of a better description — there will be spin-offs for the surrounding areas in the medium to long term. We are not convinced by those arguments. Most of the evidence for the sea benefits of no-take zones comes from subtropical waters, particularly those around coral reefs. If there were a very real problem with a fishery in an area, scientifically speaking, there might be an argument for a no-take zone.

749. However, as I mentioned, 57% of our earnings come from one species, which is nephrops, prawn, langoustine — whatever you want to call it. In a worst-

- case scenario, the science tells us that the stock of that animal in the Irish Sea is stable. In a best-case scenario, the science tells us that the stock has been increasing over the past four years. That is why we say that, if we decide to have MPAs, MCZs or no-take zones, the decisions on them must be evidence based. There has to be scientific evidence to back it up. There does not seem to be any scientific need to put that order of protection in place in these areas.
750. I emphasise that we are not saying no to MPAs and MCZs. If we look at the geography of the Irish Sea and the fishing effort, as shown by the coloured areas on this map, we will see that the fleet does not fish some areas because fishermen do not want to interact with the underwater seabed creatures. There is evidence that the communities on those reefs are pretty pristine, and that is with existing fishing effort. The question that the fishermen will ask is: if we have these pristine areas, why do we need to impose closed areas around them?
751. **Mr Elliott:** That leads me on to the second point. Your proposals talk about displacement, economic interests, social interests and the environment in the protected area. It is fine to put that into a Bill, but how do you see the outworking of those issues in practice?
752. **Mr Rodmell:** The emphasis is on the prevention of problems before they occur. The initial amendment to clause 12 is intended to provide for that so that, in the initial selection of sites, the potentially negative effects of displacement are thought about in the round.
753. As Alan pointed out, the industry in Northern Ireland is vulnerable because of its dependence on one species, the locations of that species and the fact that the actual marine space is rather limited in the first place. However, that does not mean that, in trying to deal with the issue at the outset, the possibilities of negative effects can be minimised. Ultimately, if it comes to the point where significant socio-economic harm would be done, we think that there would need to be an obligation to manage those effects so that livelihoods are not unduly affected as a consequence of the legislation.
754. **Mr Elliott:** Are you saying that greater weight needs to be given to economic and social aspects?
755. **Mr Rodmell:** No, not necessarily. As I said, we see this as much more about trying to find the synergies in a three dimensional space.
756. **Mr Elliott:** Yes, but given that you are proposing the amendments, you are clearly saying that not enough weight is given to economic and social issues in the Bill. Is that reasonable?
757. **Mr Rodmell:** To an extent, we would say that. The way that the Westminster Act could have been implemented may have meant that decisions were made on the slightest changes in evidence in the scientific base, which we do not think should necessarily overrule socio-economic considerations at the outset. There needs to be more of a balanced approach. We do not feel as though the Westminster Act had the provisions for that at the outset.
758. **Mr Elliott:** My final question is a simple one. Would you like to be a member of the Marine Task Force?
759. **Mr McCulla:** Thank you very much for that question.
760. **Mr Elliott:** You are welcome.
761. **Mr McCulla:** I know that, two weeks ago, you asked the Marine Task Force whether, given its very name, it included representatives of the fishing industry. Without quoting directly from the evidence, I believe that the answer that you got was somewhere along the lines of saying that, if the fishing industry wants to adopt its policies, it would be very welcome as a member of the Marine Task Force. I do not know whether we could sign up today to the policies of the Northern Ireland Marine Task Force, but as I mentioned, there is an open invitation to the task force, any NGO and this Committee to visit Kilkeel

- so that they can look at the evidence that we have and the measures that we are putting in place. As we speak, we have three trawlers in the Irish Sea trialing measures that will reduce their impact on the environment. A lot of work is going on to increase the sustainability of our fisheries so that the impact on the environment can be reduced. From everybody's point of view, that is a win-win situation.
762. The problem that we in the fishing industry have is that we do not have the resources behind us that some have to promote the good work that we are doing. However, I would very much like to take the opportunity, Chair, to welcome you and the other Committee members to Kilkeel so that you can see for yourselves what we are doing. That invitation has been open to the Marine Task Force for a long time.
763. **The Chairperson:** I have to declare an interest — I love seafood; I live on it.
764. **Mr Elliott:** I hope that it is sustainable.
765. **The Chairperson:** It has to be sustainable; that is my last word.
766. **Mr Hill:** If I can just make a point about MPAs and MCZs. On Monday of this week, James Marsden came across at our invitation to discuss this hot topic. We gave him a PowerPoint presentation and engaged with him. We had a very frank discussion that bore fruit. He gave us a way that we believe we can use to move forward on these MPAs, and he told us how we can go in on the first and second tranche. Inviting him here involved a lot of hard work. We are not afraid to meet anybody. We will give our presentation, and we have the figures and everything else, but James Marsden came to Kilkeel and said “Oh, you have a fishing fleet”. He came down and engaged with us. He was here for around 36 hours, and he went away a totally different man.
767. **Mr McCulla:** For your information, Chair, James Marsden is the marine director of Natural England, and he has been instrumental in bringing forward the English proposals for MPAs. I have to say that there may be a perception in certain quarters of the fishing industry that Mr Marsden is not fishing friendly, but as we find so many times, when people from his mould actually come and engage and see the work that we are doing here in Northern Ireland, they go away impressed and want to engage with us further, as David said. That must be good.
768. **The Chairperson:** They get a better understanding of the situation.
769. **Mr Hamilton:** You only have to look at me to see that I have in part been sustained down the years by fish of the battered variety. *[Laughter.]* There have been too many of them.
770. **Mr Weir:** I think that it is more the chips that come with it. *[Laughter.]*
771. **The Chairperson:** Yes; it is not just the fish.
772. **Mr Hamilton:** Thank you for coming along; your evidence has been very useful. It is very beneficial to the Committee to get evidence from a broad range of stakeholders, and, when talking about the Marine Bill, there is none more important than you. One theme that has come through from your evidence and the questions that members asked is the need for your sector to be involved throughout the process. It is encouraging that you are actively seeking to be involved. We have looked at experiences elsewhere and at where they have been good and where they have been bad. Where it has been good, it has involved all the different sectors right from the start. I think that we are increasingly of the collective view that, if the process is sometimes a slow and laborious, that is what has to happen to get this all right. We are dealing with a lot of different interests who all have very valid points to make.
773. You touched on this quite a bit, and, Alan, your point in response to Tom about scientific evidence is key. I have repeated at various stages in the passage of the Bill that, on the basis of the marine science, MCZs should be designated and then protected no

- more than they should be protected. I can understand some of your proposals, including the new clause. Down through the years, the fishing industry has felt that a lot of things have been done to it but that not a lot has been done to compensate for that. I take it that that is the thinking behind a lot of this.
774. I think that clause 12 states that consideration should be given to economic and social circumstances. Consideration could easily be given. You could ponder it for a while and say, “Yes, we have considered that, but we are still going to go ahead and do it.” That might be the right decision, but it will have a consequence. It could displace the industry and have a very detrimental impact on it. Even after a long, slow and laborious process, in which everybody is involved and hopefully everybody has agreed on, that could still have a detrimental impact on the industry. Is that where you are coming from? You are not opposed to it, but you appreciate that it could have an impact on your industry.
775. **Mr McCulla:** Mr Hamilton, thanks for your question. In short, yes, that is where we are coming from. I will let Dale expand on that a wee bit.
776. On your first point, the fishing industry amazes me with its resilience. Generally speaking, the Northern Ireland media highlights our case in about the middle of December each year after our return from our annual pilgrimage to Brussels, where various further restrictions have been placed on the industry.
777. **Mr Hamilton:** Have there not been any miracles in those pilgrimages yet?
778. **Mr McCulla:** I keep believing in miracles. *[Laughter.]* You are right that the industry feels very vulnerable. For example, European cod recovery measures in the Irish Sea started in 2000. What some people might call a no-take zone was imposed off the County Down coast 12 years ago, and, 12 years later, we are still waiting for it to work. For example, the cod quota is 5% of what it was 12 years ago. The 40-plus white fish trawlers that targeted cod, haddock and other white fish that we had in 2000 have now gone — full stop.
779. In addition, you have proposals, whether for MCZs, offshore renewable energy or whatever. You can fill the map with all these activities that are going on in the Irish Sea, which, as we said, is a small geographic area, comparatively speaking. The fishermen feel that they are being pushed further and further into a corner, and they have responded to that. Our organisation has tried to respond by looking for opportunities elsewhere by diversifying trawlers into other activities such as cable, oil and gas operations. However, more importantly, at the end of the day, a fisherman’s job is to catch fish and land them. Therefore, the onus is on us to maximise the value of that catch. I hope that, when you come to Kilkeel, we can show you what we are doing in that sense. The industry feels very vulnerable.
780. I will let Dale answer the other part of the question.
781. **Mr Rodmell:** I agree. The residual effects of the planning process are very concerning for the industry. As has been highlighted, some of the English designations are very problematic. Some of the most problematic are in the Irish Sea, as they affect the Dublin Bay prawn fisheries. On top of that, every prawn fishery in English territorial waters, bar one, has been selected for an MCZ. That is because of the primacy that is ultimately given to those habitats in the selection process. However, these are relatively intensively fished areas, so the consequences depend on the management measures for large-scale displacement. It is a head-on conflict in that sense. We certainly do not think that it is fair or proper that fishermen, who may have spent their lives in a particular area — indeed, generations — should be simply turfed off those areas without a further thought.
782. **Mr Campbell:** Obviously, the long-term sustainability of the ecosystem underlies all this. You have had

- discussions with, and you are knowledgeable of, the English and Scottish fishermen and others who are involved in the fishing industry. I know that it is early days. What has been their practical experience of some of the things that you are welcoming and that you are concerned could happen here? They are a few years ahead of you in terms of experience. What has been that experience?
783. **Mr McCulla:** Thank you for the question, Mr Campbell. I will give a brief answer, and then I will let Dale and David come in. There is quite a stark difference between the English and the Scottish approaches. David referred to that earlier. In England, the fishing industry feels that it has been kept very much at arm's length in the process. That is reflected in the fact that, as Dale said, many of the MPAs seem to have been targeted as very important fishing areas. That means those not just in the Irish Sea but right around the coast of England. On the other hand, the industry in Scotland has been involved from day one in working up proposals for the offshore areas that have already been designated and now on proposals for the inshore areas. The result of having been involved from day one is that the industry has come up with proposals that it can live and work with. In many ways, although no piece of legislation will be perfect, certainly the example from Scotland is what we would like to see done here.
784. **Mr Rodmell:** Those involved in the Scottish process have had more time to deliver their outputs, as has been mentioned, so that has been of benefit in itself. Also, a similarly rigid set of ecological criteria has not been adopted for that process. Although the scientific principles that it aims to deliver are the same in the end, it is not applied in the straitjacket way that the English system was applied. So, those two reasons have led to a more flexible and pragmatic approach.
785. **The Chairperson:** I see your point. You ask exactly what impact the MPAs have on the fishing industry. Does an MPA mean that you are totally excluded from those areas? You talk of displacement. Does that mean that fishing is restricted in those areas, or does it mean something different?
786. **Mr Hill:** It depends on the management areas, which have not been decided yet. So, that is where the Achilles heel is, if I may use that term. We are designating an area, but we do not know what is happening in it yet. Fishermen here want to engage, and we want to help to designate the areas, but we want to co-locate with these things.
787. Ultimately, although they are fishing boats, they are also businesses. In Kilkeel, we have 2,500 or 3,000 people involved in the industry. So, a balance has to be struck. If you go back 20 years, you will see that the fisherman was a totally different breed. Today, they are smarter, because we have quotas, days at sea and all sorts of things. We have to be smarter. You have a fishing plan, which will include things such as MPAs, which are coming up, or wind farms. We are talking to as many people as we can and educating the fisherman to engage. He wants to engage. If we can do something together, sensibly, such as adopting the way that things are done in Scotland, which is from the bottom-up instead of top-down, we can move ahead on this quite quickly.
788. **Mr Dallat:** I am sorry that I missed your presentation. I have read the documentation, and I have known you, Alan, for a long time.
789. Let me ask a difficult question. What is the point in having marine conservation zones if they avoid the fishing grounds?
790. **Mr McCulla:** Thanks for the question, Mr Dallat. I can turn that around slightly: what is the point of having a marine conservation zone if there is not something there to protect? At the end of the day, humans — fishermen — are part of the natural environment and ecosystem. I was reminded of that earlier this week. In 'The Sunday Times' there was an article by well-known journalist and author Charles Clover, who

is maybe not perceived in the fishing fraternity as an ally. In that article, he used the word “harrow”, as in harrowing the field. In many ways, that is what fishermen do to part of the seabed: they harrow the seabed. From harrowing it, they help to grow a crop. The most important crop for us is nephrops. What I am trying to do, Mr Dallat, is turn the question around. If you told a farmer to stop harrowing the field or stop ploughing the field, he would ask why. Unfortunately, the answer that we get from some quarters is: “Just so that we can see what happens.” That is not good enough. There has to be a scientific and ecological reason for doing that. Likewise, Mr Dallat, if, in the analogy that I gave about the farmer, there were a feature in the field, and if the ethos on the protection of that feature were explained, I would have no doubt that the farmer would agree to protection and mitigation measures, which is what happens. Again, I emphasise that we are not saying no to MPAs or MCZs. However, it is simply not good enough to come in and seal off an area of the seabed just so that we can see what will happen.

791. **Mr Dallat:** I think that my question was very well turned around. *[Laughter.]* Finally, you mentioned your annual pilgrimage to Brussels. I would welcome a pilgrimage to Kilkeel. I would not be looking for miracles, but I think that it would be useful.
792. **Mr Boylan:** To the fish and chip shop.
793. **Mr Dallat:** No, battered fish.
794. **Mr McCulla:** I would be very happy to arrange that.
795. **The Chairperson:** I will be looking for lobsters. I am only joking. I love them, but I cannot afford them.
796. Thank you very much indeed for that very comprehensive presentation. Thank you, Dale, for coming from England to Stormont.

24 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mr Chris Hazzard
 Mrs Dolores Kelly
 Lord Morrow

Witnesses:

Mr Paddy Campbell *Department of
 Agriculture and Rural
 Development*
 Mr Ian Humes

797. **The Chairperson:** The next briefing is from two officials from the Department of Agriculture and Rural Development (DARD), Paddy Campbell and Ian Humes. Hello, Paddy and Ian. Thank you for coming. Perhaps you will give us a briefing for five to 10 minutes, and then take questions from members.

798. **Mr Ian Humes (Department of Agriculture and Rural Development):** Thank you very much. I am head of sea fisheries policy and grants in DARD. With me is Paddy Campbell, who heads up our policy team. He has particular expertise in sea fisheries legislation, and has also been involved in the consultation with the Department for Environment, Food and Rural Affairs (DEFRA) on the Marine and Coastal Access Bill, which is now an Act.

799. The Committee has asked the Department to comment on a number of clauses, and you have our response. In principle, DARD welcomes the Marine Bill. It should provide a framework within which the sustainable development of the marine environment can take place in a coherent manner that respects the interests of all those who undertake activities within it. Fishing is, obviously, a major activity on our

seas. It is one that has been around for a long time. The response that you have has been prepared mainly from a sea fisheries perspective, but there are also interests in the Rivers Agency, which has a responsibility for coastal flood risk management. Both parts of the Department have had input to the response that the Committee has.

800. Our response covers the main points that you have raised, but we have also raised some issues that we consider to be important, particularly in relation to the consultation on marine conservation zones, including those that are outside the area of responsibility of the Department. The Irish Sea is a very complex place in its different uses and different administrative and other boundaries. We have brought to the Committee a number of maps. We have presented them to the Committee for Agriculture and Rural Development, which found them helpful in understanding the position about the complexity of the business of planning and controlling and managing the sea. Paddy will run us through the first map.

801. **Mr Paddy Campbell (Department of Agriculture and Rural Development):** The first chart is illustrative, showing marine responsibilities in the Northern Ireland inshore and offshore regions. As the sea fisheries division of DARD, we have responsibility for sea fisheries management in an area beyond our 12 nautical mile limit. On the map, the area that is delineated by the solid red line is called, in our legislation, the Northern Ireland zone. We have responsibility for all of the fisheries in that area.

802. DEFRA is responsible for designating marine conservation zones (MCZs) throughout the Irish Sea in the offshore area, including part of the area for which we have sea fisheries responsibility. The Department of the Environment (DOE) has delegated responsibility for

- designating MCZs within the 12 nautical mile limit, the territorial sea limit. On the map, it is shown by a dotted line in the south Down area.
803. These days, our main fishing industry is based on nephrops fisheries — Dublin Bay prawns. It takes place on a mud habitat, mainly on the western Irish Sea. You can see from the map that it overlaps pretty much with the Northern Ireland zone area between Northern Ireland and the Isle of Man. That is part of the reason why, back in 1998 or 1999, when the devolved matters were decided, DARD lobbied hard for sea fisheries responsibility in that area so that it would have its major fishery under its control.
804. We are interested in integration and planning that is organised in a coherent way so that all the decisions that affect fisheries are taken together. One of our major concerns is that offshore renewable designations would take place in this area. DEFRA would possibly be designating MCZs in this area, and, behind that, with the Marine Bill, our local Administration would be designating MCZs. Our appeal to people is that these things be taken together. There is a chance and a risk that, if these things are not considered together but are developed separately, more area of sea could effectively be excluded from activities, including fishing, than is strictly necessary. That is one of the points that we wanted to make today. We support the local Administration having more of a say in the planning process over the larger area.
805. **Mr Humes:** I stress the importance of the Irish Sea nephrops fishery to the fishing industry. Ninety-five per cent of our boats fish for nephrops. It is the lifeblood of the fishing industry, and it is the material on which our processing firms depend. If you are to take ground away from the nephrops fishery, it is not as if the fishing industry can go somewhere else. That species is habitat-dependent. It lives in mud grounds. Mud grounds exist in the broad area that we have highlighted on the map. Although it is in the Northern Ireland fishing zone, it is in an area that is the responsibility of Secretary of State for Environment, Food and Rural Affairs to make a call about the MCZs.
806. The map is even more complicated. Look at where the Scottish fishing zone comes in. Above the Isle of Man, you have the Isle of Man extended territorial sea, and, from the south-east, you have Wales and Ireland. You have all of those administrative boundaries, but marine nature conservation does not respect administrative boundaries; a feature can exist on the seabed that transcends those boundaries. It is important that decisions about land or marine use be taken in a proper, integrated way. That, for the Irish Sea, involves discussions with our neighbours in the Isle of Man, Scotland and the Republic. It needs to be examined in a coherent way, which is why our Minister has suggested to her counterpart in DEFRA that any decisions about MCZs that are taken in the offshore region of the Northern Ireland fisheries zone should be deferred until we have a Marine Bill in place here and we can look at MCZs in a proper co-ordinated way.
807. **The Chairperson:** Thank you very much for your presentation. I understand your concerns: the fishing industry feels that legislation from different sections of the UK is coming at it. We had a briefing from someone from England who was quite critical of the engagement by DEFRA. At the time of the designation of MCZs under the Marine and Coastal Access Act 2009, they felt that very little consultation was carried out. Should we learn from those mistakes? How much engagement should we have with the fishing industry? We have talked to the fishing industry; it has a lot of concerns about no-take zones and further restrictions. From your point of view, how should we engage with that industry?
808. **Mr Humes:** I can relate only our experience, which is that it is best to talk to the industry at an early stage to get its views and opinions, not when you have made up your mind about what you are going to propose to the world at large. It has a great deal of expertise

- about the sea and what it contains, as does DARD and its scientists because they have been working in the marine area for a very long time on sea fisheries conservation. They know an awful lot about the benthic habitat, and they know about fish and fishing. There is a wealth of information to draw from in what is a relatively new area for DOE.
809. As in all things, if you talk to the stakeholders and have a rich vein of conversations with them first of all, the published proposal stands much more chance of flying and gaining support. We cannot introduce fisheries management measures by simply foisting them on the industry; we must talk to it about the feasibility of technical measures that it could adopt to reduce its impact on other species that it is not trying to catch. It knows how it works best. We have a problem with cod, for example, in the Irish Sea, which is in a particularly bad state. The Department and the Minister are committed to doing something about recovering cod, but not at the expense of the industry. We must work with it closely to develop technical solutions to avoid killing cod while continuing to maintain the viability of the industry. That is going on at the moment. We have a trial in which the industry and scientists are involved. We are also talking to the European Union about that. In my experience, the approach is to involve them in the conversation to develop the solution, not to come to them with a ready-made solution and ask what they think.
810. **The Chairperson:** The designation of MCZs on the English coast obviously impacts on the Northern Ireland fishing industry. How badly has it been impacted by the designation of all of those MCZs?
811. **Mr Humes:** The MCZs in the Irish Sea are proposed MCZs. I am not clear whether we know about the management of those.
812. **Mr P Campbell:** The proposals at this stage have gone to DEFRA for consideration. I understand that it is reviewing all of the MCZs, whether in the Irish Sea, the North Sea or the south-west, to improve the scientific data on which they are based. That is one of the criticisms that have been raised. We are speculating a little bit, but it is likely that most MCZs will require some restriction of fishing activity — dredging, for example, is probably the most obvious one. That is the sort of method that is likely to come in.
813. **Mr Humes:** I think there is a proposed MCZ. If you look at the first map we provided, they are proposing an MCZ in that little sock-shaped area at the top, just west of the Isle of Man, to protect mud habitat. That will directly impact on the fishing industry. If you take 15% of its grounds away, there is 15% less to catch. In principle, you have to reduce the size of the fishing fleet, or everybody has to take less. At the moment, the finances are such that there are not enough fishing opportunities to go around to maintain a viable and sustainable industry in the longer term.
814. **The Chairperson:** Will they have to go further?
815. **Mr Humes:** They are nephrops fishermen. They would have to go further, to the southern part of the Irish Sea, off the south-east coast of Ireland. At the moment, they can do that, but if Europe decides to change the approach to the management of that particular stock, they may not be able to move to other places, so they could be hemmed into the northern part of the Irish Sea. If you take ground away from them there and they have no opportunity to move to other places to fish for nephrops, it would have a direct impact on the viability of the fleet.
816. **Mr Boylan:** Thanks for your presentation. It is very interesting, but the key for me is that everybody — all of the stakeholders and relevant bodies — gets their opportunity through the Bill. I am a bit concerned. I take it that this area on the map is the one you are pointing out. Do you not agree that any designation should be evidence based? The previous witness said that there could be conflicting evidence

- one way or the other, but I believe that, through all of the agencies, and particularly the fishing industry, there has been a body of evidence and good management practices until now that will influence the position. I am getting the impression that you feel that those are going to be designated no matter what your influence is. You keep asking to be involved in the process, but I get the underlying impression that you think they are going to be designated, irrespective of how much input you are going to have. From my point of view it is not just about consultation, it is about proper engagement and talking to the industry. Will you tease that out a bit more for me?
817. **Mr Humes:** In respect of MCZs, the Department of the Environment is carrying on a function that has been delegated to it by the Secretary of State, whereas fishing is a devolved responsibility, and our Minister is answerable to the Executive on that. It is a question of accountability for MCZs. There is a part of the Bill that refers to the responsibility of DOE in relation to the designation of MCZs. It mentions consulting the Secretary of State and other people.
818. **Mr P Campbell:** That is clause 14(4).
819. **Mr Humes:** Yes. That is quite different from what it says it will do in relation to marine planning. When an MCZ is being proposed, it may be the responsibility of the Secretary of State. It is a reserved matter, and, again, that is unique. In Scotland, marine nature conservation is the responsibility of Scottish Ministers, and, in Wales, it is the responsibility of Welsh Ministers. That is not the case here. We would like to think that Northern Ireland Departments will be fully consulted in advance of the introduction of MCZ proposals. Recently, we have had some consultation on special areas of conservation off Rathlin Island and at the Maidens. That consultation occurred a while ago, and we have not seen anything more about it. We believe that proposals have already gone to the Secretary of State. It is important that the process of engagement be adequate.
820. **Mr Boylan:** That is an important point. The Secretary of State may designate an area. We are bringing through a Marine Bill, and, if it is going to impact on any of our industries, we need to tie that in now. That has been highlighted today, and we need to bring that to the forefront of our discussions with the Department.
821. We have to go back to the issue of the evidence base. During the previous session, Tom Elliott brought that up with Professor Lloyd. He said that he could believe one piece of evidence and that I could take a view based on another. Therefore, unless all the Departments work together on this and try to balance that all out, how do you propose to address any of those issues? Have you enough of an evidence base in the Department?
822. **Mr Humes:** Our evidence base is for fisheries. We have very extensive information about fisheries in the Irish Sea. The nephrops fishery in the northern part of the Irish Sea is probably one of the best surveyed fisheries in Europe. We know that it is being fished in a sustainable way and at a level that is below maximum sustainable yield. That means that it is being fished responsibly and that it will be around in years to come. There is good information on other stocks, particularly herring. However, on other species, such as cod, the information is not as good because of the state of the stocks. We have a lot of information about fisheries, but less about other features that are in the marine area.
823. **Mr Boylan:** You can only do your own bit. My final question is on the interdepartmental marine co-ordination group. Who do you think should best carry out the implementation of the Bill? Should it be cross-departmental? I know that it is the responsibility of DOE, but surely there are other factors.
824. **Mr P Campbell:** You mentioned the interdepartmental group. That is

- important in that it allows, at an official level, Departments to work together to bring concerns in front of the DOE. We anticipate that that will be a very important group for the detailed implementation. The Marine Bill talks about engagement, but it contains no detail on guidance. For example, Departments will be expected to evaluate the impact of any activities that they allow in the marine area, but that is just a blank statement in the Marine Bill. You will have to work together closely to develop guidance along with the DOE on what you mean by significant impact, what your thoughts are on what causes significant impact, and whether we agree on that. Some type of scientific agreement needs to be found so that one set of science is not saying that something is damaging and another set is saying that it is OK. Those sorts of things have to be worked out when we go forward into the detail.
825. **The Chairperson:** At the moment, that interdepartmental group has no legal status. It is very much a consultative group.
826. **Mr P Campbell:** It is a consultative group established by the DOE, and it involves all the representatives from all the other Departments with marine interests.
827. **The Chairperson:** Do you think that its terms of reference should be stepped up to give it more clout to bring forward policies, rather than just being a consultative group?
828. **Mr P Campbell:** You are putting me on the spot. I do not know whether I could comment on that.
829. **The Chairperson:** That would give the Departments a bit more say and enable them to be a bit more active in coming together to implement the Marine Bill.
830. **Mr Humes:** Once you have the Marine Bill, these things will get teased out, developed and improved over time. A conversation will have to continue. Post the Marine Bill, there is a huge amount of detailed work to be done to eventually get a marine spatial plan. As Paddy said, a lot of guidance will need to be developed. There will be a requirement to find out new information about what we have in our seas, to develop a science plan, to develop a database that will support all of this, and to look at the range of spatial information that we have about the marine environment. We have huge amounts of information about the benthic environment, water currents, water temperature and lots of other things, and that needs to be brought together. Most if not all of that information exists within the Agri-Food and Biosciences Institute (AFBI), which is an agency of DARD. It has been the main agency involved in the collection of data in the marine environment for very many years.
831. I noted that you were referred to Marine Scotland earlier in the meeting. It was established once Scotland took on responsibilities for the marine area. We used to deal with those colleagues when they were in the sea fisheries Department. Further responsibilities were added, and they became Marine Scotland. We have a lot of information available. Public money was spent to collect it, so it should be there for the public good.
832. **The Chairperson:** The Marine Bill impacts on six different Departments. Therefore, it makes sense to have people working together and to give them more clout and a more active involvement.
833. **Mr Humes:** Yes. Every region will have an approach that is appropriate to the size and scale of the issue that they are dealing with. Our marine area is relatively small in comparison with that of Scotland, which is absolutely huge as it extends out towards Rockall and way out into the North Sea. Similarly, Wales has a much longer length of coastline than we do. England's extends from Bristol right the way round to Berwick-upon-Tweed, so there is a huge area to cover. You need structures that are appropriate to the area that you are seeking to manage. We are fortunate — or unfortunate, depending on how you look at it — that we have a relatively

- short length of coastline and a fairly small marine area that we are being asked to manage.
834. **Mrs D Kelly:** Thanks for your presentation. You talked about the evidence that AFBI has provided over the years and the scientific knowledge that you have in relation to fishing. If that is the case, one wonders how we have got into such difficulties in relation to Strangford lough with the danger of infraction proceedings. I understand that that may well have been partly a political decision, but, nonetheless, the Northern Ireland taxpayer is at risk of serious infraction costs as a consequence of a failure to take action. I appreciate that there will always be competing priorities. Professor Lloyd said that there will be winners and losers. Unfortunately, that will be a feature of the Bill. We will want to minimise the losing aspect. Of course, none of the proposals can be divorced from the common fisheries policy (CFP) proposals, which you referenced when speaking about how the fishing catch will be moved around.
835. By and large, however, you appear to be satisfied with the general thrust and direction of the Marine Bill, other than some particular points that require clarification. How do you see the Bill sitting alongside what the CFP proposals are likely to contain? What are the key challenges to having a good Marine Bill that will provide a sustainable future for all the interested parties? What aspects of the Marine Bill does the DARD feel particularly uncomfortable with?
836. **Mr P Campbell:** The Marine Bill will help us to deliver our obligations under the marine strategy framework directive. It is likely that marine conservation zones will feature as part of the actions that we will take to meet our marine strategy framework obligations to achieve good environmental status by 2020. That is where the CFP comes in: one of the key objectives under the marine strategy framework directive is that commercial fisheries will have good environmental status as well. The common fisheries policy reform proposals will have to ensure that member states can deliver on that part so that all fish stocks are being fished sustainably by 2020. That is where those elements come together.
837. As we said, we are broadly content with the Marine Bill. It follows closely the Marine and Coastal Access Act 2009. We have already raised our concerns about consultation on MCZs. We are a wee bit different from DEFRA in that, as Ian said, we rely on the Secretary of State taking account of the views and concerns of the Northern Ireland stakeholders rather than imposing on us something that we find very difficult.
838. **Mrs D Kelly:** Has DARD or the Minister made any representations to Margaret Ritchie, who is a Northern Ireland member of the Environment, Food and Rural Affairs Committee, so that a voice at that table articulates your specific concerns? Have representations been made to the Committee as a whole?
839. **Mr Humes:** The Minister has written to her counterpart about the MCZs that are being proposed in the offshore region of the Northern Ireland zone. Her counterpart will make the decisions about the MCZs. She has lodged her concerns with Richard Benyon about the proposals and their impacts. It is not that we do not want MCZs; rather, we want to have them considered alongside proposals that are coming forward here so that everything is done coherently.
840. Professor Lloyd made the point about winners and losers. When you zone an area or approve its use for alternative energy, you prevent fishing from happening in that area. Therefore, you already have a closed area. Once a wind farm is in place, you effectively have an MCZ. It is about being able to make the same thing do several things rather than saying, "Let's have a wind farm and another closed area to protect mud." If you are going to put the wind farm on a piece of mud ground, and fishing and navigation is excluded from that area, you will have a protected area for that mud habitat. It is about looking at those sorts of issues, and looking at them together. We have proposals for alternative energy running in parallel

- with our proposals for marine planning, although the two are running at a different pace. The proposal for part of our zone to be an MCZ is running at a pace dictated by DEFRA. Bringing those things together is important. Fishing will have to be excluded from some areas because of the nature of that fishing and the nature of the feature that you want to protect. It is important that we are able to take steps to include management measures for fishing, and we need to talk about those things so that we all move together at the same speed. However, we are not moving together at the same speed at the moment, and that is the difficulty.
841. **Mrs D Kelly:** That is a useful point for us to follow up on at another time.
842. **The Chairperson:** We could look at it more strategically and take a more a co-ordinated approach. Wind farms may not be permitted in MCZs.
843. **Mr Humes:** They may not. We talk about areas that are zoned to protect nature, we talk about areas that are zoned to provide for alternative energies, and a few people have talked about the need to establish fishing zones. If you look at a land-use plan, you will see areas that are zoned for recreation, industry, and so forth. I assume that a marine plan will look a little different in the longer term. That marine plan will depend on strategic guidance. Shaping Our Future is our regional strategic planning strategy, and people have to have regard to that. Every proposal will, I think, have to have regard to the policies that are developed for the marine environment.
844. **Mr Elliott:** Thank you for your presentation. I have only one question, and it has been half-answered. However, I will ask it directly. The previous presentation indicated that there will be winners and losers. Is the fishing industry going to be one of the losers?
845. **Mr Humes:** It is bound to be, Mr Elliott, because, at the moment, it has had unfettered access to the seas. When I say unfettered access, I should say that there have always been restrictions on the fishing industry, because we have closed certain areas to protect fish stocks or certain other things. However, there are now greater pressures on the sea, because more ground has been taken for other uses, and use has to be planned in a co-ordinated and sensible way. The fishing industry will undoubtedly be a loser, because it will lose ground.
846. **The Chairperson:** The aim of the Bill is to protect the environment.
847. **Mr Elliott:** At the cost of the economy, obviously.
848. **The Chairperson:** It is trying to perform a balancing act, mitigating certain circumstances.
849. **Mr Humes:** Absolutely. This will be a political decision. Our map indicates where the Irish Sea nephrops fishery is. If someone decides to use part of the ground for alternative uses that exclude fishing, that will be a political decision, because, on balance, people have felt that there is an environmental feature that needs to be protected there, or there is an alternative use that it can be put to that will benefit Northern Ireland plc more than fishing. However, that is about politics, and planning is about politics.
850. **The Chairperson:** Thank you. It is very good to end on that note. Sorry, John, I had yet to call you.
851. **Mr Dallat:** You said at the beginning of your presentation that you have detailed research on fishing grounds, and so on. The Marine Bill is focused very much on Strangford lough and a wee bit of Rathlin Island. Does your research extend beyond that? For example, do we know anything about the Foyle estuary and Barmouth?
852. Finally, I am interested in the fact that there may be a revival of herring stock and would like to hear a bit more about that. It is a lifetime since I have seen anything at sea that would suggest that there are herring present.

853. **Mr Humes:** Sorry, but your last point was about the revival of —
854. **Mr Dallat:** Herring.
855. **Mr Humes:** Perhaps we will start with that, because it is a really good news story.
856. **Mr Dallat:** I remember as a young boy being out on a boat, seeing this oily top and saying, “Ah, there are the herring”. I have not seen them for a lifetime.
857. **Mr Humes:** Herring used to be a very important species to the fishing industry around the UK, and, at one time, it was prosecuted by small boats and family businesses. They fished for herring when it was in season and then moved on to something else. Herring stocks became seriously depleted, and management measures were put in place some 20 years ago. We have spent a lot of money recently improving our research on the stock, and that was benchmarked by the International Council for the Exploration of the Sea (ICES), which is the independent body that looks at fishery science. We believe that it will produce, for the first time in 20 years or more, a full stock assessment and will be able to recommend a level of fishing that is consistent with maximum sustainable yield. We do not know what the new total allowable catch (TAC) will be, but we know that we now have a robust scientific assessment of the stock, as we do for our nephrops fishery. Indications in recent years have shown that the stock is stable and is, in fact, increasing. It is a well-managed fishery. It is prosecuted by only two boats now. However, those boats are much larger and are capable of catching much more. The stock is very healthy.
858. I said that we have good information, but I must add that we also have bad information. We have not got enough information, or as much as we would like, on some species stock. It is a question of resource, too. How much resource do you put into stock that is worth, say, £150,000 to the Northern Ireland industry? The nephrops stock is worth £15 million to £17 million to the Northern Ireland industry. That is where a lot of our money on scientific research goes. Sorry, can you repeat your earlier question?
859. **Mr Dallat:** I just do not understand why the Marine Bill does not focus on other parts of the shoreline. That question may not be to you directly. Does your interest in monitoring what is happening under the water include, for example, the Foyle estuary and Barmouth?
860. **Mr P Campbell:** There is a lot of research. The Agri-Food and Biosciences Institute has been working closely with the Northern Ireland Environment Agency (NIEA) for a number of years on the water framework directive and water quality monitoring. There has been a lot of good information on, as Ian said, hydrography, temperature and salinity — all those sorts of features.
861. **Mr Humes:** As well as on contaminants and pollution. Some of that information has been provided to meet the UK’s obligations to the OSPAR Convention and other things.
862. **Mr P Campbell:** That research is on all over Northern Ireland.
863. **The Chairperson:** That concludes the briefing from DARD. Thanks very much indeed for coming.

24 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mrs Dolores Kelly
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Matthew Ferguson *Northern Ireland*
 Miss Hannah Geary *Schools' Marine Bill*
 Miss Carol Moorehead *Advocacy Group*
 Mr Emmett Rice

864. **The Chairperson:** I welcome Carol Moorehead, a zoology student at Queen's University Belfast; Matthew Ferguson from Down High School; Hannah Geary from Glenlola Collegiate; and Emmett Rice from St Malachy's College.
865. Hello, you are all very welcome. It is nice to see you all again. I think that we met at Castle Espie. I am delighted that you are here with us. You gave us a very thorough paper, which I read last night. Many congratulations on writing such a good paper. We usually ask witnesses to give us a five- to 10-minute presentation. Given that we already have your written paper, perhaps you can reiterate the main points, and then Committee members can ask questions. I am sure that they will be very kind to you.
866. **Miss Carol Moorehead (Northern Ireland Schools' Marine Bill Advocacy Group):** Thank you very much for inviting us to present to you. The Northern Ireland Schools' Marine Bill Advocacy Group (NISMBAG) is made up of sixth formers from seven schools across Northern Ireland and one zoology student from Queen's University Belfast. We have been supported by the Royal Society for the Protection of Birds (RSPB) and the Northern Ireland Marine Task Force (NIMTF) to form the group. As young people passionate about our marine environment, we welcome the opportunity to present formally to the Committee, and we feel honoured and excited to be a part of this and to take an active role in shaping the legislation.
867. We have put considerable effort into gathering, reflecting on and presenting the opinions of local people from coastal communities. We see the Environment Committee's members as stewards, with the duty and responsibility of ensuring effective management of our marine inheritance. We support the NIMTF's suggested amendment to clause 18, which would include highly protected areas (HPAs) within the marine conservation zones (MCZs), and ask that an independent marine management organisation or a single government body be set up to implement the Bill.
868. We first attempted to demonstrate the benefits of a well-managed HPA. We are aware of the benefits of HPAs for biodiversity, people and the economy. They are recognised by management bodies in the rest of the UK. Those bodies have decided to implement their Bills to include them. I will hand over to Emmett from St Malachy's College. He will highlight how the Lundy Island marine conservation zone benefits biodiversity, people and the economy, and he will point out the implications for Northern Ireland.
869. **Mr Emmett Rice (Northern Ireland Schools' Marine Bill Advocacy Group):** Lundy Island became England's first marine conservation site and a no-take fishing zone in 2003, and there are already noticeable positive effects for many species, including lobsters. When monitoring began in 2004, the mean abundance of landable-sized lobsters

- in the no-take zone was already 205% greater than the average for control and reference locations, and, by 2007, it was 427% greater. Visitors' calculated aggregate expenditure was £1.3 million, compared with the reported annual turnover for 2005 of £1.7 million. Lundy also generates revenue from selling Lundy lamb over the internet.
870. Good management is achieved through biannual meetings of partners and all marine stakeholders feeding into an annual management forum of partners. Monitoring, education and enforcement is carried out by the wardens, and any infringements are reported to the local fisheries authority. For Rathlin Island, we feel that Lundy Island's marine conservation zone demonstrates the environmental and economic viability of a well-managed highly protected area.
871. That has implications for marine conservation zones in Northern Ireland, and I will highlight a couple of local examples from Rathlin Island. The RSPB seabird centre on the island supports tens of thousands of nesting birds, and that increasing population is a tourist attraction. It now receives more than 14,500 visitors a year, which is critical to the health of the local economy. Visitor evaluations show that around 60% of visitors to the reserve come to the island specifically because of the RSPB's presence. Rathlin Island benefits from visitor expenditure of £230,000 annually owing to the existence of the RSPB centre, and that equates to over five full-time equivalent jobs. Added to 2.8 people directly employed by the RSPB and 1.4 people employed in farming, that amounts to 9.2 full-time equivalent jobs.
872. One Rathlin Island fisherman operates sustainable rod fishing and pot fishing for lobsters and crabs. He ensures that all fish caught on line are used either for personal use, or served in the Manor House or the new fish and chip shop on the island. The fisherman organises sea angling and wildlife-watching trips. He feels that his fishing methods are reasonably sustainable, and the wildlife-watching trips entertain and attract tourists, bringing sorely needed money into the local island economy.
873. As young people, we have visited Rathlin Island. We found it difficult to spend money, and we feel that there need to be improvements to the infrastructure, which would help people on the island attract tourists to stay overnight and spend money there. We have ideas that we can share, particularly with teenagers in mind.
874. **Miss Moorehead:** I will pass you over to Matthew Ferguson from Down High School and Hannah Geary from Glenlola Collegiate, who will share their ideas on how to grow marine-based activities in Northern Ireland, which is a hugely untapped area for our future economy.
875. **Mr Matthew Ferguson (Northern Ireland Schools' Marine Bill Advocacy Group):** We talked to a wide range of marine users and began to build up an idea of how highly protected areas could increase revenue in Northern Ireland through leisure and tourism. I am a regular diver in Strangford lough, and I feel that our dive sites have an advantage, as they are easily accessible. For example, a diver could arrive at Belfast City Airport on a Friday night and get a dive in before the sun sets. We need to promote those dive sites in Britain, in Europe and on the world stage.
876. One of the divers whom I interviewed highlighted the fact that the benefits of MCZs far outweigh any commercial gains from overfishing and overuse of the environment. Greater marine life would increase the health of our ecosystem, which could generate a whole new environmentally driven industry. A properly managed coastline would accommodate all forms of water users without causing conflict. It has been shown throughout the world that environmental ecotourism is more profitable for local communities than traditional fishing. That is backed up by Labour's charter for angling in 2005, which stated:
- "A recent study of the sea fishing industry in England and Wales showed that recreational*

- angling is worth £538 million a year (nearly as much as a commercial fleet at £600m)."*
877. Labour's bass management plan goes on to recognise:
- "there are some species of sea fish which could return Best Value for the UK, and the overall marine environment, if designated and managed primarily as recreational species."*
878. That plan also exists in Eire. The good news is that more sea bass remain in our waters owing to temperature increases caused by climate change.
879. **Miss Hannah Geary (Northern Ireland Schools' Marine Bill Advocacy Group):** Coming from Bangor, where many dinghy sailors take part in national and international competitions, I can say that our loughs give protection from the prevailing westerly winds, thus increasing the number of days available for marine leisure users. That makes Northern Ireland extremely desirable as a host for both sailing and sea angling competitions.
880. From talking to local marine users for our research, we found the consensus of opinion to be that the present system of managing our seas is simply not working. Many are asking for the urgent restriction of existing damaging and unsustainable fishing activity and the establishment of no-take zones or highly protected areas. A Belfast lough mussels grower, who harvests by dredging, mentioned the environmental benefits of his industry, with mussels filtering impurities and thus improving water quality. He recognises that his activities could damage the habitat where he collects sea mussels around the Copeland Islands. With subsidies, he could update his equipment so that it would cause less damage.
881. An Ulster Museum marine biologist and diver has seen at first hand the damage caused by mussel dredging in Belfast lough and would like a reduction in that activity, along with marine conservation zones or highly protected areas to protect our already overexploited marine environment.
882. A Rathlin Island rod and line fisherman was seriously concerned by the deep trawling from mainland and Scottish boats, which resulted in dramatically declining fish stocks. He indicated on his sea chart of Rathlin Island the best sites for various species that are now under threat, claiming that the sites should become no-take zones.
883. **Miss Moorehead:** We have demonstrated that well-managed HPAs should benefit biodiversity, people and the economy and that they already have support from many local marine stakeholders. We agree that the present system of managing the marine environment is failing. Without an independent marine management organisation or, at least, a single government body such as Marine Scotland, we feel that it will be impossible to create an effectively managed and coherent network of marine protected areas of local importance to Northern Ireland.
884. We are greatly concerned that the existence of a confusing array of six primary government bodies with responsibility for the marine environment in Northern Ireland will hinder the effective implementation of the Marine Bill. Our first preference is for an independent body similar to the one in England, but we would accept the establishment of one governmental body solely in charge of marine activities, similar to that in Scotland, as long as it had proper enforcement powers and resources.
885. From our discussions with a wide variety of marine stakeholders, including the NIMTF, commercial fishermen and recreational marine users, we feel that it is vital to have them represented on any new body. The simplest solution is to create a new organisation that will start to manage all the activities on the water and will act as a one-stop shop for all issues concerning them.
886. We need a single management body that is responsible for co-ordinating the many authorities and stakeholders to ensure that we have established an ecologically

- coherent network of well-managed marine conservation zones and highly protected areas. That includes carrying out environmental impact assessments (EIAs) for all existing and proposed activities. We are personally aware of delays in addressing damage to the marine environment. That demonstrates that the existing Departments do not have the time or resources to manage our marine inheritance effectively.
887. We need a single management body to be responsible for collating and analysing existing data and for collecting new data to take into account the highly mobile nature of many marine species, and for analysing human pressures and climate change. The Departments do not have the capacity to perform the vital task of ensuring that the selection of appropriate marine conservation zones and highly protected areas is based on sound scientific evidence.
888. We need a single management body to be responsible for ensuring the effective management and enforcement of protected sites to deliver for biodiversity and for people so that we do not incur potentially expensive infractions from Europe. Although it might be easy to monitor and enforce an MCZ or HPA near an inhabited island, such as Lundy Island or Rathlin Island, it would be considerably more difficult to achieve that for uninhabited islands, such as the Copeland Islands, or around rocks, such as the Maidens.
889. We will conclude by offering a short thought from each of us.
890. **Miss Geary:** I thank the Environment Committee for recognising that the Marine Bill is essential for the survival of the wonderful and diverse marine wildlife that populates our shores and for all your hard work in covering all the bases to ensure the Bill's success. The conservation of the deep blue sea that cradles our emerald isle is a cause that is well worth fighting for.
891. **Miss Moorehead:** I became aware of damage to rare sponges from deep dredging around Rathlin Island in 2010.
- In response to a letter outlining my concerns to Mr Liam McKibben, the then director of fisheries, climate change and renewable energy, I was made aware of the proposed consultation, which is only happening now in 2012. The trawling has still not been banned.
892. As a young person studying zoology at Queen's, I am concerned about the delay. We risk losing our marine heritage. We may even see the extinction of some species before we have a chance to learn about them. I seek reassurance that sufficient protection will be put in place now for our marine species to ensure that I can enjoy going out and seeing their world in their company.
893. **Mr Ferguson:** The writing is on the wall for the Northern Ireland marine environment. To continue as present would devastate our seas and cripple that resource that we have. It would deny the sea for the future generations to live, work and play on. The Bill needs to deliver a clear objective to protect the everyday species and the rare ones to ensure that they do not disappear from our waters. If that were to happen, it would prevent me from seeing a spectacular species that my dad sees every day. The future of our seas — today, tomorrow and for ever — lies in your hands.
894. **Mr Rice:** We understand that our Government are still striving to cut spending. A single management organisation in place would, because of HPAs, result in the recovery of fish stocks and an increase in leisure and tourism. That would, in the long term, be money well spent for our futures. We are aware that the Chairperson enjoys local seafood, such as lobster. *[Laughter.]* Hopefully, we can ensure that our future generations will, too.
895. Can the Environment Committee reassure us that an amendment to clause 18 will include highly protected areas with marine conservation zones, and also that an independent marine management organisation (MMO), or, at the very least, a single government

- body like Marine Scotland will be set up to manage effectively our marine inheritance for our future?
896. **The Chairperson:** Thank you very much for your very thorough presentation. I thank you for your passion for protecting the environment. You are right: it is for current and future generations to enjoy and share.
897. I want to talk about your main issue, which is the independent MMO. You mentioned funding. The Department has said that an interdepartmental group is bringing all the other Departments together for consultation and to talk about the issue. There may be a move to step up that group's terms of reference once the Bill has gone through. What is your view on that? Do you think that that interdepartmental group is adequate to carry out the work?
898. **Miss Moorehead:** Yes, as long as it can co-ordinate those activities properly and as long as there is good communication between the Departments. Again, it would be more efficient if all those responsibilities were put in the one place and in the one body, whether that is an independent body or a Department.
899. **Mr Dallat:** Hannah and Matthew both referred to their conversations with divers. Have any of you been under the water to see the wonders of the sea?
900. **Mr Ferguson:** I have.
901. **Mr Dallat:** I thought that I picked that up.
902. **Mr Ferguson:** Given that we sit between the tropics and the poles, we get a certain tidal range that brings in loads of species from the south and the north. We get a massive variety, such as certain types of nudibranch, that you just do not really get anywhere else. My dad first spotted that species in this area, as it was seen only in the tropics before. We cannot let those sorts of things just slip away; we need to protect them. On the wreck of the Alastor, there are things such as conger eels, which are massive. They grow very big because of the large amounts of food material fluxing in and out of the lough. We need to look after things such as that. I am the diver among us, and I have seen these things at first hand.
903. **Mr Dallat:** Many, many, many years ago, I had the opportunity to do what you have done. I have lasting memories of the wonder, splendour and beauty of what is under the water. To see it is a rare opportunity, and I understand why Matthew speaks with such passion. It is fundamental that your proposals are taken seriously. The public at large see only what is on the surface. They do not see the heavenly image that is underneath the water. For that reason, your inspiration is very valuable. Your presentation was absolutely splendid.
904. Hannah, you also spoke to divers. What did you learn from them?
905. **Miss Geary:** I did not speak to the divers personally, but our school sent some girls out to speak to them. I have not had that privilege myself.
906. **Mr Dallat:** We have heard a lot of evidence on this, but I think that this is the first time that we have spoken to a group that bothered to talk to the people who have gone down under the water to see what is worth protecting. I applaud you for that alone, but that is not to take away from the rest of your presentation. As a former teacher, I am so proud that young people have done this. I just hope that you are the inspiration for the future, because my generation has not been very good to the marine. Somebody needs to save it and protect it. Whichever of you spoke on the radio this morning — was it you, Carol?
907. **Miss Moorehead:** Yes.
908. **Mr Dallat:** You spoke with such eloquence. I take a lot of confidence from this. It really helps the Committee to put its full thrust behind having a Marine Bill that has the content to deliver what we all want.
909. **The Chairperson:** I endorse that. Thank you for the inspiration that you have given us. I, too, love Rathlin Island; I have lost count of the number of times

- that I have been there. I love that you can now get there so quickly on the express boat.
910. **Mr Campbell:** Your presentation was very good. I think that it was Matthew who said that responsibility for protecting the marine for future generations rests with us. Thanks for that; there is no pressure on us now. *[Laughter.]* That was a good way to start.
911. Seriously, I think that everybody is committed to trying to work towards having an effective Marine Bill that will secure the future for generations to come. Although everyone is trying to work towards a long-term sustainability project, did you research the implications that there could be for the local economy and for those who derive their living or enjoyment from the marine environment, particularly over the next three to five years as we adjust to life after the Marine Bill and its consequences?
912. **Miss Moorehead:** Yes. It will affect them. However, it is about trying to find that balance and compensating or compromising. We need to involve those stakeholders. It is their livelihoods, and they have to have an opinion. So, if we involve them from the beginning, we can really work towards —
913. **Mr Ferguson:** — long-term sustainability.
914. **Miss Moorehead:** Yes, and we can make sure that they can still go about their business in the short term.
915. **Mr Campbell:** That was a very useful contribution.
916. **Mrs D Kelly:** Thank you very much for your presentation. I congratulate the RSPB, which I think was behind the overall project. You noted in your comments that you spoke to a range of service users, particularly those in the fishing industry. It has been suggested that some of those who will lose out from the creation of MCZs might well be in that industry. You got a different response when you spoke to individual fishermen. Did you speak to a range of fishermen who had a contrary view to your own?
917. **Miss Moorehead:** By and large, they were in support of the Marine Bill. We did not come across anybody who was unwilling to speak to us or who was not in favour of the Bill.
918. **Miss Geary:** They wanted to play their part and have their say so that they could ensure that their livelihoods are not lost.
919. **Miss Moorehead:** We spoke to people such as mussel fishermen and sea anglers. There was a range.
920. **Mrs D Kelly:** So, overall you got a fairly positive response. Matthew, I think that it was you who talked about the tourism and leisure potential. How do you see that being taken forward? Did you gauge the value of the industry through diving and other activities? Did you compare that to other sites around the island of Ireland or, indeed, GB?
921. **Mr Ferguson:** Various places around the Isle of Man such as Pisces Reef attract a lot of visitors. We are in a good geographical place because of the tidal flows and so forth, and it needs that promotion and kick-start to get people interested. Kate Humble did an ‘Autumnwatch’ programme with my local dive centre in Strangford lough. That sort of thing is a chance that cannot be missed, and we need to really promote that and push it forward. We also have a number of wrecks in the lough that act as artificial reefs and help to harbour marine life. Promotion is the key thing. The resource is there, and we just need to say that it is there, if that makes sense.
922. **Mrs D Kelly:** Chair, that is perhaps a challenge for the Northern Ireland Tourist Board.
923. **Mr Boylan:** Thank you very much for your presentation. I have to say that you work very well together and have backed each other up.
924. I have a couple of questions. Obviously, it is important to talk to all the stakeholders. I hope that you took that

- into account, because we have to listen to everyone's view when we come to make a decision. You are keen on having an MMO. We had a very good trip to Scotland, where they did not go down the route of having an MMO. Why are you so keen on it? If we were to create an MMO, who would fund it?
925. **Miss Moorehead:** It is ideal, and that is because it is efficient and because people on the MMO will be very passionate and willing to put in the effort of working for it. The NGOs will give advice for free, so in the long term, the MMO could be cheaper than a government body. However, we are not single-minded about the MMO. It is not the only available option, and, if we go down the route that Marine Scotland took, that may be what gets the job done, and if so, that will be acceptable.
926. **Mr Rice:** As long as it has the appropriate power of management, enforcement and resources to conduct it, that is fine. It should possibly have independence from undue government influence, which would probably make it healthier.
927. **Mr Boylan:** What about the funding?
928. **Miss Moorehead:** Our research has not gone as far as that.
929. **Mr Ferguson:** I think that a famous economist once said, "Make polluters pay." I think that those were his words. If the polluters damage our marine environment, it should be their responsibility to shoulder the cost.
930. **Mr Boylan:** That is a fair enough point. You have put me in the notion for fish and chips, by the way. *[Laughter.]* I have just one more question. Obviously, the conservation zones will be the main issue for us, because they will impact on everyone. When we were in Scotland, the officials told us that the policy was evidence based. Have you looked into the evidence that we have?
931. **Miss Moorehead:** Our data could exist, but they exist in several places. That is part of the reason why an MMO or a single body would be really useful.
- Then we could see the full picture. We would have all the data in one place, so it would be easier to know where to put those zones. That has to be based on scientific evidence, so we need those data before we decide.
932. **Mr Boylan:** Chair, it has been a breath of fresh air. We have had presentations for five years on the Environment Committee, but this has been one of the better ones. Thank you very much.
933. **The Chairperson:** I am afraid that I have to slip outside; I am going to speak at an event in a couple of minutes, but I will join you for lunch later. So, I will see you then. Simon, the Deputy Chairperson, will take over.
- (The Deputy Chairperson [Mr Hamilton] in the Chair)*
934. **Mr Elliott:** Thank you for your presentation. It was very good. I have a couple of questions to ask. You concentrated quite a lot on leisure and tourism activities. Do you have any concerns about possible pollution from those industries?
935. **Miss Moorehead:** We advocate the more sustainable leisure activities, such as sailing and diving. However, pollution is a worry.
936. **Miss Geary:** That is also why highly protected areas are necessary. They are areas where nothing that damages the marine environment is allowed to happen.
937. **Mr Elliott:** Do you think that the income that would be generated from that leisure and tourism would make up for the downturn that other economic activities, such as fishing, would experience? As we heard from the previous presentation, the fishing industry would obviously be a loser.
938. **Miss Moorehead:** Ultimately, it will be a winner in the long term. If this is done properly and if these highly protected areas are put in the right places, it will see a return. Fishing will see a benefit from that. Leisure activities could cover the losses of commercial fishing. We

- just have to promote it in the right way and make sure that we tap into it and that people take part in it.
939. **Mr Ferguson:** When no-take zones and highly protected areas and so forth are put in place, you get an effect called “spill over”. That is where the bigger species that survive in highly protected areas grow, mature, breed and move outside the highly protected areas in search of food, thus providing a bigger catch for fishermen in the area. In the long term, that will suit them better, as they are getting bigger fish and bigger oysters and things like that. Those species came out of the sea the size of dinner plates 100 years ago, but, because of our neglect, they are dying off. Therefore, those highly protected areas will benefit fishermen and the leisure industry in the long term.
940. **Mr Rice:** I want to make a last point. Tourism helps in highly protected areas, because it makes stakeholders more aware that they are there and it increases their concern. As to leisure, we have suggested possible boat tours around Rathlin, but, to be fair, that may be slightly polluting. That would make it possible to bring people into the water for diving. It was mentioned that tourism could offset a downturn in the fishing industry, and that could happen people stayed in places overnight and were offered more activities that do not pollute the environment.
941. **Miss Geary:** KleenSocks, a type of bilge socks, for example, can stop pollution. They absorb the oil on the bilges of boats so that the oil does not contaminate the water.
942. **Mr Elliott:** We have talked to a lot of stakeholders about the Bill, and I do not think that we have heard from anyone who is opposed to it. Generally, we are all at one on that, but, once you get into the nitty-gritty of the MMO, you will find that a number of stakeholders who are opposed to it appeared before the Committee. Have you had any discussions with any of those stakeholders about their opposition to an MMO or about your support for it?
943. **Miss Moorehead:** Our primary objective was to include the highly protected areas in the marine conservation zones. The MMO is an instrument for putting that in place. We are not single-minded about it. We have not spoken to those stakeholders. We do not have anecdotal evidence on the MMO, because, initially, we were focused on the highly protected areas.
944. **Mr Elliott:** Of course, some stakeholders are also opposed to the highly protected areas in the MCZs.
945. **Miss Moorehead:** They will see a long-term benefit, but we recognise that, in the short term, it will be tough. We will have to compensate as much as we can for that.
946. **Lord Morrow:** I congratulate you on your paper, your presentation and your performance on the radio this morning. I would love to have you beside me when I do some of my radio interviews, because you do so well. Well done.
947. You strongly advocate an MMO. Do you feel that, without it, your aims and objectives can be achieved? Matthew, when it was put to you, you said that the polluter should be made to pay. That is fine, and it is a good theory. The polluter has to be caught. Pollution has to be policed and legislation has to be enforced. That all costs colossal sums of money, but we are not sure that your paper deals with that.
948. I am very interested in the example that you gave of the fisherman who fishes with a rod and line and who can sustain himself and keep the fish and chip shop going. As one who has been fishing with a rod and line since I was a youngster, I can tell you that, if I had been depending on that, I would have been dead of starvation long ago. It is very interesting. Are you sure that you are not taking us on when you tell us that this actually happens? I saw others around the Committee smiling when it was said that that fisherman can sustain the fish and chip shop and himself. I find that very good. Do you want to tell us any more about him? What secrets does

- he use, and how does he do it? Do you have his phone number?
949. Can you deal with the MMO in a bit more detail, please?
950. **Miss Moorehead:** We could get our objectives without it, but that would involve a lot of hard work and a lot of communicating back and forth so that all the information can be put the highly protected areas in the right places. It would take a long time, and we might not meet our deadline that we need to make for the European Union. So, a single body that has all the information and that will be responsible for co-ordinating all the activities is really necessary and would be a really efficient way of doing things with a lot less hassle.
951. **Lord Morrow:** Do you accept that, although you may be disappointed that an MMO does not exist, the emergence of a Marine Bill might change attitudes, create awareness and make the approach to the issue completely different? We have a society that seems to be built on quangos. As one who is not enthusiastic about quangos or the creation of more of them, I would not advocate an MMO. That is me being truthful with you.
952. **Miss Moorehead:** I can really only emphasise what I said. It is doable, but it is so labour-intensive. A lot of work has to be put in. The data really are everywhere, and people do not know where to go if the marine environment has been damaged. Do they go to the Department of Agriculture and Rural Development (DARD) or to the Agri-Food and Biosciences Institute (AFBI)? Who do they go to? If there were somewhere that they could go, that would be very helpful. Yes, the Marine Bill has created awareness, and, if we promote it more, we will have more awareness and there should be more calls from the public.
953. Could I ask you what you would advocate?
954. **Lord Morrow:** You have put it to us that we are the custodians and that we are the people who are going to be looking after it. What you are advocating is not adequate, despite your saying that in your paper. You reminded us of it, and rightly so. However, you are now saying that this is not adequate and that an MMO needs to be built on top of all that. So, we are getting into more layers of bureaucracy and red tape. Is there real accountability there? I do not think so. I think that an MMO is maybe not the way to go. We are in the throes of the debate on the issue, and we will see how it comes out at the end. Those issues will all be up there. Personally, at this stage, I am not an advocate for it.
955. **Miss Moorehead:** What about putting all the responsibilities in one Department?
956. **Lord Morrow:** That is what government is here for. We were told that things will probably change as a result of what we have here at Stormont; let us hope that they do. Let us hope that there is going to be accountability and that people will stand up and take responsibility. I hope that, whether that is now or in the distant future when we are long gone, that will be the case.
957. I am not an advocate for building more bureaucracy. We have a fairly bureaucratic system of government here, and it is not the simplest to understand. Even those of us working on the inside find it quite difficult to understand — I am sure that Mr Dallat would agree. We find it quite bureaucratic and difficult. I suspect that it would be even more so if you were sitting on the Executive, where conclusions have to be arrived at and decisions made in a certain way. Therefore, we would not want to put in other activities to slow the process down even further and make accountability even more difficult to get to.
958. **Miss Moorehead:** OK, but if you move those responsibilities and completely remove them from some places and give them to one body, you would have only that one-stop shop, so to speak.
959. **Lord Morrow:** Is that your idea of an MMO?
960. **Miss Moorehead:** It does not have to be independent, but it is about putting the responsibility in one place. That is what we are trying to understand.

961. **Lord Morrow:** The buck stops here. Everything stops with government — or it should. Accountability should be there.
962. **The Deputy Chairperson:** Carol very deftly turned that around. Maybe you two should swap places. *[Laughter.]*
963. **Mr Dallat:** I will be very brief. Like Lord Morrow, I was not very skilful with a rod and line. *[Laughter.]* Thirty years ago, you could take a half-decker boat 50 yards off the shore anywhere and you would be sure that, if you dropped a hand line with six hooks, you would have six fish. That is gone. That is the reason why the Marine Bill is critical.
964. **The Deputy Chairperson:** You have two oul' boys here reminiscing about by-laws. *[Laughter.]*
965. **Mr Dallat:** You young people do not understand.
966. **The Deputy Chairperson:** Thank you very much. I echo what others said. Thank you for the quality of your evidence and, above all, thank you for the time that you have taken out of your very busy educational duties to take this on. Irrespective of what comes out at the end of the Marine Bill, there will certainly be an Act, and you can be very proud of your input to that. It is great that, in this place, you have felt able to engage with us in this way. As Lord Morrow said, this place is sometimes a bit confusing and impenetrable, and that is just for those of us who work here. This is the first time that I have seen anybody who is studying at school or university coming to give evidence before a Committee. So, we thank you for that. You are trailblazers for that. Very well done for coming up here. Thank you very much.
967. **Miss Moorehead:** Thank you for listening.

24 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mr Chris Hazzard
 Mrs Dolores Kelly
 Lord Morrow
 Mr Peter Weir

Witnesses:

Professor Greg Lloyd *University of Ulster*

968. **The Chairperson:** You are very welcome, Professor Lloyd. Committee members already have a copy of your written briefing paper. Please give us a five- to 10-minute presentation, after which members will ask questions.

969. **Professor Greg Lloyd (University of Ulster):** Thank you very much for the kind invitation to come along to the Committee to say a few words. First, I wish to apologise to you, because normally my responses to consultation papers tend to be slightly more full, but, sadly, time worked against me. Therefore, I have made one or two points that I will talk to, if I may.

970. The marine environment represents one of the big challenges for modern societies, because it is a resource that, in scientific terms, is highly vulnerable and highly sensitive to change. It is very much what academics might call a “contested space”. In other words, it is not a clean slate. We are not coming to the marine environment and simply saying, “Let us plan for and manage it in the best interests of Northern Ireland”, or wherever. The marine environment is already demarcated by clear property rights. We have oil rigs, dredging rights and marine passageways. It is a potential location for offshore energy in

various forms, and its property rights are highly complex and contested. For example, we know from the North Sea Treaty and other international treaties that the marine environment is already delineated, and there are different responsibilities. We also know that there are different ownership regimes on the inner marine environment.

971. We have come to examine the marine environment in a very deliberate way. We increasingly recognise that it is so sensitive and something to which we need to pay particular attention. There has been a gradual move to try to manage the marine environment in many places. I always seem to reference Scotland as an exemplar of good planning practice, but, in the early 1970s — I refer to this in my submission — it introduced its coastal planning guidelines as the first attempt to look at the interface between land and water. The guidelines dealt with the presumption in favour of development or the presumption in favour of conservation of the coastal environment. Today, planning policy statements (PPSs), for which the Department of the Environment (DOE) is responsible, are the direct consequence of that initiative. Along the way, Scotland has experimented with going further out from the coast. It experimented with coastal zone management (CZM) and integrated coastal zone management (ICZM). More recently, in the Planning etc. (Scotland) Act 2006, it extended land-use terrestrial controls to 12 miles offshore, which was largely an attempt to deal with fish farming. Although fish farming is an important part of stabilising many remote rural communities, it can, because of its aggregated effect, bring with it an impact on the environment, which can then adversely affect other activities, such as tourism.

972. We have been moving slowly towards the marine environment as the next

- great challenge. I have two caveats to apply. First, it concerns me slightly that the mentality that we bring to managing and planning for the marine environment is too dependent on our terrestrial experience and thinking. The scientific dynamics of the marine environment demand a much more sensitive and nuanced approach. Linked to that, we as a society have to be much more aware of the value of the marine to us.
973. Secondly, and forgive me for being so dismal, but the economic context is a major concern. That could be another conversation. I notice that the political debates around the need to achieve economic growth seem to be gathering momentum. The austerity regime is being questioned. What worries me is that, in moving towards an agenda that is based on economic growth, we have not stopped to think about what we mean by “economic growth”. If it is simply growth and development at any cost, things such as the marine environment may be at risk. We need to be alert to that in our deliberations.
974. **The Chairperson:** Thank you very much. Economic growth is a constant balancing act between protecting the environment and developing the economy. How can we strike a balance? You rightly said that the marine environment is a contested space. We went to Scotland, and I know that you were involved in advising Marine Scotland on marine conservation zones (MCZs), and all that. How can we achieve that equilibrium? People need to be assured that we are protecting the environment, but fishing, sports and other industries are concerned about restrictions. How can we make everyone buy into this so that it becomes a win-win situation?
975. **Professor Lloyd:** That is the big question. It is about politicising it, with a little “p”. This applies to a lot of activities in society, but we need to promote a much more engaged and active conversation around the marine environment. We as a society woefully neglect serious intellectual discussion and debate, tending simply to gloss over it. We use terms that might mean different things to different people at different times in different contexts. I am not banging a drum or being too pious, but society has become overly materialistic and consumerist. We neglect to see the effects of that on the wider environment and, indeed, on wider society. We have a divided society, and we need to be alert to that.
976. Scotland — if I may reference it again — has extended into the marine environment in its planning reforms, and it now has its own marine legislation. Indeed, it has introduced a land-use strategy, which is very important for guiding strategic priorities. Scotland celebrates planning and leadership in managing the environment. It has turned the debate around. Instead of always being negative about and critical of planning and often making it a scapegoat, Scotland uses it in a very positive, promotional way. Indeed, the new Government in 2007 — the Scottish National Party-led Government — moved planning out of the Department in which it was sitting, which was the communities portfolio, and gave the remit for it to the Finance Minister, because they wanted to use it as a deliberate delivery mechanism. Obviously, there are issues and problems with that. However, I think that that was a vote of confidence in using the planning system. Elsewhere, I think that the way in which England — as I am a Welshman, you probably want me to point the finger at England — is being critical of planning at the moment and not using it in a positive way is lamentable. We need to engender a culture change around using planning positively to manage key assets such as our marine environment.
977. **The Chairperson:** Instead of putting the brakes on.
978. **Professor Lloyd:** Yes.
979. **Mr Hamilton:** On marine planning, your submission states:
- “a culture change needs to be encouraged to promote greater understanding of the marine.”*

980. That is very important. There may be a wealth of understanding of the marine environment in Northern Ireland, but that is slightly different from understanding marine planning. As you identify in your paper, marine planning and the development of marine plans is a key component of the Bill. Does expertise in and knowledge of marine planning exist in Northern Ireland, over and above an understanding of the marine environment?
981. **Professor Lloyd:** I agree with you. We are at the beginning of a journey. I became involved in looking at the potential of regulating the marine environment a long time ago, when the first offshore fish farms were being introduced in Scotland. At that time, regulation of the farms was the responsibility of the Crown Estate. When we think about it now in retrospect, we realise that the Crown Estate was in a very invidious position. It wanted to maximise the number of fish farms, because of the rental income from them, but it was the only judge and jury on whether one was appropriate. It took a long time, probably 25 years, before government realised that there are serious issues around managing the marine environment. For example, conflicts between yachting and boating interests and potential future interests, such as cruise liners going back and forth, underwater energy pipelines, and so on, need to be resolved. We need to tread very carefully. What I am really trying to say is that we need a deeper, scientific understanding of the capacity of the marine environment. We cannot simply use it and abuse it. We need to have greater understanding of how we should use it.
982. **The Chairperson:** Sorry, Cathal, you should have called before Simon. I saw only Simon when I looked around.
983. **Mr Boylan:** It is not a problem.
984. Thank you very much, Greg. You are welcome back. I have just a couple of key points to make. One of the important points that you highlighted is that this is not about what we know about terrestrial planning and expertise; rather, it is a different model altogether. Scotland appears to have engaged stakeholders. We had a very good presentation and meeting over there. From your experience of how Scotland has gone about things, what we can learn from it? What do you think are the main differences between its approach and ours? No matter what broad principles we set down, it is about the outworkings of all that. I believe that one of the key elements is how we manage it. Based on your experience, can you give us a wee bit of insight into how we should proceed?
985. **Professor Lloyd:** The important thing is to have that scientific basis and understanding from all the interest groups. People will come at the marine environment in different ways, wearing different hats and with different priorities. In Scotland, for example, the proposal to have a new coastal national park on the west coast of the north of Scotland was effectively stopped by fishing interests, which had very legitimate concerns about it, and they brought the proposal to a halt. Managing that is very important, and, as yet, we do not have a mechanism by which we can reconcile all the different viewpoints in a respectful conversation. If the planning experience over the past 40 years is anything to go by, people will end up shouting loudly at each other. People become very polarised and then become very angry with the system. The terrestrial experience is that people then disengage, and there is a politics of resistance to positive planning, which is problematic. It would be a tragedy if we were to get that wrong with the marine environment.
986. If I may, I will make one little comparison. One of the issues around the marine environment is that it is effectively characterised by large perceived common property rights, and common property can lead to potential tragedy. We can over-exploit it, overuse it for polluting or sewerage or overfish it. Therefore, we need rigorous understandings about the limits of what

we can use the marine environment for. Then we need to think very carefully about how we regulate and enforce that.

987. **Mr Boylan:** The Scottish model has been based on scientific information, which is grand. I think that that is the way to go, because the fear out there is that certain areas will be designated with a lack of knowledge and understanding applied, and then we will have the rebound from that, and stakeholders will ask why that is being done. Do we need to look at having some pilot programmes? I do not know what the Department's thinking is on the issue, but, before we do any of that, we will need to look at how we approach the designations.

988. **Professor Lloyd:** That would be an appropriate way forward, because we are dealing with such a sensitive resource. Again, I will draw quickly on the Scottish experience. In those days, national planning guidelines were introduced for the coast for retailing, or whatever, and, over time, they morphed into planning policy statements, which are the modern equivalent. However, in the early days, when a national planning guideline was published, it was accompanied by two other documents. One was a planning advice note, which set out best practice for people who might be involved in the issue. The other document was a planning information note, which presented the scientific evidence and basis for the policy. Therefore, developers, interest groups or environmental bodies would look at the evidence that had been presented in the planning information note, and they could then understand why the priorities had been set. If they decided to challenge the evidence, that was the basis of an open discussion. These days, we tend to produce a policy and then everyone has a pop at it because there is no understanding of the intellectual background to it. Therefore, in piloting different marine environments, it would be very appropriate to use those different instruments.

989. **Lord Morrow:** I, too, welcome you, Professor Lloyd. Your paper is very

interesting. The Chairperson touched on the issue that I wanted to raise. In your paper, you state:

"Marine spatial planning is a relatively new concept",

990. which it is. The Chairperson asked you about other users, particularly the British Association for Shooting and Conservation (BASC) and groups of that nature, and I am not sure that your paper addresses that. I may have missed you commenting on that, and, if I have, no doubt you will tell me. However, I am interested to hear your comments on accommodating all users, particularly those who come from the sporting fraternity and have had an association with the marine environment for a long time.

991. **Professor Lloyd:** First, we cannot ignore the interests, so we have to find an appropriate democratic, open and transparent mechanism. There is no doubt about that. Again, I will refer to the Scottish experience. When it reformed its terrestrial planning, which included part of the marine environment, it engaged in a very deliberate programme of what it called "culture change". That mimicked First Minister Alex Salmond's use of the term "national conversation". The planning community held national summits, where it brought together all the interests, many of which may have been instinctively antagonistic to one another, and many of which were very protectionist of the use of the marine environment. It was a way of bringing them all together to talk. It was a long process — there is no doubt about that — but it is a question of promoting a better understanding of the fact that there are different interests.

992. For example, when I was a young man, I surfed, and I hated anything that stopped me from surfing. As I got a little bit older, and hopefully a little wiser, I realised that there are lots of other competing interests, and I am a bit more mature enough to be able to accommodate them. However, we do not seem to have the media to be able to promote that sort of general understanding, but we do need a

- culture change. We need a new, fresh appreciation of all those interest groups.
993. **Lord Morrow:** You have flagged the need for a deeper capacity and understanding of the marine environment. I think that those were the words that you used. We are lacking, and it is therefore important that we get the legislation right from day one, which will not be simple. To do that, we need to have everybody on board, or at least for all the stakeholders to be consulted in a way that makes them feel part of the whole process.
994. **Professor Lloyd:** If I may say so, I do not think that it is a question of simply going out and consulting. It is actually about engaging, and that must be ongoing. I am not suggesting that this is the case, but if, for example, oil and gas were found off Rathlin Island, that would raise a huge agenda of issues around the management of that coastline and the sea. Think of all the different interests involved there. It would be huge. Therefore, we need to be very engaged with the issue.
995. **The Chairperson:** We know that Scotland did very well on engaging with the various sectors. I thought so anyway. How can the legislation require, for example, the Department to be sensitive and nuanced in developing its marine plan?
996. **Professor Lloyd:** It needs to be brave and outspoken. I really think that as a society — not Northern Ireland as a society specifically but Europe — we shy away from the difficult issues. You mentioned a win-win situation. I do not think there can ever be a win-win situation, frankly. There will always be losers of some sort, and we need to have cognisance of that. I lament the fact that, as a society, we do not discuss issues fully enough, extensively enough or for long enough. My heart sinks when I open the newspapers and see the shallow, selfish little stories that are peddled in the media. Sorry, I will not get on a soapbox.
997. **Mr Hamilton:** Keep going. *[Laughter.]*
998. **Professor Lloyd:** We do not see very deep, considered discussions, and that is to our detriment.
999. **Mr Elliott:** Thank you very much for the presentation. You said that the marine plan needs to be brave and outspoken. How would you have felt, when you were surfing, if it had been banned?
1000. **Professor Lloyd:** I would have been very angry as a young man, but, having said that, life changes. Surfers today are among the most effective challengers of marine pollution. For example, there is an organisation called Surfers Against Sewage, which is a very good lobby point. All that its members are doing is articulating their viewpoint, and I think that, as Lord Morrow, there are a lot of interests that we need to capture and reflect. It is incumbent on us to find the means of doing that, and I happen to think that that means is through a prolonged conversation about how important it is, what the trade-offs are, and the fact that there may be winners and losers. We have to talk about that rather than pretend that it is not happening.
1001. **Mr Elliott:** I am afraid that, to me, what you say sounds conflicting. You say that you want protracted discussions and debate, but also there are going to be winners and losers. If people are definitively going to lose out, what is the point in some of the discussions? You have your mind set in the first place that people are going to lose out.
1002. **Professor Lloyd:** I do not think that I am saying that people will definitely lost out, but, inevitably —
1003. **Mr Elliott:** I think that you are.
1004. **Professor Lloyd:** OK, I will retract that. When any development takes place or any natural resource is exploited, or whatever, there will be beneficiaries and benefits, but there will also be some costs. Too often, the political system and the planning system get bogged down in trying to manage the expectations that have been raised unnecessarily or the costs that follow. People react against that. If we have

- conversations up front so that we can talk, and explain and understand that there might be trade-offs, we may get to a better position. That is what I am trying to say.
1005. **Mr Elliott:** I have one final point to make. You said that a greater understanding of the marine is needed, but environmentalists, fishermen and even Departments hold very differing views on that. Even scientists differ in their views of the marine environment. Who has the authoritative opinion?
1006. **Professor Lloyd:** There has to be leadership from government. It should hold what evidence there is about those understandings.
1007. **Mr Elliott:** Yes, but you must accept that there is very conflicting evidence.
1008. **Professor Lloyd:** Absolutely, but that is politics. You have to manage the conflicts and mediate to achieve an understanding to which everyone agrees. If I can be rude, that is political leadership; that is what is required by a Department. It could establish a specialist unit, for example, that concentrates on the marine and begins to learn about it.
1009. **Mr Elliott:** That is fine, but Cathal could take one view of a scientist's opinion and I could take a totally different one.
1010. **Professor Lloyd:** In England, the Foresight Group looked at land use and the different values that we should set for land. That managed to reconcile fairly quickly the different scientific viewpoints of land values, such as whether it is for agrarian use, development, water, or whatever. Achieving a greater understanding is doable, but it needs attention and serious engagement. I would not put it up as a hurdle.
1011. **Mr Dallat:** Professor, I found your presentation riveting. The only thing that caused me a little palpitation was the suggestion that planning should become the responsibility of the Department of Finance and Personnel (DFP). You will understand that our Minister of Finance and Personnel has very strong views on the subject, particularly when it comes to the bovine species. Perhaps you will explain that a bit more.
1012. On a more serious note, I am looking forward to your students coming later. I wonder whether they are the key to helping us reduce "contested space". Perhaps there is hope in the future that, rather than just getting involved in gymnastics, the whole community can have a more mature understanding of the need for this generation to protect the environment for the next generation.
1013. **Professor Lloyd:** I sincerely hope that. It is our responsibility to encourage that conversation and allow young people in the generations coming through to engage with it, because, as you say, they will be the future stewards of that environment.
1014. It is a huge issue and a huge problem. The challenges are absolutely massive because we have already done terrible damage to the natural environment. I have been having conversations recently with colleagues from the Netherlands. They are beginning to think about how to plan for or anticipate a future in which there is no growth but in which there are very serious environmental parameters and limitations. There may be very serious social and other characteristics, so how do we plan? We have never really done that. The environment worries me, because political thinking in the UK for the past 50 years has been based on pursuing economic growth, with a very low ecological consciousness. We do not have debates about the ecosystem of the marine environment. The ecosystem is multilayered and very complex, and it links together in all sorts of ways. If you tamper with one little bit of it, that affects other bits. I agree with you that we need the younger generation to drive it.
1015. **Mr Dallat:** Will you promise not to pursue the notion of planning moving to DFP?
1016. **Professor Lloyd:** I happen to think that it is a very good idea. The Scottish experience was that planning was suddenly transformed, even in

- government, from a problem to a positive delivery mechanism. It works. I believe that Mr Swinney is very pleased with it.
1017. **Mrs D Kelly:** Thank you for your presentation. I agree that you will not be able to please all of the people all of the time, so you have to do the right thing.
1018. You said that some areas should be zoned for conservation and some for development. What primacy is given to the scientific evidence? How much scientific evidence exists? How much of it is conflicting? Has there been any analysis performed?
1019. **Professor Lloyd:** There is an awful lot of scientific evidence. The Crown Estate recently undertook some research — it is logged on the website of the Planning Exchange Foundation (PEF) — that looked at a way in which all the information could be assembled so that all the scientific evidence from all across the world, most of which is in the form of reports or evidence on the internet, and so on, can be brought together. The thinking of the Crown Estate is that if that is brought together in a systematic way, everybody who wishes to engage in debates around the marine environment at least has access to a level playing field. One of the things that happens with terrestrial land-use planning, and the reason that we have conflicts, is that, quite often, information is dysfunctional: one person has some information and others have other information. They may interpret it in different ways as well. If you create a common database, we may be able to promote a better understanding, or at least a more considered basis for discussion and debate.
1020. **Mrs D Kelly:** You also mentioned the importance of the economy. The marine environment has a lot of attractive renewables opportunities. I think that many people acknowledge the fact that the technology is fast changing. Therefore, any marine planning would have to be much more flexible than is currently the experience with terrestrial planning.
1021. **Professor Lloyd:** I could not agree more. Equally, however, we as a society need to invest in terrestrial planning. It is an important part of how we make the best use of limited and scarce resources. We have a public interest to meet. It is incumbent on Governments to meet that, but, sadly, it is not always the case that sufficient attention is paid to the resourcing of the planning system. That will be an absolute requirement for the marine environment, given the very complex scientific evidence that will be involved, or else we will simply be back into polarised debate, shouting loudly and perhaps reaching second-order decisions. I argue very strongly that, as a society, we should invest heavily in the skills base for the specific skills that we need and also in engineering the debate and understanding.
1022. **Mrs D Kelly:** And it cannot just be an add-on to existing —
1023. **Professor Lloyd:** No.
1024. **The Chairperson:** I have a follow-up question. One of the stakeholders talked about the lack of capacity in Northern Ireland to deal with the marine environment. You talked about data and how everything needs to be based on scientific evidence. Do we have the capacity to do the planning and designation, and do we have enough information?
1025. **Professor Lloyd:** Probably not at this point. There is probably a lot of invisible capacity that we have not teased out. Perhaps, as part of this conversation, people, groups and communities may come forward and tell what they know. There is no doubt that capacity can be nurtured. However, it will need a mindset change. We need to have a new attitude to the way in which we look after our environment. We have to put in place the planning and management arrangements to look after it.
1026. **The Chairperson:** Marine Scotland has a lot of staff in different areas doing research and development and touching on other areas.

1027. **Professor Lloyd:** I think that that is a deliberate political priority, which is important.
1028. **Mr Boylan:** That is a valid point. With anything new that you introduce, there is a level of capacity-building. It should be about what the Bill sets out to do and what we can achieve, as opposed to setting our target too high. Do you believe that, in terms of what we put on paper, we can achieve what we set out to do?
1029. **Professor Lloyd:** I think so, and I think there are some lovely ideas in the proposed arrangements. I was very pleased to see the attention given to marine conservation, because, again, the marine environment is such a complex thing. It is unlike me to say this, but we should be very conservative in the way in which we use it.
1030. **Mr Hazzard:** Thank you very much for your presentation. You said — I agree with you — that societal norms and behavioural balance are tipped towards consumerism and materialism, and you spoke of the dangers of that. You also mentioned the need for a nuanced, extended debate. In what forums or arena do you think could most productively take place, considering that our media have gone the way they have gone lately?
1031. **Professor Lloyd:** The political forums would be important, but it is also about encouragement, and perhaps the media need to be encouraged to take on those debates. It is risible that, all through August, the media admit that it is silly season, and they run stories that are appalling in that they are so trivial. There is an opportunity for some very deep, considered thinking. It is not new, in a way. People are beginning to write about those things and challenge them. I was reading a report recently that suggested that we may be just at the point of having a completely different approach to our values in society, and that will be very interesting. Will Hutton, the columnist, once said that we have got to get to a position in which anything to do with the public sector is not immediately seen as something that is bad. Let us get to a position in which there is a true partnership and greater respect for the environment.
1032. **The Chairperson:** There are no further questions. Thank you very much for coming.
1033. **Professor Lloyd:** Thank you very much indeed.

29 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr Tom Elliott
 Mr Chris Hazzard
 Mrs Dolores Kelly
 Mr Francie Molloy
 Mr Peter Weir

Witnesses:

Mr David Knott	<i>Belfast Harbour Commissioners</i>
Mr Peter Conway	<i>British Ports Association</i>

1034. **The Chairperson:** I welcome Peter Conway from the British Ports Association (BPA) and David Knott from the Belfast Harbour Commissioners. We are quite pushed for time, because we have to finish by 2.00 pm. Please give us a brief overview of your written submission, which has already been circulated to members, as that will allow more time for questions from members afterwards.
1035. **Mr Peter Conway (British Ports Association):** I am representing the British Ports Association today, but I am the chief executive of Warrenpoint Harbour Authority. Warrenpoint is the second freight port in Northern Ireland and the fifth on the island of Ireland.
1036. I am very grateful for the opportunity to provide evidence to the Committee. The BPA membership includes the ports of Larne, Coleraine, Londonderry and Warrenpoint. Between them, they handle eight million tons of trade through Northern Ireland and almost one million passengers. As the marine position paper from the Department of the Environment (DOE) states, Northern Ireland has always been dependent on the sea for trade and on its sea ports as gateways to that trade. Northern Ireland ports are key parts of the European transport network, and the ports are making a particularly important contribution to the development of offshore renewables. In themselves, they are significant employers, attracting related businesses, growth and regeneration.
1037. Of the four ports, three are trusts and one, Larne, is a private port. Nevertheless, each has to operate without subsidy or strategic direction from either the Northern Ireland Government or the UK Government. Public policy, such as the decision to promote a Marine Bill, is extremely important to us. We believe that ours will be one of the main sectors affected by it. We have a very particular interest that may be quite distinct from other expressed interests, which are likely to concentrate on the environment and conservation. We, too, have major environmental responsibilities, and we have to run businesses.
1038. To further set the scene, I should also mention that there is a UK national ports policy statement, and although it is not relevant to Northern Ireland because ports policy is devolved here, it should not be forgotten that the trade forecasts for the entire UK show strong growth in port trade until 2030. On the island of Ireland, ports are an important economic barometer of what is happening in the economy and are a very important economic driver for local regions. That creates the context within which the port development plans will be submitted, and it is another part of the planning framework.
1039. Finally, it should not be forgotten that a considerable amount of legislation already protects our coasts, including the habitats directive, the environmental impact assessment regulations, the water framework directive and the

- soon-to-be implemented marine strategy framework directive (MSFD), as well as the UK marine policy statement. They all introduced tough regimes on environmental standards, including for water quality and impacts such as underwater noise, marine litter and non-indigenous species.
1040. Ports will be involved in one way or another in all these initiatives. Indeed, all the ports in Northern Ireland have been involved in environmental impact assessments for many years. In Warrenpoint, for example, we hope to build a new 200-berth yachting marina, and we have produced a thorough and comprehensive environmental impact assessment for that. We are very conscious of our responsibilities to the environment, and we work very closely with the environment.
1041. If I may digress for a moment, I will distribute to members copies of the accounts for Warrenpoint harbour, which were published just last week. Members will see from the photograph on the front cover that we are in an area of outstanding natural beauty in the Mourne mountains, and we value that. My management group and I take the very strong view that business and industry can, should and must work in harmony with the environment. However, we are also required to run businesses. I am digressing, because I am familiar with my own port, but we employ more than 200 people of all shapes and sizes in the Newry and Mourne region in management and blue collar jobs. We have to ensure not only that we all work in harmony with the environment but that these jobs are protected and preserved so that there is a balance between the requirements of the Marine Bill and those of business and industry.
1042. Nevertheless, as we say in our statement, we support the principles of the Bill and believe that, if it is implemented in the right way, it should make a helpful contribution not only to conservation but to ensuring that the planning regime is efficient and fit for purpose. We do not seek to make any amendments to the Bill at this stage,
- as we believe that the real test will come when it is implemented. I will go over this quickly, but one area that we are particularly concerned about is the marine plans. We are of the view that there should be a single plan covering the whole of Northern Ireland. The word “plan” is potentially misleading, as it suggests some kind of blueprint for the coast, whereas we support coastal mapping that gives, for example, a full description of current activity, protected areas, proposed developments and so forth so that it can inform the planning process.
1043. The plan should not change the role of government in new developments. The commercial initiative must remain with the ports. There are no indications that the Government would want to have such a responsibility, but it is important that the plan is the framework, not the blueprint, from which everything else flows. In fact, all those principles have been carefully nurtured in developing plans in England.
1044. A difficulty with marine plans is the number of stakeholders that are potentially involved. We know that a statement of public participation is required, and we have no problem with that. However, there can be great difficulties in analysing a huge volume of responses and assessing their significance. There needs to be some system of weighting so that a proper balance can be struck. Again, that has been a significant issue with the first English marine plan, so, no doubt, officials in Northern Ireland should keep in touch with their counterparts in England.
1045. Finally, we are very much of the view that the plan should be completed before any marine conservation zones (MCZ) are identified. There should also be a sufficient opportunity for proper consultation on the sites and their effects, particularly where it is probable that site protection will have a serious impact on commercial activity. The Bill requires that the identification of sites also takes economic and social considerations into account. Final

- decisions need to take into account the UK marine policy statement, which acts as a guide, and consideration needs to be given to where there is a site that could be designated and to the effects that that would have on a planning application. It is important that planning blight is avoided, but I am sure that that is something that you find from your responsibilities across Northern Ireland.
1046. The Department of the Environment's marine position paper makes some very important links between the marine and terrestrial areas of planning. Although this is strictly not part of the Bill, we hope that, when marine plans are in place, the opportunity will be taken to ensure that there are good links so that marine development is complemented by developments on land.
1047. Where our port in Warrenpoint is concerned, we are very keen for the Department of the Environment to progress links with the Department for Regional Development (DRD) to the ports, particularly the southern relief road around Newry, which is a dreadful bottleneck for us to have to contend with. There are major environmental advantages to having that dealt with. There is a proposal for another crossing near Warrenpoint harbour, but that is not the one that we would propose — our concern is the southern relief road.
1048. All in all, we believe that real opportunities are presented by the successful passage and implementation of the Marine Bill, so we are in favour of it. Experience in other parts of the UK can certainly be used to pre-empt problems.
1049. **Mr David Knott (Belfast Harbour Commissioners):** I represent Belfast Harbour Commissioners, and ours is a trust port. Without going over the statistics, which are in our written submission, it is probably worth making the point that we are Northern Ireland's principal maritime gateway and that we handle about 60% of the trade coming into and out of Northern Ireland, as well as, increasingly, trade to the Republic. We currently handle more than 17·5 million tons of produce in a year and well over 300,000 passengers travelling in and out through the port. Therefore, ours is a critical piece of infrastructure for the Northern Ireland public.
1050. Belfast Harbour Commissioners welcome the Bill. We have a few concerns, and Peter alluded to some of them. We raised those concerns in our written submission and in prior consultations with the Department of the Environment. The key thing is that we look forward to a common-sense approach to marine planning, licensing and enforcement, and we probably have a one-off opportunity here to get this right. We are aware that there have been problems in some of the other jurisdictions, and I hope that we can avoid those by the way that we introduce the Bill here.
1051. It is important that the Bill recognises and does not impede the vital role that ports play both for the Northern Ireland population and in our economy. From a harbour authority's point of view, it is important that matters of navigational safety are not compromised. It is essential that the Bill takes that into account, particularly when the marine plans are put together. Nothing in the Bill should be allowed to diminish navigational safety measures, especially those that are already in place.
1052. We feel that the marine conservation zones need careful, thoughtful and extensive consultation. We recognise their necessity, and, like Peter and his organisation, we live with the sea and appreciate its value. So, we are not anti-environment by any stretch of the imagination; we want to work with our environment for everybody's benefit. It is very important that the selection and designation process for marine conservation zones is based on the consistent application of sound science, particularly sound scientific data. That needs to be done in accordance with agreed and published policy, some of which is already out there, and it must take account of essential socio-economic factors. One of the lessons that is coming out of the implementation

- of the marine conservation zones in England is that those socio-economic factors become very important when selecting sites, particularly when comparing two possible sites. The general experience of some English ports in this area has not been good. In some cases, we know that scientific principles have not been followed, and, in other cases, the physical conditions that prevail on sites have not always been given appropriate consideration. Again, it is very basic stuff, but it is very important that, when we get into designating these sites, we do it properly. We should also take a top-down approach so that we work within the policy rather than put the cart before the horse. As Peter said, we should not designate marine conservation zones and then look to see whether they fit the policy; they should be developed in accordance with the policy.
1053. It is particularly important from our point of view, as well as for a lot of other commercial interests and that of the public in Northern Ireland, that the establishments of those marine conservation zones do not impact negatively on port operations and essential port development. Of course, those comments apply not only to marine conservation zones but to other developments as they come along. Navigational safety in particular needs to be taken into account for any development in the marine environment.
1054. In all those situations, the key to success essentially involves effective consultation processes, and we have seen that with a number of other activities in recent years here. In related environments, for instance, the offshore renewable energy strategic action plan provided a very good example of good consultation. All the stakeholders came together and engaged, which is a prerequisite for a successful outcome. So, it is very important that those consultation processes are characterised by transparency and open stakeholder dialogue. We need to be able to speak honestly to each other in an open environment.
1055. To ensure overall coherence, it is important that the Bill recognises and takes account of the UK marine policy statement, which we referred to, and the national ports policy statement. Again, we have two areas of agreed policy, and it is very important that we do not stray outside those. We also need to ensure that, as the marine plans come into play, they are synchronised with other marine spatial plans either in this or other jurisdictions. We believe that the document creates the potential for emergency by-laws to conflict with some existing policies. Although we understand the need for emergency by-laws, their designation and use needs to be very carefully controlled so that they are not used as a vehicle for operation outside the agreed policies.
1056. **The Chairperson:** Thank you very much. You both certainly gave very thorough presentations and made a lot of valid points. I appreciate your point about wanting the Bill to take cognisance of existing strategies. How do you feel that we can best make the Bill work with the existing strategies, including the UK policies and other pieces of legislation that you mentioned, so that your activities and development will not be negatively impacted on?
1057. **Mr Conway:** Experience has shown us that there are sometimes clashing interests. For example, in Carlingford lough, where I work, we have two jurisdictions. We have significant fishing interests, particularly mussel fishing grounds, and a commercial port. We also have tourism interests and responsibilities. However, all those are beginning to come together, and, as David said, consultation and communication are the answer. If we look on the Marine Bill as a good foundation for all those partners and parties to work together, it can and should be welcomed.
1058. Already in Carlingford lough, for example, the Loughs Agency has taken into account the concerns of the shipping channel, so the designation of the mussel farming area has been pulled back from the channel. Heretofore, it

- was right up against the channel, but that was not suiting the fishermen and certainly not the navigators. As we all talk together and communicate, using something like the Marine Bill as a base could benefit all parties.
1059. **The Chairperson:** We have certainly seen good examples from Scotland. They have engaged to a great extent with the fishing industry and other stakeholders.
1060. **Mr Conway:** The Northern Ireland environment and heritage service has to be complimented for the way that it engages with the ports. I have mentioned dredging to some of the representatives here. It is a very costly exercise, and some of our competitor ports have to dredge 24/7. That includes many ports in the south of England, such as Dover, as well as Heysham, where we have the direct link to. However, Warrenpoint and Londonderry have to dredge only every six to seven years.
1061. We just completed a £1 million-dredging programme to maintain the channel and ship fairway, but we have some concerns about the disposal of the dredged material. We are required to take it to what we would call a dumping ground — it is called a disposal ground now, I believe — seven miles off the coast. That is a major cost in fuel, as you can imagine, and it is not very good for the environment. We believe that that material, which was generated by glaciation 60,000 years ago, should really be brought ashore and used for agriculture purposes or land reclamation or even put back into the river further upstream. So, that is just an example, and, in fairness to the people who grant the Food and Environment Protection Act 1985 (FEPA) licences, they are quite prepared to engage on that issue, but we need to move it along a little bit. Again, that is an example of communication. So, the Marine Bill could be beneficial if it helped us with such issues.
1062. **Mr Boylan:** Peter, you are very welcome. I would like that question to be put to the Department, because the point about dredging is very valid, and perhaps we could look at it. That may make it more beneficial for the areas that are opposed to it. Perhaps we can get a response from the Department on that specific point.
1063. You highlighted a number of issues, and I will pick up on four of them. Either of you can answer. You highlighted your concerns about by-laws and how they can work better. You highlighted clause 14(6), which deals with designations, and you said that you are concerned about designating an area where there is an “urgent need” to do so. Can you comment on that?
1064. You asked how licensing would impact on activities, and you discussed the relationships that are involved in designating MCZs through, for example, the British model. What have you learned from that model, and what can we learn?
1065. **Mr Knott:** Following on from what we were saying in the lead-in to this, I will make a point about dredging. I reinforce what Peter said about it, which was that the Northern Ireland Environment Agency (NIEA) does a pretty good job on licensing. We have found that it is easier to talk to, it knows what it is doing and it has a very competent team. That is very important from our point of view. Under the water framework directive and within a programme of measures, a series of objectives has been established. One of those objectives is to develop a maintenance dredging protocol for Northern Ireland. That is very important to the major ports, and it could be quite significant to some of the fishing ports, such as Kilkeel, which needs to carry out dredging, if not every year, quite frequently. The idea of having a maintenance dredging protocol is that there will be an agreed baseline for ports that are required to carry out maintenance dredging so that we know when and how we will dredge and what the impact of that dredging will be. Subject to no significant changes in that environment, rather than having to go through a detailed

- application process or, quite possibly, an environmental impact assessment (EIA) for certain projects, we could work within the dredging protocol. From our point of view, it would cut down on red tape, and it would give the public and other interested parties the confidence that we are working within a set of agreed guidelines and to standards. From the Northern Ireland Environment Agency's point of view, it would cut down on repeat work for it. To us, that is important, and I think that we should take every opportunity to progress that particular protocol. Again, it needs to be done in a consultative manner, and it will be a confidence-building measure for everyone.
1066. I will go back to the by-laws. We do not have big issues with the majority of the Bill, but in our written submission, we picked up on a few clauses that might be open to interpretation or that perhaps need tightening up a bit. One of those is the clause on emergency by-laws. We felt that the way that that clause is worded is all-encompassing, and I know that I used the word "draconian" in the submission. As it sits, it could be implemented with no consultation at all. I think that consultation is important, even on emergency measures. Everybody appreciates that emergencies occur and that we have to take urgent action. We would not want to delay such action. However, I still think that a degree of consultation is necessary before that type of by-law comes into being to check whether it is in line with the policy agreements. We cannot have somebody just stepping outside the rules on a whim or because of unproven evidence.
1067. **Mr Conway:** We could see situations where, for example, an emergency by-law to restrict the use of jet skis in harbour areas could be beneficial. So, it is not as though we do not recognise that there are situations where that could be beneficial to ports. Following on from what David said, we would be concerned that something like that could be put in place without consultation. In that case, there could be consultation with boating organisations, and so on. So, it cuts both ways.
1068. **The Chairperson:** I presume that that clause is really a general provision that could be used to implement a by-law in the case of an emergency, such as sudden pollution. The provision will be very rarely used, but it is there so that the Department can act in an emergency. I would say that it will not be used willy-nilly.
1069. **Mr Boylan:** On that point, I would argue that it is about the proper management of activities and everything else. I know that that is the key to it all.
1070. **Mr Knott:** I just want to develop the point about proper management, although I might be digressing a little. Again, I know that we certainly made that point in our written submission. One of our concerns is about the need for appropriate consultation prior to the designation of marine conservation zones.
1071. At the same time, management controls need to be put in place to manage a marine conservation zone once it is in place. I know that this will be a thorny issue, but those two activities really need to be carried out more or less concurrently, because it is very difficult to respond to a consultation on a conservation zone without knowing what measures need to be applied to protect it.
1072. Again, the marine environment is very dynamic. I appreciate that, because the marine environment continuously moves and species move, some zones may not be cast in stone physically. I certainly expect that to be the case. I am sure that there will be requirements to allow for that. When we consult, I think that it is important that we have a good idea of the type of management controls that will have to be put in place so that we get a real idea of the actual impact of designating an area.
1073. **Mr Conway:** I think that it is true to say that, over the past 20 years, the management of ports worldwide, particularly in the Western World, has improved to the extent that we genuinely

- recognise that environmental issues are an important part of business. You will see that when I distribute my report. Believe it or not, I am an economist by profession, so I know that from a business perspective, you can, in fact, demonstrate that good working relations with the local community and environmentalists are beneficial to the bottom line. I think that business and industry have woken up to that in the past 20 years.
1074. I just want to give you a couple of examples from our area. We are the second commercial harbour in Northern Ireland. We have a container service to Cardiff and Bristol, and we have a twice daily roll-on roll-off service to Heysham. However, we also have a fishing fleet, and we now have plans for a 200-berth yachting marina. So, we have tourism, fishing and commercial sectors all working together, side by side. The tourism side of it would not work if we were damaging the environment.
1075. So, there are three legs to the table. I know that Belfast is also developing plans to open up the harbour to the community more and to create recreational uses for harbour facilities. We have the return of species such as the heron to Carlingford lough, and we have black guillemots. We have even put in nesting boxes ourselves. So, it would be incorrect to assume that business people are negative and are not prepared to work with environmentalists. It is really quite the opposite. That is why we welcome the Bill but pose a few questions that remind people about the jobs that are involved and the importance of the economy and that say that we should all work together.
1076. **The Chairperson:** Absolutely, and you are right: the environment and business activities are interrelated. If the environment is damaged, business activities could be diminished.
1077. **Mr Boylan:** You did not respond to the question about licensing.
1078. **Mr Conway:** David may want to answer.
1079. **Mr Boylan:** I asked whether licensing would impact on your activities. Are you happy enough with the licensing elements?
1080. **Mr Knott:** From a Belfast point of view, licensing works fairly well at the moment. It has undergone a review over the past two to three years, particularly since the national Marine and Coastal Access Act 2009 has come into place. Certainly, our main requirement would be for licences to dispose dredging materials at sea. Again, our situation differs slightly from Peter's in that a lot of our dredgings are not what could be classed as high-quality aggregates. Much of it is Belfast sleet, which is a not particularly nice material that does not have too many uses on land. However, if we dredge in areas where materials are reusable, we should look at having a little extra flexibility to enable us to reuse materials. That fits into other government priorities.
1081. The ports and harbours are keen to do that. As far as climate change is concerned, we are on the front line, as we are at that interface between the sea and land. So, when we get into changing sea levels and so on, we really will be the people standing on that front line who will face that situation daily. We are not averse to doing what we think is right, particularly if it involves cutting our carbon footprint through reusing materials and reducing waste etc. We believe that that is the right thing to do. As Peter said, we probably need a little more freedom in the legislative regime. That may not apply to us so much, but NIEA officials could be given a little more room for manoeuvre through active management rather than passively working to a prescriptive list.
1082. **Mr Conway:** The officials in the environment and heritage service are very prepared to engage and are very constructive. They do not hold up any applications for licences. They are familiar with the ports' requirements, and they work closely with us. The monitoring buoys are established and put in place when required. We really have a good working relationship with

- that organisation. However, I believe that disposal at sea is something that the service has inherited, and, in a way, it is blocked from changing it. We believe that there is now an opportunity and that the service would support looking at it. That may not be required in all ports — maybe not in Belfast but certainly in Derry — where the dredging material is mainly sand that can be used for beaches, for example. In our case, where the material is organically good, it could be used for farming rather than being taken seven miles out to sea, which is expensive.
1083. We are on the front line of other environmental issues. We are looking at the servicing bases for the potential wind farm operation off the County Down coast, and we are involved in the potential development of biomass. Of course, when you look at transport and at its costs and environmental and carbon footprints, what they call “short sea shipping”, which I would not recommend anyone saying in a pub late at night — *[Laughter.]*
1084. **Mr Elliott:** You would need to know what you are doing at that minute.
1085. **Mr Knott:** Yes, exactly.
1086. **The Chairperson:** I would not try to say that even in the daytime.
1087. **Mr Conway:** Nevertheless, the view in the ports industry, and certainly in the BPA, is that getting more goods on to ships and using them to carry a lot more than trucks would have a major impact on reducing the carbon footprint. Goods could be shipped back and forth between this island and Great Britain and within this island, for instance, from Belfast to Cork.
1088. **Mr Hamilton:** Peter has sort of answered my question. I was going to ask whether it was fair to summarise your position as not being against the Bill but supportive of it, while being wary of how it would be implemented. That seems to be the view that probably everybody that we have had before us has had. That view has questioned who will not subscribe to a Bill that is going to protect the marine environment much better than previously, but the suggestion has been that in doing that, we should be careful of how the Bill will impact on their fishing or shooting businesses, for instance. That seems to be a fair summary of your position as well.
1089. I will move now to the emergency consultation. I cannot remember whether that came out in evidence that we heard a couple of sessions ago, but the shooting and country sport sector might have been concerned about it as well. I think that others might have been concerned about that as well. People were concerned that something could come in all of a sudden and that, perhaps, another incident could be slipped in under the guise of being an emergency even though it was not. They were suggesting that a telephone call might be sufficient consultation in such circumstances. As the Chair pointed out, there is not going to be any discussion or debate about what is going to happen in a pollution incident, but it would be nice to be told about it, rather than have it happen. Is that what you think?
1090. **Mr Conway:** I have to be honest. Pollution incidents happen from time to time, and we are trained on oil-spill response initiatives. Primarily, we rely on our own by-laws and our ability to handle such situations. We certainly would not be sitting back to wait for government to come in to deal with it.
1091. **Mr Hamilton:** That would be bad for your business.
1092. **Mr Conway:** Yes. If it goes wrong, we get a lot of bad PR. We had a fishing vessel sink about three years ago as it was leaving the port. A team managed to get alongside it, and it sank along the berth. There was a small amount of pollution, but we had to engage our own team to put out the absorbent buoys and to work with it. We tasked the oil-spill response people from Southampton to come to the port, but we had the job done by the time that they got there. That is the way that ports have to operate, even if it is beyond

their harbour limits. We have that particular responsibility in Carlingford lough, where it is not altogether clear who is responsible. There is a Southern jurisdiction connection, but we have made an agreement that we will go and handle the issue and sort out afterwards who should pay and so on.

1093. **Mr Hamilton:** That is exactly the way that it should work in practice. Consultation has come up, but, in some circumstances, you could envisage that it is more that information is being given in a situation than a consultation taking place, because it is a genuine emergency. You would only want to see it used in genuine emergencies and not as some sort of ruse to do something that perhaps otherwise could not be done. We talk about consultation, and we are used to 12 or 16 weeks of consultation in this part of the world. In this case, however, it is of more benefit to say, "Something has happened; this is what we are doing." It is not as though it will be non-negotiable, but you could have an input. In such circumstances, you could ask, "Have you thought about this? Could you do it this way?" It is not something on which there will be discussion about whether it is going to happen; it is going to happen and it has to happen, because it is an emergency. You will be telling people so that they will know how it will impact on their business. You might be able to feed in to that in a positive way. However, it is not consultation in the sense of taking a couple of weeks.

1094. **Mr Knott:** I am sorry, Mr Hamilton, can I just clarify our comments on that? We were discussing emergency situations, such as oil spills. I agree fully with Peter. We have very comprehensive plans in place. They are tested regularly, we work with others and we consult on those plans when they are put together before they are needed. I would not see that type of emergency as the real issue. It is more a situation where somebody has reported, let us say, a species of a particular fish living in a certain area. That species may be extremely rare, and it may need to be protected now. That is where we come

back to the idea that it should not be a shutters-down approach; we need to look at the science and the controls that are required. That will necessitate consultation and a consideration of what people may or may not need to do to protect that species. That is the sort of scenario that I envisaged.

1095. **Mr Hamilton:** I agree with you. An emergency, in my view, is not that a species has been found. That is not an emergency in itself, because it could be happening with others somewhere else. You need science and an assessment of the situation. If something is there and can move on and go somewhere else, what is the point of designating an area?

1096. These points are all for clarification with the Department, and we will do that and take them forward. I would not see that situation as an emergency in the same way as I would see a pollution incident, an accident or something like that as an emergency.

1097. **The Chairperson:** I certainly agree with that. I doubt whether the Department would shut the whole place down if we saw blue whales or humpback whales in Carlingford lough.

1098. **Mr Hamilton:** How do you draw a line round it? The line keeps moving.

1099. **Mr Boylan:** That has raised an interesting point. We need to clearly identify the roles and responsibilities. You could have your management plans and everything else, but when there is an emergency or a case such as that that David described, we need to look at it from the point of view of this Bill. In the past, people have said, "It is somebody else's responsibility." All those guidelines on who has to act in each situation need to be handed down.

1100. **The Chairperson:** We need clarification of what is categorised as an emergency that will trigger that by-law and of the grounds that are going to be used for it.

1101. Thank you very much, gentlemen, for your very thorough presentation and for the dialogue with us.

31 May 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mr Chris Hazzard
 Mrs Dolores Kelly
 Mr Francie Molloy
 Lord Maurice Morrow of Clogher Valley
 Mr Peter Weir

Witnesses:

Mr Ken Bradley *Department of the*
 Ms Brenda Cunning *Environment*
 Mr Angus Kerr
 Ms Gerardine McEvoy

1102. **The Chairperson:** I welcome Angus Kerr from the planning policy division in the Department of the Environment (DOE), as well as Ken Bradley and Brenda Cuning from the environmental protection division and Gerardine McEvoy of the environmental policy division. I ask members to turn to the clause summary that has been provided and to the Bill itself.
1103. We will start with Part 1, where clause 1 deals with the Northern Ireland inshore region. Most respondents were content with the clause. Some stressed the importance of clarifying exactly where the boundary lies, especially the extent to which the Bill will apply to Carlingford lough and Lough Foyle. So, I invite the Department to comment on clause 1.
1104. **Ms Brenda Cuning (Department of the Environment):** Good morning. To clarify that point, I will say that the Bill extends to Carlingford lough and Lough Foyle. Clause 1 sets out that the Bill will apply to all the UK waters that are adjacent to Northern Ireland. I think that there was some confusion, because clause 1(5) mentions a boundary order. That boundary order defines which part of the UK territorial sea is adjacent to Northern Ireland and which part is not. So, that really just carves up the UK territorial sea, but the Bill applies to Carlingford lough and Lough Foyle.
1105. **The Chairperson:** Do members have any comments?
1106. A number of organisations suggested that Part 1 should be extended to include an overarching aim or general duty that is similar to that in the Marine (Scotland) Act 2010, which states that the Scottish Government must take sustainable development and climate change into account when they implement their Marine Act. So, I invite the Department to comment on that.
1107. **Ms Cuning:** The Department believes that we already have a sustainable development duty under the Northern Ireland (Miscellaneous Provisions) Act 2006. That places a duty on all public authorities to carry out their functions in such a way as to best calculate the contribution to sustainable development. As far as we are concerned, at the moment, we have a sustainable development duty; in fact, all public authorities do. Those duties are set out in the Executive's 2010 sustainable development strategy.
1108. The Bill also includes some binding provisions on sustainable development. The marine plan itself, for instance, has to have policies from all the Departments that are connected with sustainable development. That is key, and it is stressed. There is also a requirement for us to carry out a sustainability appraisal, whereby the Department must show that proposals for the marine plan contribute to sustainable development. So, we believe that, at the moment, the Bill is actually strong enough on those points.
1109. Furthermore, the marine plan has to be in accordance with the marine

- policy statement (MPS). Sustainable development is very strongly emphasised in that, as it comes from the high-level marine objective that has been set for the whole of the UK. That aims to create a vision of clean, healthy, safe, productive and biologically diverse seas. That is the very essence of sustainable development for a marine area.
1110. **The Chairperson:** What about climate change?
1111. **Ms Cunning:** There is no explicit duty in the Bill that deals with climate change. However, it is referenced in various areas. For example, it is one of the issues that must be taken into account when you are looking at developing the marine plan. The effects of mitigation of climate change are reflected in the high-level marine objectives that I just referred to underneath the marine policy statement. As the marine plan has to be in accordance with that, of course climate change is going to be one of the issues that you must have regard to moving forward. The marine plan has a list of issues that have to be kept under review, such as changes to the physical or biological aspects of the Northern Ireland marine area. That means that any effects of climate change would have to be taken into account in that way. So, again, we do not believe that a specific duty is required in this case.
1112. **The Chairperson:** We have spoken to a large number of stakeholders, and we have attended an event. All the major stakeholders are saying that we need to have this issue mentioned at the front of the Bill to give its purpose. Sustainable development and climate change should be included as a high-level aim of the Bill. I know that you said that it is in other documents, such as the Programme for Government (PFG), but would it not be sensible to have it at the front of the legislation so that it can be reinforced and so that the focus can be on it as the purpose of the Bill?
1113. **Ms Cunning:** I believe that the purpose of the marine plan, because it is so closely linked to sustainable development, is quite clear in the Bill.
- However, it is something that we can consider. It is not something that we are absolute about, but we think that it is endemic in the Bill already.
1114. **The Chairperson:** I think that it would be useful to have it stated explicitly at the very beginning of the Bill. The major stakeholders, including the Marine Task Force and the Council for Nature Conservation and the Countryside (CNCC), all commented on the usefulness of having it right at the top. It would make the purpose of the Bill much clearer. What do other Members think about that?
1115. **Mr Hamilton:** It would be interesting to refer back to some of what was said about the other pieces of legislation that have those duties anyway. It strikes me that there is no point in having a second piece of legislation that says exactly the same thing, because that would be over-legislating. Until we take a look at where those duties on sustainability are in existing legislation, it is hard to come to a conclusion about whether we think it is required in this Bill as well. We could look at that and perhaps come back to it.
1116. **The Chairperson:** Sorry, you are saying that —
1117. **Mr Hamilton:** The Northern Ireland (Miscellaneous Provisions) Act 2006 was referenced. If we take a look at that and satisfy ourselves that it is strong enough or otherwise, we can come back to the issue.
1118. **The Chairperson:** I am strongly of the view that it is important to have it at the beginning of the Bill.
1119. **Mr Weir:** On Simon's point, I think that looking at the positions and then coming back to take a decision would surely be the sensible approach, rather than making a decision and then going to look at things.
1120. **The Chairperson:** OK. We will do that. Maybe the Department will bear in mind that this is something that we want included.

1121. **Mr Dallat:** I am sorry, Chairperson. I am confused. Just for my benefit, what are we going back to find out?
1122. **Mr Hamilton:** The officials referenced existing legislation that makes sustainability and climate change endemic in the Bill already. There is an existing duty to consider all these things. I would have thought that it would be in the Committee's interests to satisfy ourselves of the robustness of that situation before concluding whether we need to add it to this Bill. If we have legislation that has such provisions already, you have to satisfy yourself that that is either sufficient or not sufficient before deciding whether to slot the issue into another Bill, which could be the second time that it is in legislation.
1123. **The Chairperson:** Even if it is covered in another Bill, I think that there is value in re-emphasising it right at the top of this Bill. The Committee Clerk suggests that we ask the researchers to do some specific work on the matter.
1124. **The Committee Clerk:** Yes, I suggest that we ask them to do a specific piece of work on checking the robustness of other legislation and then to bring it back to the Committee in two weeks.
1125. **The Chairperson:** Are Members happy with that?

Members indicated assent.

1126. **The Chairperson:** We will wait on further information before we decide on that one.
1127. We will move on to Part 2, namely marine planning, and to clause 2, which covers marine plans for the Northern Ireland inshore region. The issues that were raised about clause 2 included concerns about vague or weak wording, the possibility of more than one plan, and the time that is to be allowed for comment after the launch of a plan. I ask the Department to respond to the issues that the stakeholders raised.
1128. **Ms Cunning:** One of those issues was whether the Department should have a duty to develop a marine plan. Our view is that we actually have a duty

to do so because of clauses 2(1) and 2(2). Clause 2(2) states that, where a marine policy statement is in place, the Department must "seek to ensure" that the marine plan is developed for the whole of the Northern Ireland marine region. There is a marine policy statement; therefore, we will seek to ensure that that happens.

1129. There were queries over the words "seek to ensure". That is a reflection of the fact that marine planning is quite a complex issue. In Northern Ireland's case, it will involve multiple Departments, the Executive, and very many sectors all reaching agreement on a marine plan. I do not think that it would be appropriate to say that we have to do a marine plan; it just might not be possible to cover the whole of the Northern Ireland marine area for whatever reason. It is partly about having a little bit of flexibility to take into account the practical reasons why it might not be possible to do it for the whole Northern Ireland marine area. That is our aim and intention, and it is what we have set out to do.
1130. We have set out to create one marine plan for the whole of the Northern Ireland marine area. You said that people mentioned the possibility of having more than one plan. I think that the Belfast Harbour Commissioners and the British Ports Association in particular brought that up. The idea is that we have one overarching marine plan but that we also have the flexibility to create some more localised and more detailed plans underneath that for any special areas that might require it, such as the loughs or the area around Rathlin Island. Again, there are queries about woolly wording, and that has been done to allow flexibility so that we can in future do everything that we need to do with marine planning. It is not a case of doing one marine plan and then that is it; the process will be developed over the next 20 years so that we can make sure that we cover all Northern Ireland's waters in the most suitable way.
1131. The other term that was queried was "relevant considerations". I think that

- we wrote to the Committee about what they would be. Some stakeholders suggested that we put forward guidance on that. That is something that we can, and probably will, do with responsibilities for public authorities and how they react with the marine plan. That would be developed fully as marine planning is taken forward.
1132. We cannot put any relevant considerations in the Bill, because what will they be as we move forward? They will change with time. The plan will be in place for a number of years, and there could be advances in scientific knowledge and new economic priorities, or species could be discovered. All those could be relevant considerations further down the line. The marine policy statement could be amended, so you may want to be able to take that as a relevant consideration. So, there is a wide range of things. Again, flexibility is the key with this issue.
1133. Another concern was reflected in the comments that were made about the marine plan after it is adopted. Some stakeholders suggested that there should be a period between a marine plan's publication and before its formal adoption. Our view is that marine plan development is an inclusive process, and a statement of public participation will be developed to allow that. It could take up to two years to develop a marine plan. We believe that that is long enough to allow everybody to have their say and to come to an agreement at the end of that time. An agreed marine plan would be published and adopted, so we would not need another period of time after that; the two years would be sufficient.
1134. There were suggestions that various bodies should be included as statutory consultees. We would not want to go down the route of starting to list different bodies as statutory consultees. We want the plan to be as inclusive as possible. Therefore, it will be kept open-ended, and all interested parties and the public must be consulted in the development of a marine plan. We think that that is the best way forward.
1135. There was also a suggestion that the marine plan should give primacy to existing activities. Those will, of course, be in a marine plan. That is the whole point of it, and we do not think that anybody would suggest otherwise.
1136. Those are the main issues, unless the Committee has any others.
1137. **The Chairperson:** Members, you may wish to consult the appendix to the cover note, which is quite useful.
1138. You certainly answered a number of the stakeholder queries. Resolving policy conflicts in accordance with clause 2(8) would be difficult. How will that work in practice?
1139. **Ms Cunning:** Clause 2(8) states says that, if there is a policy in the marine plan that conflicts with a statement or information in the plan, it must be:
"resolved in favour of the policy."
1140. The stakeholder who raised that query may have been a bit confused about what that means. It basically means that the marine plan will contain supporting information, as well as policies. Clause 2(8) is just saying that the policy has primacy. So, if a departmental policy is listed, even if some of the supporting information conflicts with it, the policy would always take centre stage. The process of resolving policies per se involves consultation with Departments and sectors, agreement with Departments, and getting it through the Executive. That is how we would resolve policies if there were conflicts.
1141. **The Chairperson:** So, would a policy from the Marine Act take primacy?
1142. **Ms Cunning:** In the marine plan, yes. So, a policy would have primacy over any supporting information that may be in that plan.
1143. **Mr Hamilton:** The explanation about the word "may" in clause 2(1) is reasonable. Sometimes, we see the word "may" and believe that it should always be "shall". It is one of the few amendments that we can actually get through in this process.

1144. I understand your point. For clarity, the optimum is a plan for the whole of Northern Ireland, but there may be circumstances in which that cannot be the case. Therefore, you cannot say that you “shall” have it for the whole of Northern Ireland if there are circumstances in which that is not possible. What circumstances are you envisaging in that?
1145. **Ms Cunning:** It is quite difficult to put forward circumstances. It could be that there is one area, perhaps an area that is close to the Isle of Man, where we cannot resolve an issue about fishing, etc, and we might —
1146. **Mr Hamilton:** So, it is an unknown unknown.
1147. **Ms Cunning:** It is, unfortunately. I understand the concerns about flexibility, but we are talking about primary legislation that has been developed over a long time and that will be in place for quite a while.
1148. **Mr Hamilton:** Unlike you, I am not an expert, but I thought that it might be beneficial to have it for different parts of Northern Ireland, because some areas may have more fishing grounds than others, or some may have more renewables potential than others. Eventually, you might get to the stage of saying that it is desirable to have different plans for different parts of the region, because they are affected by different factors.
1149. **Ms Cunning:** Absolutely. That is why we want the flexibility to have it for part of Northern Ireland as well, even though we are talking now about doing one for all of Northern Ireland.
1150. **Mr Hamilton:** A couple of stakeholders suggested that the plan should be agreed 21 days before it is implemented. Perhaps I am jumping into clause 3, which refers to amending the plan. To give some satisfaction to those who are raising that concern, I can understand why they might want to have that flexibility, particularly when you look at who may be suspicious of what is being done to them by government. They might want a bit of time to see whether there are any negative impacts. In some cases, negative impacts will happen to different sectors; that is just a fact of life as far as this issue is concerned. However, if there are egregious errors or omissions or whatever, I take it that they can be covered by clause 3.
1151. Therefore, if something is discussed and agreed before the adoption of a marine plan and is omitted for any reason, will clause 3 will cover that and allow the plan to be changed at any time?
1152. **Ms Cunning:** It is not quite as flexible as that. Some people would be worried if we could amend the marine plan “willy-nilly”, which was the phrase that was used, I think.
1153. **Mr Hamilton:** So, you would have to get back into the process again.
1154. **Ms Cunning:** Yes, we would have to consult, so that will reassure some people that we are not just going to change the plan ourselves. We would have to go through the process again of consulting people. If an error were discovered, we would go back and discuss it with people and bring forward an amendment.
1155. **Mr Hamilton:** I think that the key to this is what happens before there is agreement. That is also key throughout the process, which is extensive and laborious. It is one of the few occasions when we can have legislators telling us that the longer the better we take to get full agreement the better, rather than rushing on and trying to mop things up afterwards.
1156. **Ms Cunning:** Absolutely.
1157. **Mr Elliott:** My first point is that this is quite a difficult issue. I appreciate that, at times, it may not be possible to include the entire area. However, almost all the stakeholders, regardless of whether they were more or less enthusiastic about a marine Bill, were saying that you need to take the area as a whole and set your plan accordingly.

1158. I listened to Simon's point that there might need to be separate plans for some areas, such as wind energy development or fishing, etc. However, the key is that people were saying that those things should be in the one, overall plan that says that this is an area for wind energy and that is an area for fishing.
1159. I know that you have gone some way towards convincing me, but I am still slightly concerned that we need that overall plan, because some people, whether they are the harder environmentalists or those who are more concerned with the economic aspects and what is already there, will remain unconvinced. I am not sure how we will get over that.
1160. My second issue was one that Simon raised, and it concerned the opportunity to challenge the marine plan. That is in clause 2(9). I do not see this point in the summary; I think that it was raised separately and may not have been in any of the submissions. However, there was an indication that there should be a challenge period. Clause 2(9) says:
1161. "A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1."
1162. There was a suggestion that there should, perhaps, be a 21-day period in which to challenge that. Given that that provision is different from an amendment, what are your thoughts on that?
1163. **Ms Cunning:** We will have spent two years developing and discussing a marine plan with all the different sectors, and after that and having produced the consultation draft, we will modify the document, based on people's comments. Simon mentioned that the process is laborious; we go through all that and then we publish the plan. If anyone wanted to open it up again after that two-year process, I would have to ask them whether two years was not sufficient. Our point of view would be that we do not need an extra 21 days at the end of the process.
1164. **The Chairperson:** It may be that the Department may not have taken some people's views into account, and when the plan is issued, their concern is that the six-week period is too short. I know that we are going to cover this later on, but Tom mentioned it, and I thought that I would jump in. If people are going to take a judicial review, that will be too short a time for them to instigate it. Is that your point, Tom?
1165. **Mr Elliott:** Yes.
1166. The Chairperson: We will look at that later on.
1167. **Mr Weir:** To be fair, in an emergency, the courts can move very quickly on a judicial review or an injunction. When it comes to challenges, there will always be some opportunity to question what is there. My one slight concern is about what is meant by a challenge. I would be interested to hear the officials' opinion of a challenge if it means that the plan may not be implemented immediately.
1168. I know that there are a number of aspects to consider on the broader environmental side. In a planning-type situation, if a provision is being brought in that does not impact immediately and is given a stay of execution, as it were, someone could do something wrong in a scorched-earth fashion and exploit any window of opportunity before that provision came in. It is about striking a balance. Would there be dangers in putting things on hold through a challenge?
1169. **Mr Angus Kerr (Department of the Environment):** That has certainly been a big issue on the terrestrial planning side, because plans and policies can highlight areas that are going to be protected. If that protection does not come into play immediately when it becomes public, it is sometimes the case that landowners and developers take that as an opportunity to take action before the protection comes into effect.
1170. **Mr Weir:** I suppose that it may be more difficult to do that in the marine planning environment.

1171. **Mr Kerr:** It is probably less of an issue, although I would not necessarily rule it out as a concern.
1172. **Ms Cunning:** Also, you would have to ask yourself what the impact would be of allowing people 21 days to make some sort of comment on the marine plan after it has been published and before it has been formally adopted. What would happen if the marine plan is published and we say to someone who had been engaged in the process for two years that they have 21 days to make comments before it is adopted? Would that set us back two years and force us to redo everything? I am not sure what the impact of those 21 days would be.
1173. **Mr Weir:** Let us take Strangford lough as an example. I know that there are controversies about the reasons for the various kinds of damage that are caused there and that that is not necessarily something on which there is consensus. However, a particular activity in a certain area could be banned if, for example, it had a certain level of commercial advantage but caused environmental damage. It occurs to me that, in that circumstance, there would be a concern that people would view a three-week window of opportunity as their last chance to exploit that activity to the full and people would try to get whatever they could in those three weeks.
1174. A separate issue is how the plan can, broadly speaking, be challenged. I think that we need to drill down on that and make sure that we get it right. I can see why there would not be a good reason for a delay between publication and implementation. There is a danger that people could exploit that, albeit that it could happen in relatively few cases.
1175. **Mr Dallat:** It seems that this will be a fairly flexible Bill. You make it up as you go along — is that it? [Laughter.] I am sorry; my knowledge of Bills is somewhat limited.
1176. **The Chairperson:** It is a new area for Northern Ireland.
1177. **Mr Dallat:** We have the largest inland sea on these islands: Lough Neagh. Is that covered by the Bill?
1178. **Ms Cunning:** No, it does not cover freshwater.
1179. **Mr Ken Bradley (Department of the Environment):** It covers only saltwater.
1180. **Mr Dallat:** OK.
1181. The withdrawal of the plan will be published in the 'Belfast Gazette'. That is not on my daily reading list.
1182. **Mr Weir:** Why not, John? It should be from now on.
1183. **Mr Dallat:** Is it something that I should rush out and order immediately in case there is a withdrawal? If a plan is to be withdrawn, are people allowed to know when that will happen? Would everybody have to buy the 'Belfast Gazette' to find out?
1184. **The Chairperson:** We are going to cover that in detail in the discussion on clause 4. That is a good question, but we will look at it later.
1185. Clause 3 is entitled "Amendment of marine plan". No issues on that clause have been raised.
1186. Clause 4 deals with what you have were talking about, John, and is entitled "Withdrawal of marine plan". One issue that was raised was that the clause should be amended to allow for the withdrawal of a marine plan only when a replacement has been published or, in the event of the withdrawal of a marine plan, a new plan should be brought forward within a specified period.
1187. Another issue is whether we should include provisions for appealing against the withdrawal of a marine plan and/or include a formal mechanism for consulting on the withdrawal of a marine plan. Brenda, are you going to answer that?
1188. **Ms Cunning:** First, I will refer to John's point about the withdrawal of the marine plan. We have to advertise a withdrawal in the 'Belfast Gazette'. However,

- clause 4(4) states that the Department must take any other further steps to bring the withdrawal to the attention of interest persons. So, the Department has to bring any planned withdrawal to the attention of all the people it has consulted on the actual development plan and to anybody who was involved in it. So, it is not just the readers of the 'Belfast Gazette' who are informed; putting it in the 'Belfast Gazette' is more of a formality that we do for all kinds of legislation.
1189. I know that there are some concerns that we could just withdraw a plan that we have spent over two years developing and not replace it. That is certainly not the intention of the clause. A marine plan is likely to be withdrawn only in very exceptional circumstances where we are about to replace it with another one. That is the purpose of the clause.
1190. We cannot just withdraw a plan "unilaterally" — I think that that was one of the phrases that was used. We have to consult with all other Departments that represent all the other sectoral interests in the marine environment. The Executive will have agreed the marine plan, so we must consult with all the other Departments on whether we are withdrawing a plan.
1191. Clause 4 also allows us to withdraw a plan if the Secretary of State (SOS) withdraws agreement to it if it has retained functions covered under it. We need to have that ability to withdraw it. If, for whatever reason, the Secretary of State no longer agrees to a marine plan, we have to have the ability to withdraw it. Again that would happen only in extremely exceptional circumstances. There is a concordat agreed between the UK Government and Northern Ireland Executive on how marine planning should be carried out. That states that we will seek to resolve any issues between the Secretary of State and the Department before withdrawal of agreement to a plan is considered. So, the purpose of the clause is that we may need to withdraw the plan if the Secretary of State withdraws agreement to it or if we are going to replace it with a new one.
1192. **Mr Weir:** I have a minor point. I appreciate what you said in relation to the Secretary of State. Perhaps some colleagues around the table would say that even our waters do not run free, but I will leave them to make that point.
1193. I want to pick up on John's point. It is a bit of a side point as regards publication. It is maybe a slightly archaic route in that we are talking about the 'Belfast Gazette' and other methods. It might be difficult to enshrine it in the wording of the legislation, but is there any reason why there is no reference in any legislation for a requirement to publish on the Department's website, without actually naming the website? We are thinking about legislation, and we have a commitment. OK, with the best will in the world, I suppose that people can go and look up the 'Belfast Gazette' or whatever, but, realistically, it will not be widely published. I suspect that the various groups that are directly affected will keep an eye on it. From the point of view of modernising legislation, if there is a requirement to publish, why do we not have reference in the Bill to the fact that it should be published on the Department's website? I assume that it is something that the Department will do anyway.
1194. **Ms Cunning:** Is that just with regard to the withdrawal of a plan?
1195. **Mr Weir:** I mean it in a more general sense as regards publication. If the Department is not going to publish it on its website then, to be perfectly honest, there is something wrong with its communications. Given that it is something that will be done, and you will also do it in the 'Belfast Gazette' in any of these circumstances, I was wondering whether there was a more general amendment of that nature. Maybe it goes wider than this legislation. However, is there any specific reason why that could not be included?
1196. **Mr Kerr:** That is something that we can look at. I know that more recent

- legislation puts requirements on Departments in relation to electronic communications.
1197. **Mr Weir:** I am sure that it could be phrased along the lines that it is to be published “on the Department’s website”. Given the fact that names may change from time to time, I appreciate that a specific website should not be named, but I would have thought that that would give sufficient certainty, and it would make it more accessible to the public.
1198. **Ms Cunning:** The website is one of the methods of engagement that is put forward in the statement of public participation. However, you are right; we could look at putting that more —
1199. **Mr Weir:** If John is borrowing my copy of the ‘Belfast Gazette’, a limited number of the public will have access to it.
1200. **Mr Dallat:** Chairperson, my colleague has just got it on the internet. The solution is that everybody should have an iPad and check it every day.
1201. **The Chairperson:** Brenda, are you saying that you would consult the relevant Departments, but not the general public?
1202. **Ms Cunning:** Yes, if we were going to withdraw a plan. However, we are considering that a plan would be withdrawn as another one is being brought in, and that would involve consultation on the new plan that will be replacing it.
1203. **The Chairperson:** So people will, obviously, be aware through the process.
1204. **Ms Cunning:** Yes, that is the idea.
1205. **Mr Kerr:** If you have the power to make a plan, you should also have the power to take it away. It would not be a case of taking it away and not having anything there in its place for no reason.
1206. **The Chairperson:** So, if there is a reason for it to be taken away but not to be replaced by a new plan, how can people appeal and say that they do not want that? Would they be consulted about the fact that you were going to take it off and not replace it with a new plan? In those circumstances, how can people object to it?
1207. **Mr Kerr:** Those circumstances would not arise. The reason for taking it away would not be to have nothing there. It would be the same as it is with all the forward planning policies that the Department brings in: you would be replacing it with a more up-to-date plan or with a process leading to a more up-to-date plan.
1208. **The Chairperson:** So you are saying that it will not happen. You will not withdraw a plan —
1209. **Ms Cunning:** I cannot see any reason for abandoning a plan that you have spent time and effort developing.
1210. **Lord Morrow:** I have a question on the point that Peter Weir mentioned. I remember an experience with a National Trust property. It was published in the gazette. We were wondering why there was so little feedback, until we discovered that it was published in the ‘Belfast Gazette’, which circulates mainly in London. It was not getting to the Northern Ireland population. The Bill does not say that you shall communicate with others. It is purely saying that you are tying everything in and the Department must publish notice of the withdrawal of the marine plan in the ‘Belfast Gazette’. Perhaps only 0·1% of the people of Northern Ireland will ever get sight of it. That needs to be changed. We have moved on, have we not?
1211. **Ms Cunning:** Absolutely. Clause 4(4) states that where a marine plan is withdrawn, the Department must take further steps to bring it to the attention of “interested persons”. Therefore, it is not just the ‘Belfast Gazette’. “Interested persons” is then defined as persons who are likely to be interested in or affected by the withdrawal of the plan, as well as members of the general public. Therefore, basically, it is everybody. We have to take steps to bring it to the attention of everybody. Using electronic means is one way in

- which we would do that, but it is not the only way.
1212. **Lord Morrow:** Why do you specifically mention the 'Belfast Gazette'?
1213. **Mr Kerr:** It is a throwback.
1214. **Ms Cuning:** It is a standard thing that we put into all legislation.
1215. **Mr Kerr:** It is something that we are looking at on the land use planning side to see whether it is still required through some of the subordinate legislation that we are doing at the moment. It might be relevant to think about that for this legislation. You are right — most people are not aware of the 'Belfast Gazette'. It does not seem to get used. So we are looking into the purpose of it.
1216. **Lord Morrow:** In relation to the National Trust property that I referred to, it was said then that we would look at that. That was three or four years ago, and we are still looking at it.
1217. **Mr Kerr:** The 'Belfast Gazette' is only one of the requirements.
1218. **Lord Morrow:** It is the main one.
1219. **Ms Cuning:** Yes, it is.
1220. **Lord Morrow:** My opinion, for what it is worth, is that the Bill should state that we will consult everybody and should not name the 'Belfast Gazette'. You can still go ahead and publish in the 'Belfast Gazette'. If you feel that a publication that is mostly read in London is going to be of some merit to the population in Northern Ireland, that is fair enough. However, when we did the probe in relation to that, it was discovered that it was not the best way to take it forward. The 'Belfast Gazette' is specifically named, and you nailed it when you said that it is a throwback to the way things used to be done. We need to move on.
1221. **The Chairperson:** I want to return to the point about whether the Bill should be amended to allow only for the withdrawal of a marine plan when the replacement has been published or in the event that it is going to be replaced. You said that withdrawing a plan without having a replacement plan would be rarely done or is not going to be done. Would it not make it clearer for the public if you stated that that is the case?
1222. **Ms Cuning:** We can look into that. The only thing I will say is that if the Secretary of State withdraws agreement to the marine plan, the marine plan has to be withdrawn. Therefore, we cannot include a provision to say that we will replace it. It would be the intention to replace it with a plan that did not cover retained functions in that case. So, it is not just as straightforward as the Department withdrawing the plan. We would need to take into account whether such an amendment would cover the circumstance of the Secretary of State withdrawing agreement to it.
1223. **The Chairperson:** Will you have a think about it?
1224. **Ms Cuning:** Yes, absolutely.
1225. **The Chairperson:** It is a fair point raised by the public that the Department is not simply going to withdraw a plan because the Secretary of State said so and not replace it. It is just about making it more explicit.
1226. **Mr Molloy:** If we no longer had a Secretary of State or a Northern Ireland Assembly, where would the plan go?
1227. **Mr Kerr:** It would still be in place.
1228. **Mr K Bradley:** Even if there was no Northern Ireland Secretary of State, there would be reference to the Secretary of State, because it is not a devolved matter. Not all of the activities are devolved.
1229. **Mr Molloy:** I am taking it beyond that stage. Where would the Bill go if it was no longer a devolved state?
1230. **Ms Cuning:** We will cross that pontoon when we get to it.
1231. **Mr Molloy:** It is a serious point. The Marine Bill covers Carlingford lough and Lough Foyle. If there was not an equivalent in the South, where would the Bill go? Obviously, arrangements would be made.

1232. **Mr Kerr:** Presumably, with constitutional change, legislative provisions would be put in to cover how we transfer not only DOE issues but all government policies and plans.
1233. **Mr Molloy:** So we can tell the Secretary of State that he is not that important to the Bill.
1234. **The Chairperson:** We will move on, and you can come back with more information on clause 4.
1235. We move now to clause 5, which deals with the duty to keep relevant matters under review. Issues raised were that it should include a time period for review, for example, every five years; that it should use a clearer term than “dependent on the region”; and that the words “maintenance of” should be inserted before “its natural resources” in clause 5(3)(b). Brenda, will you respond to those points, please?
1236. **Ms Cunning:** I think that it might have been the CNCC that raised the point about the period for review of every five years. Clause 7 gives a reporting period of every three years, and then we have to report to the Assembly on marine plans. That is a much tighter period. Clauses 5 and 7 have to be read together. We must have an ongoing review of issues, as is required by clause 7. Clause 7 specifically says that we have to do a report every three years on the matters that we have kept under review. So, we already have a time period for review within the Bill.
1237. As regards the point about using a clearer term than “dependent on the region”, I am not sure what the question on that is, I have to admit. I think that it is with regard to clause 5(3)(b) and the reference to “the living resources dependent on the region.” To be perfectly honest, I am not sure how to make it clearer than that. It is about the living resources that are in the sea in the marine area of Northern Ireland, and they are dependent on that habitat.
1238. The final point was about the maintenance of its natural resources. I think that this has been slightly misread.
- Clause 5 requires us to keep various things under review, and that includes changes to the physical, social, cultural or economic characteristics of the Northern Ireland region. We have to look at any of those changes and at what effect they might have on the natural resources and the living resources. It is not actually the maintenance of the natural resources; it is about what effect it will have on the natural resources, per se. That could be a positive or a negative effect. That is why we do not think that a change is required there.
1239. **The Chairperson:** Reporting is different from review though, Brenda. You said that you are going to report every three years. That does not mean that you are going to review it.
1240. **Ms Cunning:** We have to have ongoing review, under clause 5, and clause 7 says that we must keep under review the effects of the plan and what the plan is doing. Those things link together. We have to look at the effects and at what changes are coming about because of the plan. The two things are inextricably linked. It would be unwise to have a report on the plan every three years and to have a report on the review of the plan every five years. It would be somewhat excessive.
1241. **The Chairperson:** Are members happy to accept that?
1242. **Mr Hamilton:** I think that there is a problem with these types of suggested amendments sometimes. If we changed it to specify every five years, you can rest assured that the Department would review it every five years only and would not review it at any period in between. Sometimes, flexibility and, dare I say it, ambiguity are actually quite helpful.
1243. **The Chairperson:** Are members content with the Department’s explanation? Do you need any more information? Are we saying that we do not want the clause to be amended in relation to any of those issues?
1244. **Mr Dallat:** I think that I understand what Brenda said. However, we were told earlier that the Marine Bill applied only

to saltwater areas, and yet, this refers to the inshore region. Am I right in saying that that is because of the impact the sea might have on the inshore region?

1245. **Ms Cunning:** The inshore region, from the high water mark out to 12 nautical miles, is the area that we are talking about. It is where fresh water becomes salt water in rivers. However, you are right: recognition is given to the impact that the freshwater environment might have. So, river basin management plans are one of the things that must be taken into account when developing a marine plan. The link is made between fresh water and the marine environment.

1246. **The Chairperson:** OK. Are members happy? There are no amendments.

Members indicated assent.

1247. **The Chairperson:** Clause 6 deals with decisions affected by a marine plan. Issues raised were that it should clarify the terms “relevant considerations” in subsection (1) and “must have regard to” in subsection (3); that it should require any public authority that takes an enforcement or authorisation decision under subsection (2) to consult with affected parties prior to taking the decision and to mitigate or compensate for any negative impact on another user group or the marine environment; and that it should require any public authority that takes a decision that is not an authorisation or enforcement decision under clause 6(3)(b) to state its reasons.

1248. **Ms Cunning:** I have already spoken a little bit about the relevant considerations and what they might be. If the Department were taking an authorisation or enforcement decision on, for example, a marine licence, it would have to take into account relevant considerations such as new information that has come forward since the marine plan was developed, new statutory obligations from Europe or new technological developments. So, there are different types of relevant considerations. We do not want to pin those down in the Bill, because there

is such a wide spectrum. Nevertheless, such considerations would have to be taken into account. They would have to be explained, to a certain degree, by the public authority when making an enforcement or authorisation decision that deviates from the marine plan. They would have to say, “We have done that because, under a revised directive, we are now required to do x, y and z. That is why we have done it”. So, that is what we think the scope of “relevant considerations” is.

1249. The term “to have regard to” is quite widely used. We have had advice on that. A public authority must have regard to the marine plan. It must be one of the things that it considers when developing decisions on consultation responses or bringing forward anything that is not an authorisation or enforcement decision. That term is widely used.

1250. On the second point, there were concerns that if enforcement or authorisation decisions deviated from a marine plan, there would not be a mechanism for mitigation or compensatory measures. However, there would be a mechanism for such measures under the authorisation regime. For example, marine licensing allows you to put conditions, mitigation measures, compensation measures, etc, on a marine licence. So that is where such measures would be. Similarly, for fish farm consent or renewable energy consent, mitigation and compensatory measures would be under the authorisation regime. Therefore, such a mechanism is not required under the Marine Bill, because it is already covered.

1251. The final point was that, if a public authority takes a decision that is not an authorisation decision, it must state the reasons why it has deviated. The marine plan will be one of many considerations that it must have regard to. I think that, if asked, a public authority would explain the reasons for deviating from the marine plan. Therefore, we do not think that it is necessary to have that in the Bill.

1252. **The Chairperson:** Are members happy with the explanation?
1253. **Mr Hamilton:** The accepted view is that consultation is key to the success of the Bill. Clause 6(2) states:
- “If a public authority takes an authorisation or enforcement decision otherwise than in accordance with any appropriate marine plan, the public authority must state its reasons.”*
1254. That is fine, and it is very transparent to do that. However, it does not flow from that that the authority has to consult or discuss. Maybe you can tie it in somewhere else. Think about it from the point of view of different stakeholders who may be concerned about the implementation or the variance of it when a decision is taken outside of an existing marine plan. That plan was a process in which they had a fulsome role in consultation and perhaps — hopefully — have agreed to. Then a change happens. It is outside of the marine plan. A statement of reasons is given, but there is no back-and-forward. It has been suggested to us that perhaps that clause should be tightened up to include a requirement for consultation.
1255. **Ms Cunning:** The requirement for consultation will come under the authorisation or enforcement regime that is used. For example, if someone applies for a marine licence, there is consultation on that. Various sectors are asked for their input. Habitat assessment is done, and people get input to that. Again, through the mechanism that gives the authorisation, you would have consultation. The “must state its reasons” is in addition to that. It is, in effect, topping and tailing it for the purposes of the marine plan.
1256. **Mr Hamilton:** So, you are saying that, if I apply for a marine licence to, for example, put a wind turbine offshore, it could be outwith the marine plan?
1257. **Ms Cunning:** No.
1258. **Mr Hamilton:** I am not clear about this point. You have a marine plan that says you do this, that and the other in this particular area. Then something goes at odds to that. It might then have a negative impact on, say, environmental interests, fishing interests or whatever. If we perceive a negative impact, where does that interest —
1259. **Ms Cunning:** They would engage through the marine licensing process. If you are seeking a marine licence for that turbine, the public has to be notified that there has been an application. There will be engagement with the public. That is what happens at the moment: there is engagement, and a result is brought forward. However, the Bill is saying that, in addition to that, you must state your reasons if you are deviating from the marine plan.
1260. **Mr Hamilton:** I understand. That is in a specific set of circumstances where a licensing process is going on. That is quite strict; it is almost a legal process. You go through A to Z to get your licence, and, maybe at point M, someone else from the outside is brought in and asked what they think of it. Are any other decisions affected that could be taken that are outwith a marine plan that would not be within the marine licensing process?
1261. **Ms Cunning:** If it is an authorisation decision, it is based on there being an authorisation process. So, when the Department of Agriculture and Rural Development (DARD) gives a licence to a fish farm or the Department of Enterprise, Trade and Development (DETI) gives an energy licence, all those licence authorisation regimes will have some element of consultation. There would not be the same consultative arrangements with enforcement, but you would want somebody to be enforced against. The wider public would not necessarily be consulted on that.
1262. The next step down is decisions that are not about enforcement or authorisation, and that is where the public authority “must have regard to”. If DETI brought forward a new strategy for something, and it was clear to people that it had not really considered something in the marine plan — or if you thought that it had not considered something — you

would challenge it through that and get it to explain how it had taken into account river basin management plans, the marine plan, the development plan and so on in that process.

1263. **Mr Hamilton:** All right. That is OK for now.

1264. **The Chairperson:** Are members content with the Department's explanation? We do not need to ask for an amendment.

Members indicated assent.

1265. **The Chairperson:** We move on to clause 7, which deals with the monitoring of, and periodical reporting on, marine plans. The issues raised were that, under subsection (2), the report should be conducted independently of the Department; and that the reporting requirement should not end in 2030, as is stated in subsection (8). Brenda, will you give us an explanation on those, please?

1266. **Ms Cunning:** I will address the idea of conducting the report independently of the Department. The Department should bring forward the report on its marine plan and marine planning process. We believe that the independent oversight comes from laying that report before the Assembly. We are content that there is sufficient oversight of the Department's role in marine planning through the Assembly.

1267. As regards the point about the reporting period ending in 2030, there is ongoing reporting. As long as a marine plan exists, it must be reported on every three years ad infinitum. The actual marine planning process is required to be reported on every six years. The idea is that, by 2030, we will have had marine plans in place for 10 to 15 years. By that stage, the process will be well-established. We will know whether it is working or whether there is a need to look at different legislation or mechanisms. So, 2030 is seen as a make-or-break time. We have either done it right or need to look at it again. That is why we want a cut-off period, when we can say that everything is working well and that the process works. We will

carry on with reporting on marine plans after that.

1268. **The Chairperson:** Are members content with the explanation?

Members indicated assent.

1269. **The Chairperson:** Clause 8 deals with the validity of marine plans. An issue raised about clause 8(2) was that we should limit the grounds for judicial review of a marine plan to ultra vires or where failure to comply with a procedural requirement is in breach of the Aarhus Convention. Issues relating to clause 8(4) were that grounds for appeal should include that the document, or part of the document, is irrational, incompatible with the European Convention on Human Rights or that there is significant new evidence; that a person aggrieved by a document should have access to an alternative means of challenging than the High Court; and that the definition of a person aggrieved by a relevant document should include natural or legal persons affected or likely to be affected by, or having an interest in, the relevant document, or non-governmental organisations (NGOs) promoting environmental protection.

1270. Other issues raised were that the six-week period for seeking leave for judicial review should be extended to the normal period allowed in common law, which is three months; that a dual challenge could be brought against the plans under this clause and the strategic environmental assessment (SEA); and that the clause should be removed and the validity of marine plans should be challengeable under established judicial review procedures, time frames and grounds.

1271. Brenda, will you address the points in that list, please?

1272. **Ms Cunning:** Clauses 8 and 9 mirror provisions in the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010. Marine legislation in the whole of the rest of the UK has similar provisions for challenging marine plans. The advice we had is that the clauses form a form of judicial review

- in respect of the marine plan. There is previous case law that acknowledges that. They define the grounds upon which a person aggrieved by the marine plan may apply to the High Court: either that the plan is not within the powers of the Department or that there is a procedural requirement.
1273. With regard to the definition of an aggrieved person, recent case law acknowledges that individuals or groups of individuals can be aggrieved persons if they want to challenge various decisions by government bodies. So, I do not think that it is necessary for us to amend the clause in that way. Specifically, I do not see it as being necessary to add in NGOs that are bringing forward environmental protection. That is quite limited. Why not expand it to everybody? If you are going to start listing, you would have to list everybody, whereas “aggrieved person” is a catch-all for anybody to bring forward a challenge to the marine plan.
1274. It is, however, on those two specific grounds: that it is outside the powers or has not followed procedural requirement. It is a form of judicial review, and there is previous case law to that effect with similar provisions. The Town and Country Planning (Local Development) (England) Regulations 2004 has a similar provision, and it has not been challenged on those grounds. The rest of the UK marine planning authorities have similar provisions with regard to challenges in order to allow judicial review of a marine plan. As to having an alternative means of challenging a marine plan, I think that the word “challenging” is slightly misleading. The stakeholder said that you should be able to go to the Department, and, of course, that is what we all want. If someone has a problem with the marine plan, they should speak to the Department or the Minister and we should talk our way through it. Going to the High Court should be the last resort when something is very seriously wrong. That is not something that should be written down in legislation; it should just be the way that it is.
1275. I covered the issue of the person aggrieved. We feel that NGOs could challenge a marine plan under that definition.
1276. We will look again at the six weeks in which to seek a judicial review and come back to the Committee on that point. I have been informed that court rules suggest that judicial reviews should be brought within six weeks if possible, although it is practice to allow up to three months, or more in very exceptional cases, but we will come back to that. We feel that six weeks is an adequate period after the two-year process of developing a marine plan. By then an NGO, for example, would know which way the wind is blowing and may know well before the plan is adopted that it wants to challenge it.
1277. Someone can bring a dual challenge to the marine plan under the SEA, as it is challengeable under that legislation, and I do not see there being any conflict with the clause. I think that the clause complements the SEA, to a certain degree. The SEA looks at the environmental impact of a marine plan and whether we have followed the processes that are involved in it. The challenge under the clause relates to whether we have followed the specific steps that are involved in developing a marine plan and whether we have done that within our powers. So, I think that the two complement each other and do not cause any conflict.
1278. The idea was that the clause should be removed so that the plan is challengeable under established judicial review procedures. However, I query whether there is an established judicial review procedure, especially where this matter is concerned. It could also create disparity between the Northern Ireland marine plans for its inshore and offshore areas and the other marine plans for the rest of UK waters. It could put Northern Ireland marine planning at a slight disadvantage to that in the rest of the UK.
1279. **The Chairperson:** There was one little bit that I want to follow up on,

- which is grounds for appeal. Would any significant new evidence be in the document?
1280. **Ms Cunning:** Significant new evidence would trigger an amendment to a marine plan. It would also be a prime example of a relevant consideration. If we had a new marine plan and if new, startling evidence came forward, we would have to consider that alongside the plan. That is why we need the previous clause. We would then look to amend the plan.
1281. **Mr Weir:** I have a couple of points to make. I think that it might be worth looking at that six-week period again, because it seems to be a little tight.
1282. Two specific grounds for a challenge have been raised, which, to some extent, may be described as subsets of a normal judicial review and may cover the bulk of potential judicial reviews. There are two issues on that to consider. On that basis, why are other aspects that could be brought into a judicial review not mentioned? For example, the test of *Wednesbury* unreasonableness would normally form part of a judicial review. Is there a particular reason why other elements that could be brought into a judicial review have been specifically excluded? By not mentioning them explicitly, does that mean that, from a legal point of view, it would not be possible to legally challenge the decision in court if they were to move outside those two grounds?
1283. **Ms Cunning:** You used the word “decision”.
1284. **Mr Weir:** Sorry; I meant to say “issue”.
1285. **Ms Cunning:** I think that that is where a lot of the queries come from. I think that people are mixing up the marine plan and the decisions that will be taken on the basis of, or with regard to, that marine plan.
1286. **Mr Weir:** Let me rephrase that: I meant the contents of the document. As regards a legal challenge, you highlighted that a procedural requirement in drawing up the document was not complied with and that the first grounds is actually an *ultra vires*-type grounds, as it is outside the appropriate powers. Those are effectively drawn from a normal judicial review, but other grounds can be used in a normal judicial review. Why have those not been included? Do you feel that, by explicitly mentioning only those two specific grounds, you are effectively fireproofed from judicial review on other aspects?
1287. **Ms Cunning:** We will look at that again with our legal advisers. They have told us that because specific grounds for judicial review are in this clause, it is not considered necessary to specify irrationality as a particular grounds for review. However, just to confirm that, I will take your point to them about whether that excludes irrationality or unreasonableness.
1288. **Mr Weir:** It seems slightly odd in one sense. If challenges could be made on grounds that are not listed, I would question the merits of listing the grounds in the first place. If you are coming back to us about that, we can look at it again.
1289. **The Chairperson:** We will come back for further information on that point.
1290. **Mr Elliott:** Brenda said that she questions whether there is an established judicial review procedure. Is that the case? I ask that because I do not know. I thought that there was an established judicial review process.
1291. **Ms Cunning:** Unfortunately, not being a legal expert, I do not know either. Various different types of judicial review have been highlighted to us. Other types of legislation set out similar types of what are seen as restrictions on judicial review. It has been proven through the courts that this is a type of judicial review and that it is acceptable. I had the preconception that that is a judicial review and that you must tick all the boxes. However, there are different forms of judicial review in other legislation, and that has been upheld by case law.

1292. **Mr Elliott:** It would be useful if the Department came back with a brief explanation of that.
1293. **Mr Hamilton:** I initially wanted to make some points that are similar to Peter's. Irrationality is probably the only other grounds that is not included there. My query is similar to Peter's. By including grounds on the face of the Bill, do you exclude those that are well established in law? That is worth looking at. Peter and Tom are both right so say that, if it is a matter of including another grounds for judicial review and if that includes every grounds possible for a judicial review, why have any grounds on the face of the Bill at all?
1294. I want to stress that everybody, particularly some smaller stakeholders — not smaller in stature but smaller in number — were concerned that going to the High Court is a sort of nuclear solution. They would rather have a process in which they talk to the Department or whatever it might be. I agree with you that that should not go on the face of the Bill. However, it would probably be helpful if, at Consideration Stage, the Minister were to stress that that is his desired approach before anybody went to the High Court. It would just give some comfort to those who simply do not want to go to court and who do not want to pay to go to court that another avenue is available to them.
1295. **The Chairperson:** That would help individuals as well as the department.
1296. **Mr Hamilton:** Yes.
1297. **The Chairperson:** OK. If there are no more questions, we will move on to clause 9. There are no issues with that, so are members content for that clause to go forward?
- Members indicated assent.*
1298. **The Chairperson:** We are now on clause 10, which deals with the interpretation of this Part. An issue raised was that it should include a definition of sustainable development along the lines of the Brundtland commission report, namely that a development meets the needs of the present generation without compromising the ability of future generations to meet their own needs.
1299. **Ms Cunning:** We would not necessarily support that amendment. There is sometimes a lot of debate on what sustainable development means, and that is one definition. So, we would not necessarily agree to putting it in the Bill.
1300. **The Chairperson:** If members are content with that explanation, we will move on to Part 3, which is about marine protection. Clause 11 is on the designation of marine conservation zones, and there are lots of issues with this. Those include the need for firmer and broader consultation arrangements; using the term “marine protected area” rather than “marine conservation zone” (MCZ); integrating MCZ designation with marine planning; interdepartmental co-operation; and protection of shipping and port operations.
1301. **Mr K Bradley:** I will take over on this Part of the Bill, as it concerns marine nature conservation. You are right: clause 11, which is about the designation of marine conservation zones, gives rise to a number of issues. I will take them in the order in which you read them out. Similar to marine planning, there has been consultation on a marine conservation zone, and the Bill places a specific requirement on the Department to consult on a designation order. Clause 14(4) states:
- “The Department must consult —*
- (a) the Secretary of State; and*
- (b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order.”*
1302. That is quite explicit and covers the consultation angle.
1303. Another point was that the Department's duty to designate areas should be that it “shall” rather than “may”. As we said, “may” does not mean that the Department may or may not or that it depends on its whim. “May” is quite explicit and requires the Department to do it unless there is an exceptionally

- good reason not to. “Shall” would throw us out of context with the provisions in the rest of the UK, and there is an overarching requirement to have a coherent network of marine protected areas. “Shall” would possibly sign us up to designating much more than we potentially want to. So, we are keen to retain “may” as opposed to “shall”.
1304. **The Chairperson:** What about the word “must”? That is stronger.
1305. **Mr K Bradley:** “Shall” and “must” are the same thing, legally speaking. The term “marine protected areas” (MPA) is a generic term and could mean, for instance, a conservation zone under European legislation, such the habitats directive, or a special area of conservation, a marine conservation zone, a Ramsar site or an OSPAR site. Our DARD fisheries colleagues have no-take zones that are called marine protected areas. Again, the overall requirement is to have a coherent network of marine protected areas. So, rather than confuse issues, we would rather retain the MCZ as part of a specific designation process for nationally important sites in Northern Ireland. That fits in with the situation in England and Wales.
1306. It was felt that MCZs should be in line with the marine plan. That will happen if the Bill goes ahead with a fair wind and comes into force in early 2013. We are revoking the marine nature reserve provisions, so we will then designate Strangford lough as the first marine conservation zone. That is likely to take the majority of 2013, and may even go into 2014, by which stage the marine plan should be fairly well developed. So, we will be in tandem with that. Again, that is a process rather than an explicit legislative requirement. Ideally, a marine plan would be in place before we do anything, but we are where we are.
1307. Another point was that the Department should engage with other Departments. Explicit reference was made to the interdepartmental co-ordination group — the marine group. It is our policy to maintain that group and to discuss and agree issues that come up during this process. Even when the Bill is in place, we will probably carry on with that group so that we can look at issues.
1308. Another point that came under designation was that marine conservation zones should not restrict shipping or port operations. Again, that will not be the case. The Marine Bill is primary legislation, but it does not counteract other legislative requirements, and navigation routes and such are explicit. Marine conservation zones will not interfere with main shipping routes at all. Also, the consultation is in place, so if an MCZ were close to, say, a port, that port would have a large say, because a marine conservation zone has to take socio-economics into account in any designation process. I think that the consultation process will take those elements into account, so ports and shipping lanes have nothing to fear from MCZs.
1309. Again, concerns were raised about fisheries, in that marine conservation zones would not take fishing interests fully into account. In Northern Ireland and further afield, we have a process to engage our DARD fisheries colleagues in all aspects of marine conservation zones. They will also keep their colleagues across the water or in the South of Ireland up to speed on what is going on.
1310. I think that the designation process as set out in clause 11 is fairly straightforward. It is a fairly general enabling power, and, as I go through Part 3, you will see that the detail will probably come through in the guidance material.
1311. **The Chairperson:** So, are we definitely going to use MCZs?
1312. **Mr K Bradley:** Yes.
1313. **The Chairperson:** Does Scotland not use marine protected areas?
1314. **Mr K Bradley:** Yes. From our policy perspective, we feel that MPAs are a bit confusing. We see MPA as a very generic and overarching term to mean

any protection for any reason in the marine environment. The overall UK objective is to have a coherent network of marine protected areas in place by 2020 as part of a requirement under the marine strategy framework directive. That overarching term takes account not just of marine conservation zones but our European and international commitments under the OSPAR and fisheries-type zones. So, it takes in all the conservation elements from a DOE or DARD point of view and is seen as a generic term. I think using MPA as a local or a national designation would take it out of context and lead to confusion.

1315. **Ms Gerardine McEvoy (Department of the Environment):** I think also that, in the Scottish legislation, MPAs were interpreted slightly differently. They have marine conservation MPAs, historic MPAs, and demonstration and research MPAs, whereas at the moment, we have just one generic one for marine conservation zones. We would assume that they would be part of an MPA with the European sites, as Ken said.
1316. **The Chairperson:** Do you think MCZs would encompass historic monuments, architectural artefacts and that sort of thing?
1317. **Mr K Bradley:** I was going to come to that in a discussion of later aspects of the Bill. We have had discussions on that with our colleagues in the built heritage unit in DOE, and our legislation is slightly different to that in Scotland, because it comes from a different part of a devolution settlement. Scotland was able to amend the UK-wide Protection of Wrecks Act 1973 and put in place its own specific legislation to designate artefacts. That would not be so easy for Northern Ireland to do, and we would probably have to get a sort of reverse legislative consent motion that would allow us to get agreement from the Department for Culture, Media and Sports (DCMS) to amend the GB Act. A time factor is obviously involved in that. As well as that, Northern Ireland has the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995, which allows us to designate for certain artefacts, while Scotland does not have that provision. So, from that point of view there is not the same need to designate an MCZ. However, we are still in discussions with them to see whether there is a real need. One or two people mentioned that in the consultation, but there have not been droves of people saying that we are not protecting our marine artefacts.
1318. The 1973 wrecks legislation is quite robust in that we have only one wreck, the Girona, that is designated, and it is designated because it met the criteria. A few years ago, the agency tried to get HMS Drake designated, but it does not meet the criteria, basically because there was an attempt to salvage it and it has been broken up and parts have been removed. So, the criteria are quite robust.
1319. The Northern Ireland Environment Agency (NIEA) does not feel that there is a problem with specific wrecks or ships down there. There may be more problems with artefacts or seabed features. We are in discussion about that, and we will come back to you at a later date to see whether there is a genuine need and whether there are resources in the agency to take that forward.
1320. **The Chairperson:** So, will we be getting information back on this clause?
1321. **Mr K Bradley:** Yes.
1322. **The Chairperson:** We will move to clause 12, which concerns the grounds for designating MCZs. Issues raised on clause 12 included those that said that MCZs should be able to be designated on historic or archaeological grounds and should include provisions for highly protected areas (HPA). It should also be a requirement to take economic and social consequences into account, as should publishing robust supporting evidence to justify the designation objectives.
1323. Grounds for designation should include consideration of the impact on climate change and energy potential, as well as

- any requirement for the Department to evaluate the impact of displaced activity outside the MCZ.
1324. **Mr K Bradley:** This is another clause that raised a fair bit of interest. I will try to take those points in turn as well. We have probably covered the first one, which deals with historic and archaeological grounds. Our NIEA colleagues are also looking at submerged landscapes, which, again, would not be for specific habitats or species. We might look at whether submerged landscapes are worthy of designation.
1325. As far as the creation of HPAs is concerned, these are basically what we call no-take zones, where no human activity takes place within the boundaries of an MCZ. There are many calls, specifically from environmental NGOs, to have a raft of highly protected marine reserves in place. The Department's policy is, and remains, that the conservation objectives of the designation will determine the level of protection, and, obviously, that designation will be based on sound science.
1326. Rather than get into areas or levels of protection, the science will prescribe where the MCZs will be. We will consult everyone who has an interest in that, taking into account socio-economic and conservation objectives of the site; in other words, what needs to be done and what needs to be protected will be put in place. We will not be going for straightforward highly protected marine areas.
1327. On the other side of the coin, we have had calls to say that the Department "must" take account of socio-economic consequences. The Department will resist changing from the word "may" to the words "must" or "shall", because we feel that we need flexibility. For example, if a conservation zone contains a feature that is not commonly found anywhere else in the UK, the environmental aspects of that zone will be very important. In that case, and if the zone required full protection, we may not want to take account of the socio-economic consequences to a larger degree. Conversely, if the feature is replicated elsewhere in Northern Ireland or the UK, the environmental aspect would be less important and the socio-economic consequences would be more important.
1328. Again, like everything else, it is a balancing act between environmental and socio-economic interests. The Department is keen and willing to work with all other sectors in the designation process.
1329. The word "publish" came to the fore during consultation on this clause, as did the suggested requirement for the Department to publish supporting evidence for the designation objectives. Of course, the Department would do that. The Department may have been slightly at fault in identifying and designating European sites under the habitats directive, but we are very keen to have a much more open and transparent process for these nationally important habitats. We want to ensure that everybody is involved from the outset and that everybody knows exactly where the zone is, where its boundaries are, what its features are and why they are important. We will seek full views on all that. So, yes, we are quite willing to publish that information, and it will be in the guidance material on the designation process.
1330. Another point that emerged on this clause was that its reference to "rare or threatened" flora and fauna should be removed. However, that will not be the case. Under the marine strategy framework directive on achieving and maintaining good environmental status, we are, properly, required to protect rare and threatened species and more representative species that form part of the overall network. So, we would maintain that flexibility.
1331. Have I missed any points?
1332. **The Chairperson:** Yes. What about having to justify in writing changes to

- MCZ boundaries as a result of economic or social consequences?
1333. **Mr K Bradley:** That would be fine. The MCZ process is designed to be flexible about which features are protected, the level of protection that is afforded and the zone's boundaries. We learned from the experience of the European legislation, under which boundaries were set in stone and which, unless they increased, were never changed. The Bill will allow us to take account of any need to change the boundary because of climate change or whatever. In such circumstances we will obviously go through that consultation process as well and publish our findings.
1334. **The Chairperson:** The next point relates to different legislation. It states that the Marine Bill should not take precedence over the Wildlife (Northern Ireland) Order 1985. For example, if, under schedule 2 to the order, a bird is allowed to:
- "be killed or taken ... outside the close season",*
1335. there must be no facility under any new legislation to prohibit or restrict such activity.
1336. **Mr K Bradley:** One piece of primary legislation does not have any greater weight than another. There are obvious synergies between the Wildlife and Natural Environment Act (Northern Ireland) 2011 and the Marine Bill. The Act is more specific about which individual species are either fully protected or protected at certain times of the year. Marine conservation zones will be primarily for habitats, whereas the Wildlife and Natural Environment Act applies more to mobile species. So, each will complement rather than be at odds with the other. That is our understanding and our policy.
1337. A habitats regulation assessment was another point that came up under other requirements. Under the habitats directive, we are required to undertake an assessment of any plan or project that may detrimentally affect a conservation site. That, again, is purely for ecological reasons. As I said, the Marine Bill and marine conservation zones are all about sustainable development, of which socio-economics are obviously a part. So, we would not conduct a regular habitat assessment, because we are looking at it on a much broader scale.
1338. **The Chairperson:** Finally, should subsections be added to require consideration of a potential energy generation designation along the lines of the provisions in the Scottish Act? Should there also be an evaluation of the ecological consequences of displaced activities on the areas outside the MCZ?
1339. **Mr K Bradley:** Again, the flexible regime will take account of renewable energy infrastructure, pipelines or power lines that come across the seabed. We will work with all the industries on that issue.
1340. The intention of having a marine conservation zone is not to be disruptive to fishing or any other interests, nor is it to designate large areas of Northern Ireland territorial waters in order to displace other industries. It is not envisaged that that will be the case.
1341. **The Chairperson:** OK. You are saying that the concern is that you may push something to the next area.
1342. **Mr K Bradley:** That is correct. At the moment, we have marine conservation areas through the habitats directive, and certain types of activities are not allowed within those boundaries. I suppose that if we designate further zones and increase the area within which certain activities are not allowed, people might feel that they are being pushed out to a smaller area and would have to compete with other people in that area. That is not our intention, however, and socio-economics will be fully taken into account. It is not our intention to displace any other activity or industry. The majority of our scientific knowledge at present is in and around existing marine special areas of conservation. Our first port of call for any new conservation zones will be in and around those existing areas.

1343. **The Chairperson:** Are members content with that explanation?
1344. **Mr Hamilton:** I want to pick up on a couple of points about clause 12(7). First, will you define the “economic or social consequences” mentioned in that clause? What are social and what are economic?
1345. **Mr K Bradley:** “Economic” could mean a fishing industry or a renewable industry, or a pipeline or any other sort of activity. “Social” consequences could mean leisure activity, recreation or that sort of thing. The sorts of things that we will take into account would include cultural activities, such as a boating event, a regatta or some sort of annual event or activity that is particular to that area.
1346. **Ms McEvoy:** It covers tourism as well, that might be unique to that area.
1347. **Mr K Bradley:** We are taking account of the activities that are going on at present in the widest possible sphere. This is not a purely environmental designation.
1348. **Mr Hamilton:** I ask because, perhaps, of the way in which the word “social” has been contorted over time to mean something else. The broad definition of the word “social” would include things that people do socially, such as leisure, tourism and so forth. The omission of the word “cultural” has been raised with the Committee, “cultural” being, perhaps, a broader or a more easily understandable definition in modern parlance of leisure. We have a Department of Culture, Arts and Leisure. Shooting and wildfowling are cultural pursuits. That is a more relevant description than leisure. That fraternity would probably like to think of itself as an economic consideration. It is a generational thing.
1349. **Mr K Bradley:** That is right. The list is inexhaustible. At the beginning of this discussion, we talked about the fact that the Bill is based on sustainable development principles, which are environmental, social and economic. That is the sort of language that we use in legislative terms, and that is why we have used those two words there. Obviously, it is much broader than that. Any activity that happens will be taken into account. I know that we have had strong representations from the shooting industry, particularly from the Countryside Alliance and the British Association for Shooting and Conservation (BASC), which feels that the MCZ designation process will impinge on its rights. That is not the case. Marine conservation zones will be for seabed features, primarily. Restrictions on waterfowling or similar activities will be very limited. Your point is valid.
1350. **Mr Hamilton:** I appreciate your point. We may come back to some of the points about why their concerns may not be as legitimate as they think. There are a lot of concerns around clause 24, for example. Would the Department object to the inclusion of the word “cultural” to give a broader definition and to give comfort to sectors that may not think of themselves as being covered? They may think of themselves as being social and economic, but they do not think that others consider them to be social or economic. Maybe there should be an explanation about why “cultural” is being included in the Bill.
1351. **Mr K Bradley:** Surely, Simon. The Department is very keen in policy terms to be as inclusive as possible and will certainly look at including the word “cultural”. We will obviously take advice from the Office of the Legislative Counsel (OLC). We are definitely not averse to amending that.
1352. **Mr Hamilton:** We will bank that.
1353. I am going back a bit in the sentence to the word “may”. We love “may” and “shall”. It is one for giving comfort to anyone and everyone, and not any particular group, who might be covered by social, economic and/or cultural. Ken, you said that there would be circumstances in which something was of such importance that you would not have regard.

1354. **Mr K Bradley:** We would not have the same level of regard.
1355. Mr Hamilton: I am not saying that that should not be the case. If there is something of such international or national interest, it should be designated. It does not matter what the economic or social consequences will be; you are still going to designate it. However, even in those circumstances, where you have a feature of international or national importance, regard should be had for the impact.
1356. **Mr K Bradley:** Yes, that is right. Perhaps I confused you by saying that we would disregard it. That was not my intention. We would still “have regard to”.
1357. **Mr Hamilton:** Maybe others take it slightly differently than I do, but I was concerned by what you said. If I am concerned, you can be assured that some other people are going to be tearing their hair out. I was concerned that the social, economic or cultural impact would be disregarded. It may not be overriding, be more important or affect the ultimate designation of an MCZ, but regard should be, and always be, given to what the impact would be. Let us take fishing, for example. If by drawing that MCZ and making it highly protected — with a small “h” and a small “p” — fishing was no longer permitted to take place, you have to have regard to that in the designation, because that impacts on people’s livelihood.
1358. **Mr K Bradley:** Absolutely. What I meant to say was that, in such circumstances in which we have a unique feature, the environmental angle will feature highly.
1359. **Mr Hamilton:** I do not disagree with that, but I think that the wording is loose, because it says “may” have regard to. I think that it “should” have regard to. I am not coming in and saying that it should have and that the economic, social and cultural should outweigh the importance environmentally, but the Department, or whoever is designating, should, at least, consider the impact and quantify it in some way.
1360. **Mr K Bradley:** That is right. The designation process, which will be set out in the guidance, will show a clear and transparent trail of how all other aspects have been taken into account and why an area has been become highly protected or whatever. There has to be a clear and transparent process. The Department would like to retain the flexibility of “may”. In all cases, we will take regard of it, but there may be cases in which the environmental requirements outweigh the social or economic.
1361. **Mr Hamilton:** I am happy to park it and give it some thought. The guidance is important. It may be that we need to have that point made more explicitly clear during the clause-by-clause scrutiny or when it comes back at Consideration Stage. I do not think that it is wonderfully phrased, at the minute, to give comfort to those, say, in the energy sector, fishing, shooting or whatever leisure sector, that some thought will at least be given to their interests.
1362. **Mr Kerr:** If you want, we can keep it under review.
1363. **Mr Hamilton:** I am happy to leave it for the minute. You take a look at it, and we will come back to it when we do the formal clause-by-clause consideration.
1364. **Ms McEvoy:** Let me add that an impact assessment will be an integral part of the designation process, so we will take them into consideration. They will be looked at.
1365. **Mr Hamilton:** Ken’s first answer caused me concern — sorry for picking on you, Ken.
1366. **Mr K Bradley:** That is what I am here for.
1367. **Mr Hamilton:** What you said initially is one interpretation: we may have regard to it, but, in some cases, we will not because it is so important. No one is arguing that there will not be environmental considerations so important that it does not matter about anything else, but we should still, even in those circumstances, say —

1368. **Mr K Bradley:** I take your point, Simon. When the DOE says “may”, some people out there may think that it will probably just disregard it and designate the zone anyway.

1369. **Mr Hamilton:** Yes. I think that the Department has to be mindful of the type of people who are likely to argue that point.

1370. **Mr K Bradley:** It is a valid point.

1371. **Mr Hamilton:** Some of them do not believe that anything done to them by government is ever positive. They think that they are never listened to. I am arguing for it as much to assuage concerns as to have any impact. I want them to know that they will at least be listened to.

1372. **Mr K Bradley:** We will take it under advice. We will go back to the draftsman to see whether there is any way of tidying that up but still giving the Department flexibility. We should give people a bit more surety.

1373. **Mr Hamilton:** If that cannot be done for whatever reason, and we can take a look at that, making it explicitly clear in the guidance, and the Committee having some sight of that beforehand, might do the same job by a different means.

1374. **Mr K Bradley:** We fully intend that the Committee will see the draft guidance. That will be a very important document as well. To be honest, we had the same discussion about the biodiversity duty in the Wildlife and Natural Environment Act (Northern Ireland) 2011. The same conversation took place. We will go back to the draftsman to see whether we can come up with other wording.

1375. **The Chairperson:** You will come back to us with more information on clause 12.

1376. We will move on to clause 13, which is entitled “Further provision as to orders designating MCZs”.

1377. **Mr Weir:** This meeting is scheduled to last until 1.00 pm. Members have other meetings to go to later. We have got to clause 12. We have correspondence and so on to deal with. I suspect that we

may start to lose our quorum if we go on much longer. I suggest that, as we have reached the end of clause 12, that is as far as we should go.

1378. **The Chairperson:** OK. We will stop there at clause 12 and resume with clause 13 next week. Thank you all very much for coming, and I will see you next week.

7 June 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr John Dallat
 Mr Tom Elliott
 Mrs Dolores Kelly
 Mr Francie Molloy
 Lord Maurice Morrow of Clogher Valley

Witnesses:

Mr Ken Bradley *Department of the*
 Ms Brenda Cuning *Environment*
 Ms Gerardine McEvoy

1379. **The Chairperson:** I welcome Brenda, Ken and Gerardine from the Department of the Environment (DOE). Sorry to have to take you all the way from Stormont to here.
1380. **Mr Ken Bradley (Department of the Environment):** No problem.
1381. **The Chairperson:** It is a change of scenery anyway. Members, you will recall that we stopped at clause 13 at the previous meeting. The issues that were raised about clause 13 included the need to clarify whether the seashore can be included in marine conservation zones (MCZs) and how coastal erosion will be dealt with. It was also suggested that clause 13 include a duty on the Department to assess, manage and mitigate impacts on existing activities resulting from the designation of MCZs. I invite the Department to respond to those issues.
1382. **Mr K Bradley:** Thank you, Chair. Your first point concerned the inclusion of the seashore in marine coastal zones, and we feel that that is already covered adequately in clause 13(3)(a), which refers to where:
“the area of seashore adjoins the area of sea”.
1383. Coastal erosion has not been taken into account. The marine conservation zone is primarily a measure to conserve seabed habitats and flora and fauna in the sea. It does not really relate to coastal erosion. There is already a mechanism in place to deal with coastal erosion called the Bateman formula, under which each Department and public body deals with any coastal erosion that is relevant to its area of responsibility. We believe that the clause dealing with marine conservation areas is not the place to deal with coastal erosion.
1384. **Mr Boylan:** The Minister has accepted changes to other legislation, so I hope that he will look at this one favourably. The respondents have called for this point to be included in clause 3, and you are saying that it is covered in clause 13.
1385. **Mr K Bradley:** Yes, it is in clause 13(3)(a).
1386. **Mr Boylan:** Ken, would it seriously impact on clause 3 to include the seashore in a marine coastal zone? You are saying that it is already covered in different legislation, but surely it would be better to tidy up this Bill instead of having to cross reference each time. Would it seriously impact on that clause to include it?
1387. **Ms Brenda Cuning (Department of the Environment):** That may be a typo. Clause 3 deals with amendments, so it is actually clause 13(3).
1388. **Mr Boylan:** Sorry; OK. It says clause 3 in this briefing, but it is actually clause 13(3). Would it seriously impact on the Bill to put that in?
1389. **Mr K Bradley:** No. If it adds clarification, it is not an issue at all, Cathal, and we would be happy enough to put that in. I just want to clarify exactly where —
1390. **Mr Boylan:** I am just going on the respondents’ point that it needs to be clarified whether the seashore can be included in an MCZ. It says clause 3

- in this briefing, but it is actually clause 13(3). You are saying that the seashore is already covered. The respondents suggested extending the clause to include that. So, are you clarifying that it is already covered?
1391. **Mr K Bradley:** That is right. I am not actually sure what point the respondents are making. Clause 13 is obviously about designating MCZs, and clause 13(3)(a) refers to where:
- “the area of seashore adjoins the area of sea”.*
1392. We think that that is clear enough. However, if alternative wording or further clarification is required, we would be happy to look at it.
1393. **Mr Boylan:** No, that is grand. I am going only on what the respondents said.
1394. **Mr Elliott:** Just on that point, I am assuming — again, I am not entirely clear — that there is a question about what the idea of the seashore adjoining the sea means. Is that right up close to the sea? How far away can you go? If there is a feeling that it should be designated 300 metres back from the seashore, but it runs right up to the sea, does that mean that it is still adjacent to the seashore? I am assuming that that is what the query is about, but I am not sure. That is certainly my query. How far back can you go?
1395. **Mr K Bradley:** The seashore is right up to —
1396. **The Chairperson:** That is the definition of high tide.
1397. **Mr K Bradley:** Clause 39 defines seashore, as:
- “the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide”.*
1398. In essence, it goes up to the high water mark.
1399. **Ms Gerardine McEvoy (Department of the Environment):** The interpretation of that Part is under clause 39.
1400. **Mr Elliott:** Again, I am sorry to come back to clause 13(3)(a), which states:
- “the area of seashore adjoins the area of sea”.*
1401. I am trying to establish whether that could be 400 metres or 500 metres back from the sea line.
1402. **Mr K Bradley:** It really depends on the feature that we want to protect or designate.
1403. **Mr Elliott:** So, does that mean that it could be?
1404. **Mr K Bradley:** It could be.
1405. **Mr Elliott:** If I owned land along an area of shoreline, I would be starting to get concerned and would be asking whether my area of land could come within an MCZ. Although you just clarified it, that would pose a concern for me. I do not know whether that is what the people who made the response were trying to get at, but that is what I would be concerned about.
1406. **The Chairperson:** The definition is the spring high tide. That is the high water mark.
1407. **Mr Hamilton:** No, it is not. It goes beyond that.
1408. **The Chairperson:** Is it not? OK, we will look at clause 39 in more detail.
1409. **Mr Hamilton:** I want to pick up on Tom’s point. How far back do you go? The seashore will be bigger and smaller right around the coastline, and it will concern people who own or use the land. That is a concern that I have. Designating the seashore as an MCZ could have an impact on public access, for whatever means that might be. We were talking about beaches and bathing water a moment or two ago. Could it restrict that type of access or access for other things? You are heading into an unknown in some respects, because it permits the designation of a seashore in certain circumstances, but nobody can predict what those are, so it could be a benign clause. How it is implemented is key. It makes sense to legislate to allow the designation to happen if the conditions are there and if the protected feature or features leading to it are also present on the seashore.

1410. **Mr K Bradley:** That is right. I think that that is the key; it has to be present. In other words, the feature of the seabed has to extend to the shore. It is not a definition that was made willy-nilly; as you say, it might never be used, but it gives it flexibility.
1411. **Mr Hamilton:** Are there any examples of that already, or are you envisaging any? When those things are written, there must be some sort of idea of where you would designate in that way.
1412. **Mr K Bradley:** That is right. You would potentially do it on some geological features of areas of special scientific interest (ASSIs). It is not a true example, but if you take the Giant's Causeway, you will obviously know that it does not stop at the shoreline. The basalt rocks extend —
1413. **Mr Dallat:** To Scotland. [Laughter.]
1414. **Mr K Bradley:** That is not a very good example, but it is one that everybody recognises. You could designate the seabed for that geological feature but then carry the designation to the Giant's Causeway itself, because that is an extension of that same feature.
1415. **Mr Hamilton:** The Giant's Causeway is not a bad example for describing what could happen, although we have no problem with getting access to the Giant's Causeway. We can get the Olympic torch on to the Giant's Causeway, so we are OK. It may be that, where a feature is on the seashore, you say that the MCZ, rather than being merely out at sea, extends up to the coastline, and, therefore, public access is denied or certain activities are prohibited or whatever. It is one thing restricting activities at sea, but that becomes difficult if the area potentially extends 100 metres or 200 metres inland.
1416. **Mr K Bradley:** If a geological feature is involved, it is unlikely that access will be restricted.
1417. **Mr Hamilton:** It could be —
1418. **Mr K Bradley:** It could be, but only if that access is potentially detrimental to the feature that is to be protected. Again, that will be looked at; all activities will be taken into consideration. I cannot say that that will never be the case. It will depend on the situation on a site-by-site basis. The provision is really about giving uniformity to protecting a feature and recognising that a feature does not end at the low or high water mark.
1419. All views will be taken into consideration. It is a very flexible designation process, and, as was said the previous week, it is definitely not there to stop socio-economic or cultural practices.
1420. **The Chairperson:** Very often, it would probably be for the protection of the seabed rather than the seashore. Rather than doing it willy-nilly, it has to be evidence based to safeguard it.
1421. **Mr K Bradley:** That is correct, Chair.
1422. **The Chairperson:** We will move on to clause 14. The issues that were raised on this clause included urgent designations and the need for firmer consultation requirements, especially those regarding management measures that are proposed for an MCZ.
1423. **Mr K Bradley:** Clause 14(4) has an explicit duty for the Department to consult anyone, meaning the Secretary of State (SOS) or any other person who is likely to be interested in or affected by the designation process. The Department is already under an obligation to consult widely with anyone who is either affected or interested. So, we feel that clause 14(4) covers that point.
1424. Obviously, the management measures are part of the designation process. We set out the boundary of an MCZ, its features and the conservation objectives, and that will also lead to setting out the management measures that are required. That is all part of the overall package, which will be widely consulted on. We feel that the Department has legislated fully in that respect. It is a totally open, transparent and inclusive process that has taken account of all views.

1425. **Mr Dallat:** Apart from a spot of fishing, why would the Secretary of State be interested?
1426. **Mr K Bradley:** The Secretary of State has responsibility for approving the designation, as it is a reserved function.
1427. **Mr Dallat:** I thought that it was to do with fishing.
1428. **Mr K Bradley:** Fishing is one of the few things that is purely devolved to Northern Ireland.
1429. **Mr Elliott:** A suggestion was made about having a register of consultees. That is a good idea, and such a register could be updated and amended as necessary. How do you feel about that?
1430. **Mr K Bradley:** I have no problem with that, and I do not think that the Department has either. The problem with a register is that you are either on it or you are not. It has to be flexible.
1431. **Mr Elliott:** We accept that, but I think that the respondents were saying that if you have a register of people and bodies whom you must consult, and any others are additional, the organisations will at least know whether they are on the register.
1432. **Mr K Bradley:** It is a totally inclusive process, so I have no issues with that whatsoever.
1433. **Mr Elliott:** Can that be written into the Bill?
1434. **Ms McEvoy:** The Department has a consultation list. I think that we agreed that we would keep it updated and ensure that any affected stakeholders would be on it.
1435. **Mr K Bradley:** The duty on the Department to consult provides the responsibility to have a list. We already have a list of 700 or 800 bodies.
1436. **Mr Elliott:** Yes, but as officials have told me in other Committees, if it is not in the Bill, it is not there. I assume that it would be a matter of making a simple amendment.
1437. **Mr K Bradley:** I am not sure. We would need to look at it and see. In legislative terms, and I am not totally au fait with legal speak, having a duty on the Department to consult means a duty to consult anybody and everybody who is interested in or affected by the designation.
1438. **Mr Hamilton:** Although it is important, I think that it is more an issue of process.
1439. **The Chairperson:** When you say “interested”, do you mean NGOs and environmental groups that may not be affected but may be interested?
1440. **Mr K Bradley:** Yes, I think that that is mentioned. It means anybody who has an interest in the designation of that particular area.
1441. **The Chairperson:** So, they may not be affected by it but may have an interest.
1442. **Mr Hamilton:** I think that Tom’s point is a good one, in that some raised it because they fear that they will not be asked for their views because they are not thought of automatically. The Chair mentioned NGOs, and I think there is a list of those that will be thought of automatically, but other organisations that would have an interest nonetheless are not automatically considered to be part of the process. Whether the need for a register is in the Bill is a different matter, but I think there is definitely a need for it, and some assurance on that would be useful.
1443. The general point concerns process. I think that the clause is fine in that it requires consultation, but you cannot really write the nature of that consultation into a Bill. When the Committee visited Scotland, I found it quite interesting that although the Bill there was passed in 2010, they went into the very long process of identifying 31 sites. The area there accounts for half of the UK’s territorial waters, and they are designating only 30, so pro rata, we would designate much less than that, I would imagine. I am not sure whether that will happen in practice. They engaged in the fairly painstaking and laborious process of identifying

- areas that they thought may be useful, and they then brought everybody in and talked and talked and are still talking. So, you cannot put that in a Bill. Given the multiplicity and different number of stakeholders that there will be in certain areas, I think that it would be useful if the Department made clear, either now or particularly during Consideration Stage, that this is the sort of process that it envisages happening. It needs to put the assurance out there that it is not a top-down or a dictatorial process, not that it would be.
1444. **Mr K Bradley:** That is right. Perhaps we could broaden that and Mr Elliott's point in the guidance material that we will develop and try to make sure that it is as inclusive as possible. We also need to make sure that the guidance sets out very clearly both the process and how people are involved in it.
1445. **Mrs D Kelly:** Hopefully, unlike the situation with Lough Neagh, no absentee landlords are involved.
1446. **Mr Hamilton:** The Department needs to have an idea what the consultation will look like, and that requires consultation. That is because the way that it looks and what goes on in practice are important. I know that we were giving off a minute or two ago about having consultation after consultation, but I think that it would be helpful if we went backwards and forwards with the various stakeholders several times.
1447. **Mr K Bradley:** That is a very valid point, and it is something that the Department was criticised for. When we developed the range of marine spatial areas for consultation under the habitats directive, there was not a great deal of consultation, because that was a purely ecological designation process. As we know, this is much wider than that. I agree that guidance would need to set out very clearly, step by step, what is required and who is involved. As I said, our intention is to be totally inclusive and transparent, because, at the end of the day, we want everybody to be as happy as possible and agreeable to the MCZ and to what it is there to achieve.
1448. **Mr Hamilton:** You are right; that has to be the objective. Everybody may not be 100% happy at the end of it, but at least nobody can say that they were not involved or that they were excluded. Indeed, maybe everybody can say that they are more content than not.
1449. **Mr K Bradley:** That is right. At least they can understand why the Department is doing it.
1450. **Mr Hamilton:** Clause 14 (6) states:
"In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)."
1451. This is about what happens when an emergency arises, and this question has come up in a number of the evidence sessions that we heard. I think that most people understood that such an emergency could mean a pollution incident or something like that. It would be interesting to hear your interpretation of what would happen in practice. Again, that is probably something for the guidance. I appreciate that you do not need to consult with somebody about whether you are going to close off an area for this, that or the other because of pollution. Consultation in those circumstances may be more like providing information.
1452. **Mr K Bradley:** Absolutely. As you say, it is more like providing information. Obviously, we could not carry out a 12-week consultation for a pollution incident, but we would ring people up and inform them. There is no point in doing something without telling people why we are doing it. Otherwise, they might do something that is detrimental to the situation, because they are not fully aware of it. So, there will be a mechanism for informally telling the relevant people who will be affected by the designation and why it has been made.
1453. **Mr Hamilton:** For clarity, when we talk about emergencies or urgent need, I think that there is a bit of concern that this could be used as a back door. We

- talked about pollution, but what other types of incidents could occur?
1454. **Ms McEvoy:** Sorry; these emergency by-laws are for unregulated activities. That could mean that a powerboat race, for example, that is going through an MCZ would be subject to them. We would not stop such a race, but we would possibly divert it around the MCZ. So, these emergency by-laws refer to unregulated activities.
1455. **Mr K Bradley:** It is definitely not the case that the Department would use those emergency by-laws as a back door, because, obviously, it would be subject to judicial review (JR) for not following due process.
1456. **Mr Boylan:** My question is on the same point. As Simon said, information is important. There is a concern when urgent cases arise. The message needs to get out to explain exactly what it is about — powerboat racing, pollution or anything else.
1457. **Ms McEvoy:** That is where we would effect the by-laws.
1458. **Mr Boylan:** That is the information that needs to get out, because there is concern over that.
1459. **Mr K Bradley:** This is enabling primary legislation, so we are trying to give the Department the powers to address all eventualities. The power might never be used, but it gives the Department power if and when such incidents happen.
1460. **Mr Boylan:** Just following on from that point, the Department must obviously consult with other Departments, which is grand. However, it gives us the opportunity to tidy up the legislation where the processes and responsibilities are concerned. We have an opportunity there. Obviously, you have thought of taking that on board as well. I know that you referred to legislation that covers other areas, as well as DOE responsibilities. So, this may give us an opportunity to tidy up some of that and be more cross-compliant in the consultation process. Ken, you might look at that as well. However, I do not know whether you might need it just for the information and guidance; it may not be needed in the primary legislation.
1461. **Mr K Bradley:** I think that you are right about the guidance, Cathal; it is more to do with procedure. We will definitely take that on board.
1462. **Mr Campbell:** An issue arose from the answer that you gave to Tom Elliott. I am interested in the practical mechanisms that would flow from clause 14. You said that there are 700 to 800 consultees.
1463. **Mr K Bradley:** Yes. The Department's list of statutory consultees has hundreds of names to cover all eventualities. Obviously, if we were consulting on marine conservation, we would pick relevant consultees; we would not contact all 700.
1464. **Mr Campbell:** That is the point that I want to get to. Does that mean that, under this provision, some form of consultation about any series of designations would not entail 700 groups being consulted every time?
1465. **Mr K Bradley:** No. If we were designating an MCZ in north Antrim —
1466. **Mr Campbell:** You would not consult south Down.
1467. **Mr K Bradley:** No.
1468. **Mr Campbell:** Would such a geographic distinction be the only one?
1469. **Mr K Bradley:** I am trying to think of an example. A marine conservation zone might not be relevant to, say, a health trust or another similar body. We would have to take a view on who we consult and why, and we would expect that to mean the people who are affected by or interested in the MCZ.
1470. **Mr Campbell:** I want to get to the point that some people want to be reassured that we are not creating a legal mechanism that will end up burdened with inordinate amounts of consultation in 10 years' time. Simon made the point that Scotland is meticulously going through the process two years after its Bill was enacted. The Department is

- clear that people have to be consulted, but as was discussed earlier when we talked about taxis, actions follow consultations and you do not want to negate those actions by repeating, ad nauseam, inordinate numbers of consultations.
1471. **Mr K Bradley:** That is absolutely right. We may be slightly lucky with the marine environment, and those who may be interested in or affected by a marine conservation zone in a particular part of Northern Ireland's territorial waters are more clearly defined, shall we say, and that also applies to who we would and would not consult.
1472. I think that it came up previously that the Commissioners of Irish Lights said that they wanted to be included for looking after lighthouses. Obviously, they would have an interest, as would fishermen. Some interested parties are very obvious, such as fishing organisations, NGOs and the renewable energy industry. There are obviously other organisations that also have an interest, but hundreds would have no interest in a marine conservation zone off the Copeland Islands or whatever part of the coast. The Department would decide who to consult based on their knowledge. We would consult more people rather than less and err on the side of caution, but we would obviously not consult 600 or 700 organisations. That would be a waste of time.
1473. **The Chairperson:** Ken, you said that you will consult people who would be affected by or interested in a marine conservation zone. Clause 14(3)(a), however, uses only the term "affected by". Are we going to add the words "be interested in"? Clause 14(3)(a) states that the notice must:
- "be published in such manner as the Department thinks is most likely to bring the proposal to the attention of any persons who are likely to be affected by the making of the order".*
1474. Are you going to add the words "or be interested in" the making of the order?
1475. **Mr K Bradley:** Clause 14(3)(a) is about only the publishing; in other words, it refers to publishing the order to only those people who are affected by it. Clause 14(4)(b) is all-inclusive where consultation is concerned.
1476. **The Chairperson:** So, that means that the Department must consult.
1477. Clause 14(4)(b) has the words "to be interested in". So, the notice would be published only to people who are "affected by" and not to people who are "interested in".
1478. **Mr K Bradley:** That is right.
1479. **The Chairperson:** Fair enough.
1480. **Mr Boylan:** Unfortunately, I missed the meeting last week, but I just want clarification. It is grand having the consultation with the stakeholders, but obviously any designations in this case will be evidence based.
1481. **Mr K Bradley:** Yes, absolutely.
1482. **Mr Boylan:** I am looking at some of the comments that were made on that. How do we ensure that that evidence is clarified and independent? One group could say one thing, while another group could say something different. I am just looking at the fishing industry's comments, and that group expressed genuine concerns. It is grand having all the stakeholders involved, but getting that process right will involve making sure that it is information and evidence based.
1483. **Mr K Bradley:** That is correct. Any MCZ has to be based on the best available science. The Department will have to demonstrate what is down there, how widespread it is, why it is important and what activities are detrimental to safeguarding that feature. You are correct: we have to show through video footage or whatever what the feature is and why it is important.
1484. **The Chairperson:** We will move on to clause 15, which deals with the publication of orders. The main issue that was raised in relation to this clause was the need to ensure that all

- interested parties are included in the process.
1485. **Mr K Bradley:** That goes back to your previous point, Chair. It is about publication of the orders, not about consulting or informing people. The publication goes to those who are affected by the order.
1486. **The Chairperson:** Members have no questions, so we move to clause 16. No comments were raised on that clause, so, unless members would like any more information, we can move on.
1487. Clause 17 is on the review of orders designating MCZs. One issue raised was that clause 17 should be extended to enable the Department to amend an order and that the clause should include an obligation to review an order when significant new evidence is made available.
1488. **Mr K Bradley:** A good point was raised there. The legislation states that the Department may review if informed by the Secretary of State, Scottish Ministers or colleagues down South. On the face of it, the legislation does not appear to allow the Department itself to review. We will clarify that with the draftsman and, if necessary, amend that.
1489. **Mr Hamilton:** The Secretary of State, Scottish Ministers and the relevant Department in the Government of Ireland can make representation to the Department to review. I presume that Welsh Ministers are not included because we do not have a boundary with Wales.
1490. **Mr K Bradley:** That is right. Wales is too far away. ROI and Scotland are the most relevant because their waters abut ours.
1491. **Mr Hamilton:** During one of the presentations — I think from the fishermen — the issue came up that our fishermen had been ignored until a very late stage, even though they were affected by the Scottish and English systems, because they were distant, separate and removed. This is one element that will address those types of issues. Could something happen in Wales that would affect us, even though we have no boundary with Wales? I do not know whether fishermen from here fish there, but I throw that out there.
1492. **Mr K Bradley:** Fishing is different in that fishermen are licensed to fish and can fish practically anywhere in UK waters, and that is fine. This is down to departmental responsibilities, and Northern Ireland territorial water is restricted to 12 nautical miles unless it abuts another jurisdiction's 12 nautical miles, which happens with Scotland. It is slightly different from the fishing context. It is only if our MCZ were to abut a Scottish MCZ or if our colleagues down South did something. It is just for continuity.
1493. **Mr Hamilton:** You are right. I am sort of arguing against myself, because you could include the Spanish too. You do not want to put them in it.
1494. **Ms Cunning:** Also, the consultation arrangements were affected by it.
1495. **Mr Hamilton:** That is OK. When I saw the omission initially, I thought that it was because we have no territorial boundary with Wales.
1496. **Mr K Bradley:** The clause is to deal with situations where MCZs abut each other. We will clarify it. Maybe because the Secretary of State is allowed to initiate a review, the Department is allowed, by default, to do so.
1497. **Mr Hamilton:** What about the Isle of Man?
1498. **Mr K Bradley:** I think that the Isle of Man is too far away.
1499. **Mr Hamilton:** I would not have thought so.
1500. **The Chairperson:** Our territory does not go that far.
1501. **Mr K Bradley:** I am not sure whether some of our offshore waters do.
1502. **Ms Cunning:** Our offshore waters do adjoin those of the Isle of Man. That is what delimits our offshore.
1503. **Mr Hamilton:** That is the Secretary of State's responsibility.

1504. **Ms Cunning:** Yes.
1505. **Mr Hamilton:** That is why he is mentioned in that clause. He is not mentioned because he just wants to be; he has a constitutional duty to be included.
1506. **The Chairperson:** We move to clause 18, on the creation of a network of conservation sites. Issues raised included that it should place a duty on the Department to declare MCZs for the benefit of the Northern Ireland marine region, as opposed to just contributing to the UK marine area, and that it should require the consideration of the cumulative impact of MCZ designations on sustainable economic development activity.
1507. **Mr K Bradley:** I remind the Committee that the overall context of marine conservation zones is so that the Department fulfils its obligation under the marine strategy framework directive. Part of that directive requires good environmental status by 2020. The UK has taken the decision to designate marine conservation zones, or marine protected areas in Scotland, as well as the rest of the designations we already have, to meet that obligation. We are working to an overall UK target. Our colleagues in the Joint Nature Conservation Committee (JNCC) and Natural England are coming up with a definition of what a coherent network of marine protected areas for UK waters will look like. We are working to that overall target. By default, we will have a range of Northern Ireland MCZs; hopefully, as Simon said, not 30. However, we will have a number of MCZs in Northern Ireland waters, which will add to the overall objective. Our friends in Scotland are very important as they have so much of the UK waters — 50% to 60% — and their large marine protected areas (MPAs) will lead very much to that overall target.
1508. We cannot look at Northern Ireland in isolation. We are looking at it as part of the bigger picture. Sustainable development is obviously very relevant as well. Again, this is a very flexible mechanism for looking at the social, economic and cultural aspects of all our MCZs and not just purely the environmental reasons.
1509. **Ms McEvoy:** MCZs are for nationally important species. Therefore, we will be looking at species native to here.
1510. **Mr K Bradley:** I imagine that there will probably be some MCZs in Northern Ireland that are peculiar to Northern Ireland.
1511. **The Chairperson:** Yes; we must not just think about the contribution to the UK network. What about our own specific areas that we want to protect but which may not form a network with the UK?
1512. **Mr K Bradley:** As you are aware, sea sponges have been found around Rathlin that have not been found anywhere else. They are unique, so perhaps that area would be an MCZ at some stage.
1513. **The Chairperson:** Do we need to strengthen the Bill to say that we also need to look at MCZs in our region that may not necessarily contribute to the UK network?
1514. **Mr K Bradley:** I do not think so. That coherent network still allows for representative species. It does not have to be purely things that are rare or threatened. It is a general enabling power that gives us the flexibility to designate what we feel is important for Northern Ireland.
1515. **Mr Boylan:** That should be it, Ken. Overall, it is grand, but it is not MCZs for the sake of having MCZs. Let us be clear about that. That is what I support. It may border on other areas that are protected already, but let us be clear about designating our own areas for our own evidence-based reasons and everything else.
1516. **Mr K Bradley:** Again, it is a balancing act. We have to meet our EU commitments under the marine strategy framework directive. When we do that, we will see what else is out there. Your point is valid: we are not going to designate willy-nilly just because

- something is nice. There must be a very strong scientific reason for designation. Obviously, we will take into consideration other activities, no matter what.
1517. **The Chairperson:** You are saying that the Bill allows us to designate because it is important to Northern Ireland alone; it is not necessarily about forming a network with the UK.
1518. **Mr K Bradley:** Yes, but obviously taking the views of elsewhere into consideration.
1519. **The Chairperson:** OK. We will move on. Clause 19 deals with reports. The only issue raised in relation to the clause was that the word “restricted” should be changed to “affected”.
1520. **Mr K Bradley:** Again, the word “restricted” was put in by the Office of the Legislative Counsel (OLC). We would probably need to speak to it again to see the relevance or consequences of amending that. The Department feels that “restricted” is fine. “Affected” is obviously a bit wider than that. So, we will speak to the OLC and the draftsman to see what the ramifications of changing the wording would be.
1521. **The Chairperson:** OK. We will move on. Clause 20 deals with the general duties of public authorities in relation to MCZs. Issues raised were the terminology used and the comparison between public sector and private sector duties.
1522. **Mr K Bradley:** There is a general duty on all public authorities, when they are going about their activities to regulate or license activities in the marine environment, to take MCZs into consideration and inform the Department if any activity they are licensing would impinge negatively on an MCZ. There are a number of issues raised in this and the subsequent clause. Again, for clarification — we sought a legal view on this — when the Department designates an MCZ, public authorities have their own responsibilities. If a public body licenses something that is detrimental to an MCZ, the Department will obviously ask for explanations and try to mitigate
- the effect of the activity as much as possible, but it cannot take another Department or public body to court. So, the Department cannot sanction any other public body. I just wanted to clarify that.
1523. Obviously, public authorities have to have regard to any advice that the Department gives them in relation to MCZs, such as the designation feature and that sort of thing. We feel that this clause and even clause 21 go as far as possible, bearing in mind that other Departments have responsibilities to the marine environment in relation to fish and whatever. Again, the Bill is based on sustainable development principles; it is not purely about environmental protection. This clause and the subsequent clause are there to achieve a balance.
1524. **The Chairperson:** I know what you are saying: you cannot get the other Departments to do what you want them to do.
1525. **Mr K Bradley:** Just as they cannot get the DOE to do what they want it to do.
1526. **The Chairperson:** In others words, you do not have much clout with the other Departments. However, can we strengthen the wording? There is one suggestion that clause 20(11) should be strengthened by changing “have regard to” to “act in accordance with”. That may give the Bill a bit more power.
1527. **Mr K Bradley:** Again, that is probably going a wee bit too far. “Have regard to” means that public authorities must pay attention to it, not just consider it and then dismiss it. A public authority must have a very good reason for dismissing the advice, because it could get into the realms of a third party asking for judicial review of its decision. The Department obviously cannot take a public authority to court. However, a third party could ask for a judicial review of a decision taken by a public authority that was detrimental to an MCZ.
1528. **The Chairperson:** Do you intend to publish a lot of guidance on that?

1529. **Mr K Bradley:** There are probably four specific pieces of guidance that we will bring before the Committee once the Bill progresses through the Assembly process. Guidance on public authorities will be one of those specific pieces of guidance.
1530. **The Chairperson:** Without a marine management organisation (MMO), you will have to depend on other Departments doing what you want them to do.
1531. **Mr K Bradley:** That is correct.
1532. **Mr Elliott:** I have a query on that point. If there were a marine management organisation, would that not change the issue? Could it not take the Departments to court?
1533. **Mr K Bradley:** Not necessarily. Departmental structures will still be in place. The Department of Agriculture and Rural Development (DARD) and the Department of Enterprise, Trade and Investment (DETI) and other public authorities with responsibilities in the marine environment will still exist, and their responsibilities will not change. An MMO would probably carry out enforcement and other aspects differently, but it would not change the remit or statutory responsibilities of any other public authority. The DOE would have no greater powers than it has now to regulate any other public authority.
1534. **Mr Elliott:** If it was found that the DOE was polluting or doing damage to an MCZ and a marine management organisation had the control mechanism of looking after an MCZ, could it take the DOE to court for any act that was doing damage to that MCZ?
1535. **Mr K Bradley:** I think that the short answer is no; you would not like to think that one part of the DOE had designated a site while another part polluted it.
1536. **Mr Elliott:** It does happen.
1537. **Mr Bradley:** You would not like to think that that would happen in the marine environment.
1538. **Mr Elliott:** It could happen.
1539. **Mr K Bradley:** I do not think that having an MMO in those circumstances would make any difference. You could argue that, if there was greater integration at that level, that incident should come to light quicker and be dealt with.
1540. **The Chairperson:** We are just concerned about the difficulties of other Departments co-operating. We have seen the example of Strangford lough.
1541. **Mr K Bradley:** It is a point well made. Our Minister has his own very specific views on MMOs.
1542. **The Chairperson:** You may have covered this point already. People have said that the term:
“capable of affecting (other than insignificantly)”
1543. is vague and untested in the courts. They have suggested that the wording “other than insignificantly” should be changed.
1544. **Mr K Bradley:** In legislative terms, significant means other than trivial or minor. Therefore, that term is fairly robust, and we do not see how we could amend that to make it any stiffer, without going outside what the Department can do. We feel that that probably has the same meaning as any other wording suggested in responses.
1545. **The Chairperson:** As members are content, we will move on to clause 21, which deals with the duties of public authorities in relation to certain decisions. The issues that were raised about that clause focused on the interpretation and detail of compensatory measures.
1546. **Mr K Bradley:** Compensatory measures are not mentioned in the Bill. We feel that those measures were taken account of during the designated process, when socio-economics and cultural activities were also taken into account.
1547. **Ms Cunning:** I think that the query was about public authorities making authorisation decisions and requiring the body doing the activity to carry out

- compensatory or mitigation measures. That is not mentioned in the Bill, as the authorisation does not come from the Bill but from whatever legislation public authorities use. So, if it were the Department of Culture, Arts and Leisure or DETI giving a licence for something, they have legislation to cover that. They can put conditions on the authorisation, and that is where it would be carried out. This is just saying that if you are going to do an authorisation make sure that you include conditions.
1548. **The Chairperson:** If members are happy, we will move to clause 22, which deals with advice and guidance by the Department. Issues raised related to the need for guidance to be published and for recipients to act in accordance with it.
1549. **Mr K Bradley:** There was a bit of confusion among some respondents about what we mean by guidance. It is not guidance that is published by the Department, it is guidance given by the Department to a public body. I think there is a bit of confusion and ambiguity about what is meant.
1550. **Ms McEvoy:** Clause 22 is just about guidance to do with the MCZs and the public authorities. It is not the general guidance that we would issue on designations and public authorities. I think that some of the respondents got that confused, and thought that the clause dealt with provisions for us to issue guidance.
1551. **The Chairperson:** OK. Are members happy with that?
- Members indicated assent.*
1552. **The Chairperson:** We will move to clause 23. Issues raised were the lack of penalties or sanctions and the need for time limits for compliance.
1553. **Mr K Bradley:** This is about respondents requiring sanctions against another public body. As I said earlier, the Department cannot take court action against other public bodies; so, in that respect, there is really nothing that we can do.
1554. One of the other points made was that in clause 23(2)(a) the word “may” should be changed to “must” or “shall”. There is no reason why the Department could not give ground on that, obviously subject to OLC and ministerial approval. We will look at the wording of clause 23(2)(a) and perhaps change that wording.
1555. **The Chairperson:** OK. Are members happy with that?
- Members indicated assent.*
1556. **The Chairperson:** It just adds a bit more strength to the Bill.
1557. **Lord Morrow:** On a point of clarification; are you saying that there is no duty whatsoever in the Bill to deal with compensation?
1558. **Mr K Bradley:** That is correct.
1559. **Lord Morrow:** So, it lies elsewhere.
1560. **Mr K Bradley:** Yes.
1561. **The Chairperson:** Where? With the Department?
1562. **Mr K Bradley:** It depends on which Department or regulatory authority is responsible.
1563. **The Chairperson:** So, you are saying that we can change clause 23(2)(a) to include “must” or “shall”.
1564. **Mr K Bradley:** Yes.
1565. **The Chairperson:** What about a fixed time limit to provide a written explanation? There is no time limit for the Departments to do that.
1566. **Mr K Bradley:** That would be done on a site-by-site basis depending on the circumstances. It is very difficult to include a time limit when circumstances can be different.
1567. **The Chairperson:** So, it could run on and on for months before they come back to answer you?
1568. **Ms Cunning:** Most public authorities actually have an internal requirement to respond to queries. They would be

- criticised if they did not respond within the time frame.
1569. **The Chairperson:** What is that time frame normally? A month?
1570. **Ms Cunning:** No, it would probably be within a couple of weeks, but there could be issues when more information is required. I think that is why Ken is saying that it might be a longer period of time.
1571. **Mr K Bradley:** They might need more scientific evidence or something else.
1572. **Lord Morrow:** In relation to that, I can see all of the intricacies of vagueness now beginning to manifest themselves. If someone has a grievance, I suspect that they may be put on the merry-go-round and be told that it is not really yourselves but someone else who is responsible. They may go to DARD and be told that it is not DARD but somebody else again. Is there not an opportunity, when you are drafting a Bill, to be specific and state categorically where responsibility lies? That is not happening here. You may have very good reasons as to why this is the way it is, but I suspect that it is not very clear. It is not clear to me anyway.
1573. **Mr K Bradley:** I appreciate that. Again, it is a realisation that it is not just the DOE that has responsibility for the marine environment. Other Departments have their own responsibilities and targets. The DOE must request an explanation for failure to comply with the duty. It is the same if somebody asks the DOE for an explanation. We will give an explanation as quickly as we can depending on the issue. We have to accept that other Departments have legal responsibilities and operate under their own legal frameworks. We have to abide by those in the same way as other Departments abide by ours.
1574. **Lord Morrow:** Will there be any joined-up thinking?
1575. **Mr K Bradley:** There definitely is. We have very good working relationships with other Departments. We have an interdepartmental group at a relatively senior level, and we are bringing other Departments along with us as regards the Bill. They have agreed its content and that they will abide by the duties. There is no reason why this Bill will not work in practice.
1576. **Lord Morrow:** So, we can rest assured that what your responsibilities will not allow you to do will be covered by others and that there will be no gaps.
1577. **Ms Cunning:** Different Departments and public authorities are responsible for different functions. That is one of the reasons why we have talked about the different functions across Northern Ireland. If an issue concerns marine planning or the MCZs, that is very clearly the responsibility of the DOE under this Bill. If it concerns DETI licensing; that is covered by DETI's legislation. If someone has a problem with a decision made by DETI, that person would go to DETI. If the problem relates to a plan, the person would come to us. There are so many different functions that you have to catch them in a generic way.
1578. **Lord Morrow:** I have listened to what you have said but on that very point; who will compensate the person? This Bill does not deal with compensation.
1579. **Ms Cunning:** I do not know enough about legislation in other Departments and whether compensatory measures are included there. As regards energy consents, I am not sure whether there is a process whereby somebody who wants to develop a renewable installation can compensate fisheries or whatever. I do not whether that is dealt with in primary legislation. Responsibility should reside where the decision is taken. This Bill concerns marine conservation zones and marine planning that will set the framework for those types of decisions.
1580. **Mr K Bradley:** I know that DARD, through its legislation, can compensate fishermen for introducing no-take zones, etc. If a fisherman is out of pocket and cannot fish elsewhere for the same species, there is potential for compensation. As far as I know,

- DARD has not paid compensation to any fishermen in Strangford lough.
1581. **Lord Morrow:** Should there be something in the Bill to make the relevant Department amenable?
1582. **Mr K Bradley:** Do you mean another Department?
1583. **Lord Morrow:** Yes.
1584. **Mr Bradley:** I do not think that we could do that.
1585. **Mr Boylan:** Earlier, I mentioned tidying-up legislation. I agree that compensation is one element, but each Department is still operating in a silo and under its own responsibilities. We have an opportunity here, whether it is through guidelines or through some other way, to tie things down. Lord Morrow asked specifically about legislation, and you have said that you cannot do so within this legislative framework. We are bringing forward legislation that will impact on other Departments, and they need to know clearly how it will impact on them. If that work is not under way already, it needs to be started. The rules and regulations on designations and licensing need to be clarified exactly. Regulation is one issue. We have a unique opportunity. Has any thought been put into that process?
1586. **Mr K Bradley:** You are right: the way in which MCZs will be designated will be in the procedures and the guidance for public bodies. Each aspect is very important, and each body will have its own specific guidance. We will work with Departments in developing the guidance, and they are very keen to do so. We all operate in silos because that is how Departments are set up. Each has its own responsibilities, objectives and statutory duties, and we have to work within those parameters.
1587. **Mr Boylan:** There is still an opportunity, Ken, to get this right, because it impacts on so many other Departments. The way in which we deal with that should be our first port of call. I know that we will have a separate piece of legislation and I am sure that the Committee would agree to go down that route. That is what we would like to hear coming forward, to be honest.
1588. **Ms Cuning:** That is why we are engaging with the other Departments in the development of the Bill, on issues such as guidance, and on how MCZs will work and have been working. That is why they have signed up to the Bill, but you have made a good point.
1589. **Mr K Bradley:** For instance, DETI was concerned about MCZs when it was looking at its next raft of renewables sites. It came to us to say that the science highlighted potential areas and asked us whether they would cause us problems from a marine conservation point of view, but they did not. We are working on issues such as renewables and, obviously, more recently, with the fishermen. That dialogue is happening and, as the Bill and the guidance progress, and other measures are put in place through the marine strategy framework directive, it will necessitate greater working between Departments, and especially between DETI, DARD, the DRD and ourselves.
1590. **Mr Boylan:** I do not want to use the taxis legislation as an example, Ken. The guidance needs to be up front and the piece of work needs to be done now, as soon as this Bill is ready to roll. The departmental responsibility should be there. We do not want to go back to some of the previous legislation.
1591. **Mr K Bradley:** We intend to roll the legislation out in early 2013 and redesignate Strangford lough first of all. Bearing in mind what we said at the start of our conversation, this is all part of a bigger overall picture for an ecologically coherent network of marine protected areas (MPAs). We do not want to drag our heels and allow the UK to fall down on that, because the last thing that we want is another infraction down the line.
1592. **The Chairperson:** Ken, you said that you can have sanctions against other Departments, but can we strengthen the law to say that, perhaps, you can

- recommend sanctions where licences have been issued that would result in damage, for example, to an MCZ? One NGO suggested an additional clause that would allow you to recommend sanctions against a Department that has damaged an MCZ through its activities.
1593. **Mr K Bradley:** Again, “recommend” and “advise” are much the same wording. In legislative language, neither is any more robust. The phrase, “having regard to” means the same thing.
1594. **The Chairperson:** It would be to recommend that they carry out certain actions or measures to make good the damage.
1595. **Mr K Bradley:** That would in the Department’s guidance that is given to all public bodies; but again, it can only be a recommendation or a request.
1596. **The Chairperson:** But this is about having an additional clause in the Bill to say that you can make recommendations for those Departments to take measures to make good the damage that they have done. The NGOs have suggested an additional paragraph 23(2)(c).
1597. **Mr K Bradley:** I would need to look at that again, Chairperson. I do not think that such a subsection would be any different from what we have at the moment. We will look at that and talk to our draftsmen. We have to bear in mind that if we change something that impinges on another Department, we will have to go back to the Executive.
1598. **Mr Hamilton:** The reality of government, particularly in Northern Ireland, is that, if Ken recommends to his Minister that a new clause is adopted and his Minister accepts that recommendation, the Minister is then required to take that recommendation to the Executive. The Executive are never going to agree to that. I would love to see something in the spirit of that happening. Other Departments are not going to give the DOE the power to —
1599. **The Chairperson:** Recommend?
1600. **Mr Hamilton:** They are not going to hand the DOE the power to say that, whenever someone is a naughty boy, they must compensate x, y and z. That is never going to pass.
1601. **Mr K Bradley:** No. As we all know, Ministers and Departments are very jealous of their responsibilities. They safeguard them.
1602. **Mr Hamilton:** It would never pass.
1603. **Mr K Bradley:** You are right: there is an opportunity to do things better.
1604. **The Chairperson:** We will look at that.
1605. **Mr Elliott:** I am not filled with confidence that this will all work in the end. No disrespect to any of the officials here, but I have heard it all before at other Committees. There have been promises of good working relationships between Departments. It is not their fault; it is because, as Ken said, they get into their own silos and work in their own surroundings. What I have heard today does not fill me with confidence that it will all work.
1606. I am sorry to come back to the question about the marine management organisation, but Ken expertly avoided answering it in the past. If a marine management organisation were in place, could it take a Department to court?
1607. **Mr K Bradley:** No.
1608. **Mr Hamilton:** It depends on how it was structured, surely.
1609. **Mr K Bradley:** Loosely, an MMO would take on the fisheries enforcement powers, which DARD has, the DOE licensing powers, and the enforcement for MCZs. You would have it all in one place, but the powers would not be any different; it would just be done by one body.
1610. **Mr Elliott:** So, it could not take the DOE or DARD to court on an issue?
1611. **Mr K Bradley:** No. Potentially, it could be a non-departmental public body of DARD.

1612. **The Chairperson:** However, they work in a co-ordinated fashion; they would be thinking about conservation together.
1613. **Mr K Bradley:** That is where the Minister sees the benefits in MMOs; it would be more co-ordinated, rather than three or four bodies —
1614. **The Chairperson:** That do not talk to one another; they do their own thing.
1615. **Mr K Bradley:** Rather than three or four bodies doing their own thing, you would have one body doing all three things.
1616. **Mr K Bradley:** That is the benefit; it would cut down on cost and bureaucracy. There would be better understanding and dialogue, but they would still work within the same legislative parameters.
1617. **The Chairperson:** Like Tom, I am concerned that the Bill will not give you a lot of teeth.
1618. **Mr K Bradley:** Well, no. For the first time —
1619. **The Chairperson:** Or not enough teeth.
1620. **Mr K Bradley:** For the first time —
1621. **Mr Boylan:** Sharks' teeth?
1622. **Mr K Bradley:** For the first time, the DOE will have enforcement powers in the marine environment, which it never had before. The Department has relied on other Departments for enforcement under the habitats directive. Now, the Department has an enforcement power; it can enforce through by-laws and the general enforcement powers, including substantial fines of up to £50,000. That is a big step forward.
1623. **The Chairperson:** We will move to clause 24. Issues included the potential impact of by-laws, their coverage and how they will be administered.
1624. **Mr K Bradley:** I will come back to Simon's point about including cultural activities as well as social and economic activities. We have agreed to look at that.
1625. **Mr Hamilton:** Where would that go?
1626. **Mr K Bradley:** One of the issues raised was that the by-laws had the potential to restrict cultural as well as social and economic activities. It was not our intention for MCZs to do that. It is really only if the activity is detrimental to the feature of an MCZ that a by-law would then seek to manage unregulated activities.
1627. **The Chairperson:** That is the point that Tom made earlier.
1628. **Mr Hamilton:** Where would it go? There is no scope for the word "cultural" to go in this clause.
1629. **Ms Cunning:** Ken means that if we include it in the clause we talked about last week, that would help.
1630. **Mr Hamilton:** Can I butt in at this stage? The words "economic" and "social" are in clause 12. Are you saying that the word "cultural" could be included there?
1631. **Mr K Bradley:** Correct.
1632. **Mr Hamilton:** That is great. There is no reference in this clause to economic, social or cultural issues. Are you saying that this is not required because clause 12 deals with it?
1633. **Mr K Bradley:** Yes. During the designation process, we will iron all that out and clarify the economic and cultural issues. We will then come up with the finished article, and the by-law will protect that finished article.
1634. **Mr Hamilton:** The first consideration of economic and social, and now cultural, issues would be when you would be designating an MCZ. So, you say that you will consider that by drawing a box. Is there a linkage in the legislation — and I will take a look at it to see if there is — between designating the box and designating the by-laws? Whilst the two are obviously related, they are separate.
1635. **Mr K Bradley:** They are separate but very much related processes. Remember that, in the designation process, we will set out what the feature is, why it is important and what activities could be detrimental to it. If an activity is regulated, the duty, as we said earlier,

- requires all public bodies to adhere to it. If an activity is unregulated, we will look to the by-law, and the Department will be responsible for enforcement powers. It is very closely linked, and the process is quite transparent. If an MCZ is designated and somebody says, “Hold on, that will impinge on my activity and will, for instance, stop wild-fowling and fishing”, we may keep the feature there but move the boundary, or we might say that what is being done is not that detrimental and we might change it slightly. It is all about working it out and talking to each other. That is the balance. As Cathal said, we are not designating for the sake of designating. It will be based on sound scientific evidence, and we will have to look very closely at the potential detrimental impact and how we regulate that.
1636. **Mr Hamilton:** I do not see a linkage between them, and that is why I am raising the issue. The first process is the designation and marking out of an MCZ, and you have to give consideration to economic issues, and so on. There is then a second process, which is the application of by-laws within the MCZ. There is nothing in this clause about that, and that is why I asked where it is included.
1637. **Ms Cunning:** It is to a certain degree. Clause 24(1) says:
“The Department may make byelaws for the purpose of furthering the conservation objectives stated for an MCZ.”
1638. It all comes from the actual designation and the objectives that you set for that MCZ. That is why you make by-laws. You do not make them for any other purposes but only for the objectives of the MCZ, which is covered under clause 12.
1639. **Mr Hamilton:** The first process sets the objectives for designating it as an MCZ and then —
1640. **Ms McEvoy:** It is a protection measure. Are you saying that if we have a by-law and something is perhaps restricted, there is no economic consideration? Is that your point?
1641. **Mr Hamilton:** That is exactly it. The consideration has happened at a different point for something much broader.
1642. **Ms McEvoy:** By-laws will be consulted on as well.
1643. **Mr Hamilton:** That is OK.
1644. **The Chairperson:** Ken, how easily can you define “cultural” activities?
1645. **Mr K Bradley:** We defined it last week. *[Laughter.]* I think that we have covered “cultural”, “social” and “economic”. It is really any activity. We have to look at the big picture. We have to look at the MCZ boundary and find out what other activities go on and what else happens within that and work with those bodies and those people. It is really anything.
1646. **Mr Hamilton:** It is inclusive to put it in.
1647. **The Chairperson:** An anthropologist would tell you that “cultural” means a big spectrum of things.
1648. **Mr K Bradley:** That is right.
1649. **The Chairperson:** So, we have our own definition for “cultural”.
1650. **Mr K Bradley:** That is right, yes. I think that I am right to say that that catches up the other: if it is not social, economic, it is cultural —
1651. **The Chairperson:** It is a catch-all phrase.
1652. **Mr K Bradley:** — and we are obviously looking at the environmental, so we now have four pillars on it. *[Laughter.]*
1653. **The Chairperson:** All right. Shall we move on, members?
1654. **Mr Hamilton:** No. *[Laughter.]*
1655. **The Chairperson:** OK.
1656. **Mr Hamilton:** That was just a warmer.
1657. **The Chairperson:** By-laws?
1658. **Mr Hamilton:** That was for starters. That is that one off the list; right, OK.
1659. Under 24(2), by-laws may be made to apply:

- “to any area in the Northern Ireland inshore region or in any other part of Northern Ireland.”*
1660. **Mr K Bradley:** Yes.
1661. **The Chairperson:** Yes.
1662. **Mr Hamilton:** Why:
“in any other part of Northern Ireland”?
1663. **Mr K Bradley:** That is legislative speak. It is to include islands and that sort of thing. It is not to include County Down or County Fermanagh, it is to include —
1664. **The Chairperson:** The Copelands.
1665. **Mr K Bradley:** The Copelands; something like that, yes.
1666. **Mr Hamilton:** Is that made clear?
1667. **Mr K Bradley:** It is not an interpretation, no.
1668. **Mr Hamilton:** Yours is a fair explanation, but it could be worded:
“the endangered areas or any other part”.
1669. **Clearly, this is not going to affect the top of Slieve Donard.**
1670. **Mr K Bradley:** No. *[Laughter.]*
1671. **Mr Hamilton:** However, it states:
“or in any other part of Northern Ireland.”
1672. **The Chairperson:** The Mourne are running down to the sea.
1673. **Mr Hamilton:** The legislation will apply to Slieve Donard, even though that is utterly ridiculous.
1674. **Ms McEvoy:** The legislation applies only to the MCZ. Clause 24(1) explains that the legislation is only for an MCZ.
1675. **Mr Hamilton:** Which can only be in an “inshore region” and, now, the “seashore” as well.
1676. **The Chairperson:** Yes.
1677. **Ms McEvoy:** So, it is only for MCZs.
1678. **Mr Hamilton:** And an island can be within that?
1679. **Mr K Bradley:** Potentially, yes, and the Copelands are a good example.
1680. **The Chairperson:** Would Rathlin Island be regarded in the same way?
1681. **Mr K Bradley:** What seabed feature would you have in Rathlin Island? It is difficult to imagine because the island is too big.
1682. **The Chairperson:** It has lots of seabirds.
1683. **Mr Hamilton:** That is not marine.
1684. **Mr K Bradley:** Potentially, the seabed feature could be that it forms a feeding ground for those seabirds. I know that puffins feed there, but they are protected anyway so an MCZ would not offer any greater protection. It would not make any difference; it would just be another designation, really. We do not intend to designate Rathlin Island per se as an MCZ.
1685. **Mr Hamilton:** It just a silly use of terminology.
1686. **Ms McEvoy:** Regarded as a standalone, it can be.
1687. **Mr K Bradley:** Maybe we can see if the draftsmen can come up with an interpretation that we can put into clause 24(2).
1688. **Mr Hamilton:** I am happy enough with that explanation, but it just looks silly. You have to read it in the context of the first subsection of the clause.
1689. **Mr K Bradley:** You are absolutely right. Even to the layperson, it could potentially mean Slieve Donard. We may see if we can clarify that by including an interpretation.
1690. **The Chairperson:** By having it state “any other marine area” of Northern Ireland?
1691. **Mr Hamilton:** That would include Lough Neagh.
1692. **Ms McEvoy:** That would broaden it and we do not want to do that.
1693. **Mr Hamilton:** I am happy enough with the explanation.

1694. **The Chairperson:** John, have you something to say?
1695. **Mr Dallat:** I have something fairly intelligent to raise. [Laughter.] Given that an MCZ can be in the water or, when the tide is out, could be on the land, clause 24(3)(c) provides for by-laws:
“restricting the speed at which any vessel may move in the MCZ”.
1696. **Will that cover periods when the tide is out and the zone is used by horses, beach buggies, racing cars and all sorts of things?**
1697. **Mr Hamilton:** Donkeys.
1698. **Mr K Bradley:** Remember that an MCZ is three-dimensional and includes the shoreline. Potentially, we could designate mobile species, a seal haul-out area, or something like that, which, again, the speed of vessel going past could swamp. This is widespread enabling legislation that strives to cater for all eventualities, some of which we might not have thought of today. It may be that, down the line, we think, “Ah yes, we will designate that because it is important”. At that point, we may consider the Portaferry ferry as detrimental, or that the HSS, leisure craft or jet-skis are detrimental. So, again, it is a wide enabling power to cover any eventuality. An MCZ could be for a mobile species, a shoreline species or, as we said earlier, for feeding.
1699. **Mr Dallat:** Is that OK?
1700. **Mr K Bradley:** Yes. It is fine.
1701. **Mr Dallat:** If an MCZ was declared for Portstewart strand, would it be protected by the Bill?
1702. **Mr K Bradley:** Portstewart strand is already an ASSI and receives protection through that.
1703. **Mr Dallat:** Ken, you have an answer for everything.
1704. **Mr K Bradley:** I do not know if I would say that. It is also owned by the National Trust.
1705. **Mr Dallat:** Only the entrance.
1706. **Mr Elliott:** Concerns have been raised by the fishing and wild-fowling industries about the effects of clause 24(3)(e), which deals with the:
“prohibiting or restricting the killing, taking, destruction, molestation or disturbance of animals or plants”.
1707. **Mr Bradley:** Those by-law powers have been pretty much couched from previous legislation, such as the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, which sets out the by-law making powers for marine nature reserves. As you know, we are repealing the marine nature reserve powers and replacing marine nature reserves with marine conservation zones. We are also replicating the by-law making powers. Those powers are already in place.
1708. **Mr Elliott:** So, they are lifted directly from that Order?
1709. **Mr Bradley:** Yes.
1710. **Ms McEvoy:** Those have been lifted from article 21 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.
1711. **Mr Boylan:** I want to raise one issue. I am a keen angler, and an issue was raised that clause 24(3) is too open and could allow complete exclusion of anglers. I am concerned about the by-law protections for MCZs and how they could affect someone fishing off the shore. Can you assure us about that? As an angler, I would be disappointed to turn up some day —
1712. **Ms McEvoy:** It depends what an MCZ has been designated and protected for.
1713. **Mr K Bradley:** It is hard to envisage —
1714. **Mr Boylan:** I am only reading a response. To be fair, it is grand to say that it all depends on the MCZ, and I understand that completely. I made the point earlier that it is about proper evidence and everything else, but we are trying to work with the industry and protect areas at the same time.

- Anglers are part of that industry just like fishermen. I am only responding to the comments that were made, and I would like some clarification on that.
1715. **Mr K Bradley:** It is a valid point. It is difficult to see an example of how sea angling would be detrimental to a feature. Some fishing activity would be. If you took a 20-foot boat scallop dredging, you can see how that would be detrimental, but that would not be the case for a fisherman or a group of fishermen who throw lines out.
1716. **Mr Boylan:** I agree 100%. I knew that Ken was going to give me a good answer on that. As long as that clarification is there and it is addressed through the angling community, that is grand. That is all that I wanted to say.
1717. **Mr Hamilton:** For clarity and the benefit of others, clause 24(3) lists six different prohibitions or restrictions. It states that by-laws “may be made”. Am I right in saying that that is more a la carte than all you can eat, and that some areas that are designated as MCZs may not require any restrictions, while others may require one, two, three, four or all six?
1718. **Mr Bradley:** That is right.
1719. **Ms McEvoy:** All six would be highly unlikely.
1720. **Mr Hamilton:** There is a fear among some in different sectors that there could be six restrictions, which would restrict virtually everything. Am I correct when I say that one, two or three restrictions could be taken from that list, as appropriate and not beyond what is appropriate? Is that fair?
1721. **Mr Bradley:** Yes. That is right.
1722. **Mr Hamilton:** I think that it would be helpful if the Minister were to make that comment at Consideration Stage. That would provide clarity to those who expressed concerns that all restrictions will be in every MCZ, and that we have will hundreds of those things and not be able to do anything. You and I know that that is not the case, but it would be helpful if we clarified that point.
1723. **Mr K Bradley:** That is a good point. We will take that on board.
1724. **Mr Hamilton:** Correspondence in the past week in response to comments by one stakeholder that there would be little impact asked what “little impact” meant. Can you define “little impact” or is that too difficult without seeing the context?
1725. **Ms McEvoy:** We would have to see the context of what was said.
1726. **Mr Hamilton:** You made the point about it being hard to see how conventional angling would be involved. It would not be affected by anything other than if you could not get your boat into an area. Likewise, shooting something over is hardly likely to be restrictive. Is that a fair point?
1727. **Mr K Bradley:** Yes, absolutely.
1728. **Mr Hamilton:** Clause 24(8) states:
“Byelaws under this section may make different provision for different cases”
1729. The point was made about the designation of so-called reference areas within that.
1730. **Ms McEvoy:** Those are not for designating MCZs. MCZs are designated under clause 12. This is for protecting sites that have been designated.
1731. **Mr Hamilton:** I appreciate that.
1732. **Ms McEvoy:** I do not think that can make a highly protected area.
1733. **Mr K Bradley:** No, definitely not. Again, clause 24(8) reflects the flexibility of an MCZ. Rather than giving carte blanche protection, the site may need protection at only a certain time of the year, for example for breeding fish. The boundary could change and maybe only part of the MCZ has particular features and a protection zone is not needed. That is to allow for flexibility.
1734. **Mr Hamilton:** So, it is not for highly protected areas or reference areas.
1735. **Mr K Bradley:** No, nowhere in the Bill are the words highly protected marine

- areas mentioned. That was deliberate on the part of the Department. Our policy has always been that the conservation objectives will determine the level of protection, based, obviously, on sound science.
1736. **Mr Hamilton:** OK, that is helpful. Thank you.
1737. **The Chairperson:** Being evidence based on scientific research is very important.
1738. **Mr K Bradley:** Absolutely.
1739. **The Chairperson:** You are not doing it just for the sake of it.
1740. **Mr K Bradley:** No.
1741. **Lord Morrow:** That is a valid point. The concern is all around the lack of justification. I am not sure that you have totally reassured us. Wild-fowlers are very concerned about this clause in its totality. I suppose they are asking for a rewriting and rewording of it, whether that will be possible or not, to satisfy them. That may be difficult.
1742. **Mr K Bradley:** I think you are right. Simon's point is also very valid. Wild-fowlers have very little to worry about with regard to marine conservation designation. Their activities are land based. Marine conservation zones are primarily for seabed features, although they could, potentially, be for other occasions. Anglers and wild-fowlers have very little to fear from marine conservation zones. We already have about eight designated marine special areas of conservation (SAC) and they do not impinge on wild-fowlers or sea anglers. By and large, the sector most affected is commercial fishing. I do not think that those two cultural activities will impact to any great extent on an MCZ, bearing in mind that the majority of MCZs will be in and around existing SACs, I would imagine, because that is where our greatest evidence is.
1743. **The Chairperson:** We move to clause 25, "Byelaws: procedure". There is only one issue, which is that the clause should include specific procedures for introducing emergency by-laws rather than simply being able to override those in place for the introduction of by-laws under normal circumstances.
1744. **Mr K Bradley:** Is clause 25(10) the problem?
1745. **The Chairperson:** Yes.
1746. **Mr Boylan:** Yes, the words "urgent need".
1747. **Mr K Bradley:** Clause 25 gives the Department the power to make the by-laws and procedure but clause 25 (10) issues a caveat. The process is not applicable if there is an urgent need to protect an MCZ through an emergency by-law, which, obviously, is the next clause.
1748. Clause 25(10) is saying that we will follow a procedure but that there may be an occasion when there an urgent need to do something quickly. That means that the Department does not have to comply with that procedure.
1749. **The Chairperson:** Are Members OK with that?
- Members indicated assent.*
1750. **The Chairperson:** We move to the next clause, which concerns the emergency by-laws. Tom, do you want to say something?
1751. **Mr Elliott:** My point is about clauses 25, 26 and 27. Due to the emergency by-laws, no process has been indicated as to how you actually come to your decision. That is the issue. I would like a wee bit of clarity around how you come to the decision. I and, I think, most people understand that you need emergency by-laws at stages, but there needs to be more clarity around how you get to that stage.
1752. **Mr K Bradley:** That is right. We said earlier that there will be guidance on the whole by-law procedure. Obviously, emergency by-laws are an important aspect of that. We hope never to use the procedure, but the Department needs the power because there could be unforeseen circumstances in which you need that power. We said earlier that, if there is an emergency by-law, obviously, we have to tell people; they have to

stop doing whatever is potentially detrimental. There will be a 12-week consultation. Somebody will ring up somebody else or meet them and talk to them if they will be affected by the by-law. It is an informal consultation. The Department will not decide to do an emergency by-law willy-nilly; it will be as a last resort. It will be only if unforeseen circumstances happen, such as the pollution incident that we talked about earlier.

1753. **The Chairperson:** Can you clarify, publish or send out a set of guidelines to say what constitutes “emergency”?

1754. **Mr K Bradley:** Yes. Obviously, the guidance cannot cover every eventuality, but it will give a flavour of what types of emergency situation —

1755. **The Chairperson:** Like an oil spill?

1756. **Mr K Bradley:** Yes. A by-law would be required in those circumstances.

1757. **Ms McEvoy:** It is enabling legislation that gives us the power to make the by-laws, but we will do the operational bit and the guidance.

1758. **The Chairperson:** Are Members happy with that?

Members indicated assent.

1759. **The Chairperson:** We dealt with clauses 26 and 27.

1760. **Mr Hamilton:** Information is probably more important for emergency or interim by-laws because you are telling people to not do something. Consultation and information is probably more important.

1761. **Ms McEvoy:** Emergency by-laws will be for existing MCZs, such as if something is unforeseen. An interim one is to protect the site that we are thinking of or whatever.

1762. **Mr Boylan:** A point is made about clause 27 by BASC. Ken, I will take your word that you do not think that it will impact on anglers and wild-fowlers. It is important that the designation does not impact on them by default; there needs to be an understanding.

1763. **Ms McEvoy:** That will be taken into consideration.

1764. **The Chairperson:** Clause 28 also concerns by-laws, and clause 29 concerns hearings. There were no comments on those clauses, so we move on to clause 30. The only issue raised was that the maximum fine proposed is insufficient.

1765. **Mr K Bradley:** A by-law is there to manage unregulated activity, so that activity should be fairly minor if it is detrimental to a site. The by-law comes with a level 5 fine, which is the maximum that you can apportion to a by-law. Currently, that fine is £5,000. It is relatively substantial, but bear in mind that it is for unregulated activities, which should not be major occurrences. The Committee should remember that the Department still has the other, general, enforcement powers, which allow for a much heavier fine for someone who willfully destroys a site or does something that he is not supposed to do. For instance, we have a by-law at present in Strangford lough, as the Committee saw. It is for anchoring, diving and mooring in Strangford lough and it is there obviously to manage an unregulated activity. What an anchor can do may seem fairly innocuous, but, at the same time, it could be detrimental. So it is reflective of that. It is a by-law, because that is relevant to the nature of the problem, and the fine is also relevant to the potential damage that it does. A by-law is for a fairly minor offence, shall we say, but the Department still has the power of general enforcement for something much more problematic.

1766. **The Chairperson:** OK, are Members happy with that explanation?

Members indicated assent.

1767. **The Chairperson:** We will move on to clause 31, “Offence of damaging, etc. protected features of MCZ”. The issues raised were as follows: to the addition of offences; crossover with the Wildlife Order; and implementation.

1768. **Mr K Bradley:** Members will remember that the Wildlife and Natural Environment Act (Northern Ireland) 2011, the WANE Act, as it is known, became law a couple of years ago. It is primarily a way of protecting individual species — birds, plants, animals and that sort of thing. Marine conservation zones are primarily intended to protect habitats. We do not think that the two pieces of legislation are in conflict; they complement one another. In the WANE Act, full protection is given to seahorses, turtles, seals and a wide range of marine animals, primarily mobile species. The marine conservation zone conserves habitats, sea sponges, geological features and that sort of thing. The Marine Bill and the WANE Act are intended for slightly different reasons. From that point of view, if someone goes out and kills a seahorse, he is liable under the WANE Act; if he damages the MCZ, the Marine Bill comes into force. We do not think that there is conflict.
1769. **The Chairperson:** OK. Does it give double protection?
1770. **Mr K Bradley:** It is not double protection. It depends on the offence. An offence against a specific species is perhaps better dealt with under the WANE Act because the fine is smaller. The maximum fine under the WANE Act is £20,000, but there is the potential for custodial sentences. It would be very difficult to get a custodial sentence. It depends, again, on the individual circumstance, what species has been affected.
1771. **The Chairperson:** We move on to clause 32, at page 191. The issues are: the cost of a permit scheme, plus a suggestion that the sea-fishing defence applies to the six to 12 nautical miles zone, rather than to the zero to 12 miles zone. I think a number of people and groups mentioned that.
1772. **Mr K Bradley:** Obviously, the six to 12 mile zone is covered by the common fisheries policy, which gives the fishermen that defence. The Department feels that it is very difficult, and it would not support such an amendment.
- Fishing activity should be treated equally, irrespective of whether it is two miles out or eight miles out. We feel that we should treat fishermen equally, irrespective of where they are. We will not agree with that amendment.
1773. **The Chairperson:** OK. The defence is really from six to 12 nautical miles; is that right?
1774. **Mr K Bradley:** That is correct.
1775. **Ms Cuning:** The defence is required under the common fisheries policy. A suggestion was made that we do not need it for the nought-to-six-mile zone, but that would create disparity between people fishing in that zone and in the rest of the UK marine area; not even just in our inshore area but the rest of the UK marine area. It could create a problem for Northern Ireland fisheries or other fisheries.
1776. **Mr K Bradley:** For clarity and for ease of enforcement, it would be better to treat them all exactly the same.
1777. **The Chairperson:** Are members happy with that?
- Members indicated assent.*
1778. **The Chairperson:** We will move on to clause 33, which deals with fixed monetary penalties. Issues raised in relation to the clause were the need for guidance, difficulties in drafting the subordinate legislation and the cost of appeals.
1779. **Mr K Bradley:** Those issues were raised by the examiner. We have similar regulations for licensing, so we do not think that drafting subordinate legislation will be a problem. Bear in mind that subordinate legislation will be subject to full Assembly scrutiny and affirmative procedure. There will be full scrutiny by the Committee and the Assembly. We feel that that is right and proper. As I say, we already have subordinate legislation for licensing, so it should be fairly straightforward to do something similar for MCZs. As we mentioned in the written response, we have agreement in principle to an

- appeals body in the Lands Tribunal, again, subject to the number of cases and their complexity. We hope that there will not be too many appeals. Again, fixed monetary penalties are fairly small in respect of monetary value. They are probably going to be on-the-spot fines.
1780. **The Chairperson:** Are members happy with that?
1781. **Mr Boylan:** On that point, obviously a few issues have been raised in relation to fines. We do not want duplication, because there is already legislation there. Can we get clarification on those two or three specific points? What already exists in respect of fines? Earlier, you separated regulated activities and unregulated activities.
1782. **Mr K Bradley:** That is right. The DOE regulates licensing and activities in the environment, and other Departments regulate activities such as fishing and they issue licences for fishing and renewables. Certain Departments are responsible for regulating and enforcing such regulated activities. By-laws can be made only for unregulated activities such as mooring, diving or angling, for which no Department is responsible. Again, because such activities are not seen as a major problem, by-laws and fines are relevant. However, for more serious activities, there is a general offence that has a maximum fine of £50,000. This clause provides for a fixed monetary penalty, which is really an on-the-spot fine that is issued if somebody does something that is detrimental but is not very serious.
1783. **Ms McEvoy:** They are just civil sanctions.
1784. **Mr K Bradley:** Yes. Again, the Department will be responsible for enforcing all those. It will be first time that the Department has had that enforcement power.
1785. **The Chairperson:** OK. There were no issues with clauses 34 and 35.
1786. It is 12.30 pm. I suggest that we stop at this point. Unfortunately, we will have to have an additional Committee meeting next Tuesday, but we should be able to finish the rest of the clauses in an hour or so.
1787. We have other issues to deal with now, and then we are having lunch with the other councillors, so we will let you go home early. We will see you next Tuesday at 12.30 pm. We will find somewhere for the meeting, possibly the Senate Chamber, and let you know. Thank you, members.

12 June 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr Tom Elliott
 Mr Chris Hazzard
 Lord Morrow
 Mr Peter Weir

Witnesses:

Mr Ken Bradley *Department of the*
 Ms Brenda Cuning *Environment*
 Ms Gerardine McEvoy

1788. **The Chairperson:** I welcome back Ken, Brenda and Gerardine from the Department of the Environment (DOE). Thank you for coming.
1789. We are at clause 36, which is on enforcement officers. Members will find details on that clause two thirds of the way through our summary table of responses.
1790. The issues raised about clause 36 concerned the Department's discretionary duty to appoint an enforcement officer and the meaning of the term "member state". Will you respond to those concerns, Ken?
1791. **Mr Ken Bradley (Department of the Environment):** Thank you very much. It is good to be back.
1792. **The Chairperson:** Are you sure?
[Laughter.]
1793. **Mr K Bradley:** In clause 36, "member state" has a much wider international meaning than the definition that is applied for being a member state of the EU. The UK is a signatory to the UN Convention on the Law of the Sea. "Member state" is in the Bill with a lower case "m" and "s" so that it is not taken out of context. The call —
1794. **The Chairperson:** Should that point be clarified in the Bill?
1795. **Mr K Bradley:** I am not sure; I can check that out.
1796. **The Chairperson:** OK.
1797. **Mr K Bradley:** The definitions can evolve, of course.
1798. **The Chairperson:** It is just that many people may assume that "member state" refers to EU member states.
1799. **Mr K Bradley:** I appreciate that that would be the automatic response.
1800. The other issue concerned the Department's mandatory duty to appoint specialist persons for enforcement. That situation is a bit strange, because, for the first time, the Department is the enforcement officer in the marine environment. So, if the Department is the enforcement body and clause 36 gives it the discretionary power to appoint any other persons for that purpose, such an appointment would mean that it is no longer the enforcement officer. So, it is a bit strange.
1801. **The Chairperson:** Does that mean that that is additional?
1802. **Mr K Bradley:** Yes, the Department will be the enforcement body in the marine environment. We also have to have the discretionary power to appoint others for that purpose.
1803. **The Chairperson:** Are members happy with that explanation?
- Members indicated assent.*
1804. **The Chairperson:** We will move on to clause 37, which concerns common enforcement powers, and clause 38, which concerns repeals and transitional provisions. There were no comments on those two clauses, so we can move on to clause 39. The issues raised on this clause concerned the location of

definitions in the Bill and the definition of “seashore”.

1805. **Mr K Bradley:** There is a concern that the definition of “seashore” is a bit vague. The legislation stipulates that, for a marine conservation zone (MCZ), “seashore” means:
- “any natural or artificial break in that continuity.”*
1806. So, if we designated an MCZ off Portrush, we could obviously not take it all the way down to Fermanagh. It applies only to where the natural geological feature or whatever appeared. An example that I gave previously was the Giant’s Causeway. That feature starts away out in the middle of the sea somewhere. We would not need to designate the Giant’s Causeway, because it is protected through its world heritage status. However, taking that as an example of a geological feature, you would designate the seabed and perhaps come on shore and no further; we would not go miles inland, because, obviously, the feature does not extend any further than a few hundred metres inland.
1807. **Mr Elliott:** I think that I raised a similar issue the previous day. I am thinking of a special area of conservation (SAC) that is obviously on land. It may be designated as an SAC, so that means that you are very restricted in what you can do on a large proportion of the land around it simply because of what may be the spin-off. For example, there could be a flow of whatever it may be, or there could be ammonia or something in the air. Could the situation be the same for an MCZ, meaning that the area around it could also come under more scrutiny?
1808. **Mr K Bradley:** We would not have buffer zones or anything of that sort. The idea is to protect the feature that is on land. With an area of special scientific interest (ASSI) or an SAC, you designate an area of land or a particular feature. You are right: if something outside that boundary potentially detrimentally affects the site, the Department would not be overly happy with it. It is probably something similar for the marine environment. We would not have a

buffer zone as such, but, if a regulated activity happened outside that area that might impinge on the MCZ, we would look closely at that. I cannot think of an example off the top of my head. We are talking primarily about seabed features, and it is difficult to think of a land-based activity that would be detrimental to a seabed feature.

1809. **Mr Elliott:** It has the opportunity to come on to land, so, clearly, you have the difficulty of it possibly prohibiting some sort of development or proposal around it.
1810. **Mr K Bradley:** If it extends on to land, it is probably a geological feature, so it could not mean sea sponges or anything like that. It is difficult to think of what you would not authorise or license in that feature that is detrimental to it. You are talking about a sandbank, sand dunes or sandbars under the water or something like that. So, it is difficult to see how that would affect development.
1811. **Ms Brenda Cuning (Department of the Environment):** The ways that parts of the seashore can be designated as part of an MCZ are slightly restricted. There are conditions under clause 13(4) that have to be met for that designation. One is that it would be impossible or impractical to designate the MCZ without that part of the seashore. That ring-binds how you can do it. You cannot do it just because you want to; you have to show that it would be impossible to designate the MCZ without that piece of seashore.
1812. **The Chairperson:** So, is that definitely beyond the definition of the spring high tide? Does it mean the area beyond that?
1813. **Mr K Bradley:** Potentially, yes. If a geological feature is involved, it can be extended. However, we are not talking about going miles in land, because that would not make sense.
1814. **Ms Cuning:** That is where the interpretation of “seashore” comes in. Clause 39 states that it means any land that can be covered by water but is adjacent to the foreshore as far inland

as any natural or artificial breaks. That break could, in fact, be a wall. Physically, it could not be miles in land.

1815. **The Chairperson:** To avoid ambiguity, can you tell us whether there is any way to make it more definite and clear that you are not talking about miles?
1816. **Mr K Bradley:** The difficulty is that it depends on each feature and where it is and what you see as the natural break. It is difficult to state that it has to be within x hundred yards. For flexibility, it would be very difficult to define it more accurately.
1817. **Mr Campbell:** We have talked about inland issues, but I have a query about those offshore. Let us say that there is a potentially significant MCZ offshore. A ship or some sunken vessel, which was not obvious at the time of designation but becomes obvious thereafter, may be discovered. Thinking about recent events, it may or may not prove to be something substantial. What provision would there be in the Bill to create sufficient bureaucratic flexibility to allow whatever needs to be done to apprehend, discover or try to recover something that materialises beyond the point of designation and to ensure that someone could not use the designation as a defence for non-interference?
1818. **Mr K Bradley:** The good thing about the MCZ is that it is totally flexible in its level of protection, boundaries and things like that. You are right: if a shipwreck or some other feature were discovered, that could be taken account of. People would be allowed to dive and to try to recover it or whatever. An MCZ is not like an SAC, which Mr Elliott mentioned, because those are pretty much set in stone and the boundaries and features cannot change. The good thing about the MCZ process is that it is totally flexible to allow for such an eventuality.
1819. **The Chairperson:** OK. Are members happy?
1820. **The Chairperson:** We will move on to Part 4 and clause 40, which is about special procedure for applications relating to generating stations. The main issues raised concerned the need for effective management of the streamlined process and timelines for decisions on big projects.
1821. **Ms Cunning:** That is my area — we are back to marine licensing again. I absolutely agree that there is a need for effective management processes. That is why the Department of Enterprise, Trade and Investment (DETI) and DOE have been working on a memorandum of understanding (MOU) of how they work together, especially where this clause is concerned. In fact, this clause has really come out of the fact that they are working together. They want to be able to put in statute that, if they need to, they can develop a process whereby two applications can be taken together, one of them can be deemed to have been made etc. We absolutely agree with that, and we will be delivering it.
1822. We considered timetables for a decision on strategically significant projects when we were looking at marine licensing under the Marine and Coastal Access Act 2009. We decided at that stage that we did not want to put a timetable on a decision. Many different activities can take place in the marine environment. We did not want to either restrict a timetable for decision-making or leave it for too long a period. Under the Marine and Coastal Access Act 2009, which delivers marine licensing, it was decided not to have a timetable for decisions under those powers.
1823. **The Chairperson:** Can there be some guidance on the target time?
1824. **Ms Cunning:** Absolutely. The Environment Agency has set out targets for marine licensing. We can promote that on our website and make sure that everybody is fully aware of it. I think that the agency discusses targets with developers who approach them because they are thinking of making an application. The agency will give them an

Members indicated assent.

idea of how long the process might take. So, that is not a problem.

1825. **The Chairperson:** That will give people some certainty when planning ahead. Are members happy with that explanation?

Members indicated assent.

1826. **The Chairperson:** We will move on to Part 5, which deals with supplementary. There were no issues with clauses 41, 42, 43 or 44. So, we can move on to clause 45. The only issue raised about this clause was departmental consultation with the Crown Estate on the Bill.

1827. **Ms Cunning:** As you are aware, the Bill was not consulted on, except through the Committee process. I think that the Crown Estate had the opportunity at that stage to comment on the Bill. The Crown Estate was, however, one of the consultees for the policy proposals and throughout the development of the Bill.

1828. **The Chairperson:** So, it has been consulted throughout?

1829. **Mr Boylan:** You have not asked it to hand it back?

1830. **Ms Cunning:** No.

1831. **The Chairperson:** Good try, Cathal.

1832. **Mr Boylan:** That is recorded, so we will see how it goes.

1833. **The Chairperson:** There were no comments on clause 46. So, we will move on to clause 47, which deals with commencement. The main issue was that Part 3 should come into force with the rest of the Bill rather than at the Department's discretion. Can someone remind me what is in Part 3?

1834. **Mr K Bradley:** Part 3 has the main conservation provisions. At the time of drafting, we felt that it would be good to give ourselves flexibility, particularly for Strangford lough. As you know, there are a plethora of designations, including the marine nature reserve (MNR) designation. We are repealing the MNR provisions under the Bill, as you

know, so we did not want to be in a sort of limbo. That is why we thought that we would give ourselves the discretion to commence Part 3 at a different time. On reflection and from speaking to our legal advisers, we feel that we can probably enact the Bill in its entirety, because it will allow the marine nature reserve in Strangford lough, for example, to become an automatic marine conservation zone on the day that the Bill becomes law. So, we do not need any individual commencement dates. We, therefore, feel that the entire Bill can come into force on the one date.

1835. **The Chairperson:** Including Part 3?

1836. **Mr K Bradley:** Yes.

1837. **The Chairperson:** So, there will be an amendment to this?

1838. **Mr K Bradley:** Yes.

1839. **Mr Boylan:** I agree with that. Following on from that point, is there any indication of what secondary legislation will flow from this? Do we have any ideas about that at present? We have seen other primary legislation coming through, but there has then been a gap of two, three or four years. We do not want that to happen again. I would prefer it if everything were within our scope and vision before we decide to go about this.

1840. **Mr K Bradley:** There is very little subordinate legislation for this Bill. Such legislation is just on the appeals, and we would set up an appeals body only as and when we need it. There is no subordinate legislation that requires the Department to have a designation or anything like that. So, the entire Bill will become law on the one date, and we will just hit the ground running. We will look at Strangford lough as an MCZ and take that forward through full consultation.

1841. **Mr Hamilton:** I want to pick up on the point about Strangford lough, because it has been mentioned a couple of times. Clearly, I have a particular interest, since I represent that area, but the point would still be relevant if we were talking about Lough Foyle, Carlingford

- lough or Lough Neagh. I want clarity on this point. You said that Strangford lough will automatically become an MCZ. Rehearse that with me. How will that happen?
1842. **Mr K Bradley:** As set out in the Bill, Strangford lough will become an MCZ, because, at the minute, it is a marine nature reserve. It is the only one in Northern Ireland, and there are provisions relating to its protection as a marine nature reserve. So, we do not want to lose that protection and have a gap before we can designate it as an MCZ, because, obviously, the process to take that forward is fairly lengthy.
1843. **Mr Hamilton:** Where in the Bill does it say that Strangford lough will automatically become an MCZ?
1844. **Ms Cunning:** Clause 38(2).
1845. **Ms Gerardine McEvoy (Department of the Environment):** That clause will also repeal the provisions of the marine nature reserve.
1846. **The Chairperson:** Is Strangford lough the only marine nature reserve?
1847. **Mr K Bradley:** Yes, but that does not negate our responsibility to take it through the full MCZ designation process.
1848. **Mr Hamilton:** Yes. You anticipated my next question. You cannot automatically designate something and have a consultation inherent in the Bill. When do you start that process? You cannot start a process that has not been legislated for before the legislation is enacted.
1849. **Mr K Bradley:** You are quite right. Once the Bill becomes law, it gets the power to designate an MCZ. When it becomes law, the lough will no longer be a marine nature reserve, but it is still afforded the protection. At the minute, for example, we are taking forward a by-law under the marine nature reserve legislation against diving, mooring and anchoring. Given that that by-law is made under the MNR legislation, it will not be repealed. It will be taken forward and carried on by default, for want of a better word.
- We will then enter into the process of designating Strangford lough as an MCZ. That is a very lengthy process, because it is a different rationale to a marine nature reserve, as it takes in social, economic and cultural aspects.
1850. **Mr Hamilton:** For clarity, I am not saying that it should not be an MCZ; I am saying that there is a process. I want to make sure that I get this right. It is a chicken-and-egg question. On enactment of the Bill, the marine nature reserve is gone. You are saying it automatically moves to becoming an MCZ.
1851. **Ms McEvoy:** Until we do the formal designation, that will happen in name only.
1852. **Mr Hamilton:** So, it is not an actual MCZ, and you are saying that it is a designation of intention to make it an MCZ.
1853. **Mr K Bradley:** Yes, because you still have to do a designation order to make it an MCZ.
1854. **Mr Hamilton:** You have to follow the process.
1855. **Mr K Bradley:** That is right.
1856. **Mr Hamilton:** So, I think that it is a terminology issue. It is much easier to say that it is an MCZ in name or that it is an intention to have one.
1857. **Mr K Bradley:** It is a candidate.
1858. **Ms Cunning:** The wording of the Bill is that it is “to be treated” as if it were an MCZ. Rather than making it an MCZ, you will be amending that MCZ. You treat it like an MCZ, but you will then look at the objectives, because I am sure that the MNR has different objectives to those that you would want for Strangford lough as an MCZ. That is where the process will come through. The MNR will change to MCZ and is to be treated as such. You will then go through the process of looking at the objectives for it, what you might need for it and what its extent might be. It will become a proper MCZ at the end of that process.
1859. **Mr Hamilton:** That is fine. I just wanted clarity.

1860. **Ms Cunning:** That is why we had difficulty getting our head round that.
1861. **Mr K Bradley:** That is right. We talked about having a commencement order, because we did not want to have any gap. The same process happened in England with Lundy Island.
1862. **Mr Elliott:** I would like clarity on that as well. Will it have the protection during that period?
1863. **Ms McEvoy:** It will have the protection of an interim by-law, because it is a potential site. It can, therefore, be afforded the protection through an interim by-law.
1864. **Mr K Bradley:** An existing by-law that we have for anchoring, mooring and diving will continue.
1865. **Mr Campbell:** Is it correct that that protection is no less or no more than the existing protection?
1866. **Ms Cunning:** Yes.
1867. **The Chairperson:** That was a good question, Simon.
1868. **Mr Hamilton:** It struck me when I heard Ken mention automatic designation last week. I have been thinking about it, and my memory was sparked. I appreciate the explanation given; that is where I thought the original process of getting it enacted and then having commencement orders probably made more sense superficially with what we are going through. It probably requires a bit of clarity, too, during the remaining stages of the Bill. I am worried about spooking people if there is an MCZ and all the attendant bylaws are in place.
1869. **Mr K Bradley:** That is a valid point.
1870. **The Chairperson:** It is just a holding position, in the interim really; is it not?
1871. **Mr K Bradley:** That is correct, yes.
1872. **The Chairperson:** Are members happy with that?

Members indicated assent.

1873. **The Chairperson:** We move on then to the last clause, clause 48, which is the short title. There is no comment there. Are members happy with that?

Members indicated assent.

1874. **The Chairperson:** OK. We move to schedule 1; "Marine plans: preparation and adoption." A number of issues were raised in relation to schedule 1. These are listed in the cover note and given in more detail in the schedule 1 table in members' packs. Ken and Brenda, I believe you also have copies of that. There is a list of issues there.
1875. **Ms Cunning:** I will go through them.
1876. The first is that the Commissioners of Irish Lights asked to be included in the list of relevant authorities to be given notice about a marine plan. We do not think that is necessary. It will be one of the major consultees, but paragraph 1 of schedule 1 is really about giving notification to other marine planning or terrestrial planning authorities. Its purpose is to make sure there is a tie-up between marine planning and terrestrial planning. Obviously, the Commissioners of Irish Lights has a role, but it would be seen as a consultee, so we would not include it there.
1877. **We have noted another couple of points:** that trade forecasts within the UK national ports policy statement should be taken into account when looking at the marine plan, and that we should take into account the ports policy statement and individual port master plans, which we can do when we are doing the plan.
1878. Next:
"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."
1879. I am not sure that I see the purpose of that suggestion in some ways. They will be consulted as needs be, but they are also already notified through paragraph 1. We do not think they need to be included twice.

1880. Another issue is:
“DETI should be explicitly listed as a department to consult with.”
1881. It is, by way of clause 2 or possibly clause 4. It is explicitly listed.
1882. Will there be an overarching statement of public participation for each plan?
 Yes, there will. There will not be one overarching one, but there will be one for each plan. An SPP will be done for each plan or even the amendment of a plan. Every time you do or amend a marine plan, you will do a statement of public participation.
1883. **The Chairperson:** But is it the same each time?
1884. **Ms Cunning:** Not necessarily; it might change. That is why we are not doing one generic one that will cover us for marine planning for the next 20 years. Every time you go to do a marine plan or amend a plan, you will start again by doing your statement of public participation. That is the first thing you will do each time.
1885. **The Chairperson:** Is it really just the list of consultees that will be different?
1886. **Ms Cunning:** Yes, exactly; or the way that you want to engage with them in the SPP. It might be that, for a more local area, you might want to engage on a more face-to-face basis, and, if it was more national bodies, you might want to have teleconferences. Things could change within the SPP; that is why we would do a new one each time.
1887. The details relating to the SPP:
“should be set within a wider Departmental framework of quality standards”.
1888. The Department does have a publication schedule, and I think that is fine. We note that.
1889. Next:
“explicit commitment to consulting communities on the content of an SPP”.
1890. **We are not consulting on the SPP:** it is not like it is a one-off document that we will do and never touch again. It should be a living document. The SPP will change as you go along, and communities will be part of that process. In fact, the draft SPP that the marine plan team has created has already gone out to stakeholders for comment, even though that is not required. So, communities will definitely be involved in the evolving nature of the statement of public participation.
1891. Next:
“retain a register of interested persons”.
1892. We touched on that last week. The Department has a very extensive list of consultees. Outside the framework of the SPP, the Department has total discretion over the time frame for consultation and what it considers to be reasonable. You will be fully aware that consultation with the Department is usually carried out over 12 weeks as a minimum. That is the kind of framework we will be working in. We do not need to put anything on that on the face of the Bill, because we do not usually have to do that. It is pretty generic that we consult for at least 12 weeks. There might be a very minor amendment and maybe a consultation would be a bit more flexible, but that will all be put down in the SPP, which will be discussed with stakeholders. So, it is inclusive enough that we do not need to put something on the Bill.
1893. Next, the optional provision for holding meetings should be made a requirement, and also the optional provision for the Department to seek advice should be made a requirement. Schedule 1 covers the creation of a marine plan, but it also covers the amendment of a marine plan. Again, this is flexibility: we do not want to make anything overly bureaucratic. So, if, for example, we were going to amend a marine plan, we would not necessarily want to have public meetings on that. It could be a very minor amendment, and you might want to target who you are engaging with. To always have to have public meetings on something would be above and beyond. The same goes

- for seeking advice and guidance, which should be an optional thing that we can do, and will do as we go through the process of developing the plan.
1894. Next, the discretion given to the Department for consulting is “too broad” and should be “more formalised”. We need to have a pretty flexible system, because, again, we are not just talking about when we bring in a plan; we are talking about when we amend the plan, and we are talking about the possibility of doing localised plans. We need to be flexible so that we are not stymied by a very long-winded and bureaucratic process.
1895. Next, the matters to which the Department should give regard to in preparing a marine plan include contribution to sustainable development and mitigation of and adaption to climate change. As we have said before, sustainable development is inherent in a marine plan, because it has to contain the policies that lead to sustainable development. So, part and parcel of reviewing the plan would be seeing whether you are actually adhering to those policies. The same goes for climate change. When you are reviewing the plan, you have to take into account any changes to the physical, environmental or socio-economic characteristics of the Northern Ireland inshore area. That is already covered.
1896. Shoreline management plans do not apply in Northern Ireland, but obviously they would be something that we would consider if there were developments on those at some stage. Economics is already contained in the plan, and the strategic energy framework and offshore renewable energy action plan are already caught by the requirement to consider other plans that would be relevant to the inshore region.
1897. **The Chairperson:** Are we going to consider including climate change mitigation in clause 1, as well as sustainable development?
1898. **Ms Cunning:** No, we have talked about that and will come back to you in writing.
1899. The Department can appoint its own independent investigator. That has been queried, but we think that it is valid that we should be able to do that.
1900. The Planning Appeals Commission (PAC) has not been identified to undertake examinations, which should be held in public. The PAC might not always be the best-placed body to carry out an investigation of a plan, especially if it is an amendment of a localised plan. The PAC also has, as we know, a very heavy workload, and you would not want something to get bogged down in a very bureaucratic system, so you might want to appoint somebody local, for example somebody in university, to carry out an investigation if it was on a particular part of the plan. That is why we need flexibility there.
1901. **Mr Hamilton:** It has not always been my experience that it is the best organisation to look at planning appeals even, never mind anything else. Sorry; that was unnecessary. *[Laughter.]*
1902. **Ms Cunning:** We have not named anybody on the face of the Bill, because it should be flexible who is appointed. We have to have regard to the recommendations. We also need to explain why. So, if we do not follow the recommendation of the investigator, when we are publishing the plan, we have to give an explanation of why we have not taken on board what they have said or of how we have modified the plan.
1903. **Again, this idea the lack of a duty on the Department to produce a marine plan within a set time frame:** it is a process. It is not just a one-off plan. We need flexibility to decide what all the issues are. We could not say that you must do a marine plan in six months or two years. It is an unknown to us. We do not think it is rational to put a set time frame on the Bill.
1904. **The Chairperson:** Is it not good to have a target for when we are going to do this?
1905. **Ms Cunning:** Yes, but the provisions of the Bill also cover amending a plan. If we put it in the Bill for “a plan”, would

- we then put in a time frame for when we would need to amend that plan or bring forward a localised plan for a particular area of Northern Ireland? It would be too restrictive. The Bill sets out how we will do marine planning for the next 10 to 15 years. Do we really want to hammer that down to “you must do a plan within x amount of time”? We have never done a plan before. We have no idea what kinds of issues we will come to when we start to do one. We are aiming to develop a plan in two years. Will that be feasible? Will we get it done faster? We do not want to go down the route of putting in a fixed date for when we need to do a marine plan.
1906. **The Chairperson:** It is the Committee’s experience that, sometimes, it takes years to implement legislation and see action. We are all a bit wary of and worried about delay after delay and seeing nothing done.
1907. **Ms Cunning:** This might be an opportune time to raise something with you that I was going to throw in at the end. The Department has actually already started developing the marine plan. We want to be able to include an amendment to the Bill to put in a saving provision because we have started the work. That is how keen we are to do this plan. It is not even the case that you will have to wait for years after the Bill is enacted. We have actually started now. So, we will be coming forward with an amendment to say that any work we have done now on the SPP and on notifying other authorities will count after the enactment of the Bill. That is the commitment the Department is giving to this. We are actually already working towards a marine plan, without it being on the face of the Bill.
1908. **The Chairperson:** What do members think?
1909. **Mr Hamilton:** Chair, that provision probably makes some sense. However, I think that the Committee will want to satisfy itself as to what work has taken place beforehand. That will need to be catalogued in some way before we could say that that was fine. I do not know way that can be done without being too laborious.
1910. **Mr Campbell:** On the issue of the SPP, I want to look at paragraphs 5 and 8. Maybe it is standard format, but it says “an interested person”. Paragraph 8(a) makes sense but paragraph 8(b) appears to simply state that whoever wants to be an interested person is an interested person. That is how that appears to me.
1911. **Ms Cunning:** Basically, it is a catch-all.
1912. **Mr Campbell:** Why, then, is there a need for paragraph 8(a)?
1913. **Ms Cunning:** To make sure that it is specific. You are not going to go out to everybody, and then say: “It is OK, because we have got the general public.” It is to make you think about who is or could be affected by the plan and who would be interested in it. I know what you mean. The “general public” should capture everybody affected or interested. However, it is to make you consider that specifically. Also, you might just consult the general public of Northern Ireland, but you could be affecting somebody in a fishing fleet from England or Scotland, so you would need to consider them as well.
1914. **Mr Campbell:** A catch-all.
1915. **Ms Cunning:** Yes.
1916. **The Chairperson:** Are members happy with that? Do we want to think about asking for a time frame, or do we not think it is necessary? Will we leave it?
- Members indicated assent.*
1917. **The Chairperson:** OK, we are now on to the last one.
1918. **Ms Cunning:** Oh, yes:
“publish any reasons for modification”.
1919. That is already required under one of the clauses. Paragraph 15(4) of schedule 1 states that the Department:
“must publish the marine plan ... together with statements of each of the following ...

- any modifications that have been made ... the reasons for those modifications”*
1920. and if you have not taken on board everything that the investigator has said. That is already required. You do publish reasons for your modifications.
1921. **The Chairperson:** OK. We are now on to schedule 2, “Further provision about fixed monetary penalties under section 33”. Brenda again?
1922. **Mr K Bradley:** That is back to me again.
1923. **The Chairperson:** You divide them up well between the two of you.
1924. **Mr K Bradley:** That is right. We have covered most of that when dealing with clause 33. We have taken into account the Examiner’s comments. We feel that the procedure is fairly straightforward. It is very similar to the marine licensing provisions, so we do not see any problems there. An appeals body is mentioned at clause 33; we have agreement in principle on an appeals body to do that work. Obviously it depends on the number of appeals and the complexity of appeals. The final point is that the Commissioners of Irish Lights is to be consulted. We have dealt with that point as well. That is agreed. The provision on the fixed monetary penalties is by affirmative resolution of the Assembly, so, again, there is openness and transparency there.
1925. **The Chairperson:** Sorry, Ken, can you say that again? The second query in the cover note states:
- “Were these provisions to be enacted as the Bill stands, the resulting Order would not be easy for the Department to frame”.*
1926. What is your answer to that?
1927. **Mr K Bradley:** We have already undertaken similar provisions on the marine licensing side of it. This is obviously for marine nature conservation and fixed monetary penalties under a by-law. We have already got similar legislation for marine licensing. That is the point there. It would not be easy for the Department to frame it. We have
- already dealt with the provisions in previous legislation.
1928. **The Chairperson:** OK, that is all of the schedules. There are other issues that may not be in the stated clauses but have been raised by a number of stakeholders, so we will go through those. A number of organisations have mentioned coastal access. The rambling clubs and others have said that Wales and other parts of the UK have greater coastal access and we are falling behind. How can we address that? I think this is the opportunity for us to do something constructive about opening up our coastal access. It is also seen as a good means of promoting tourism through walks around our coastline.
1929. **Mr K Bradley:** From our point of view, coastal access, like all access, is dealt with at local councils. They have provisions to open up routes for hillwalkers or whoever. As a Department, we have not been inundated with calls about restrictions on our coast. A lot of our coast is under public ownership or that of environmental NGOs such as the National Trust. There are a number of waymarked ways, for instance, in north Antrim and east Down. The coast is well opened up, as far as we are concerned. Obviously there are bits that are in private ownership, and those are restricted. We feel that there is no real need to legislate for that. We do not see coastal access as a problem in Northern Ireland. That is why we have not legislated for it. We have not been inundated by people saying that there is a problem or that they cannot get access to any part of the coast. As a hillwalker myself, I have walked the majority of Northern Ireland’s coastline, from Annalong and Kilkeel, Newcastle and north Down right the way up to north Antrim. I have found that there is no restriction. All our most scenic —
1930. **Lord Morrow:** Why have you not come to Fermanagh and South Tyrone?
[Laughter.]
1931. **Mr Elliott:** There is no coastline there.

1932. **The Chairperson:** Their concern is that it stops and starts. It is not a through road, like in Wales, where you can go right around the Welsh coast.
1933. **Mr K Bradley:** A good part of the Welsh coastline is like that, but you cannot get access to all the coast of Wales. Yes, there are large tracts accessible and there is the Wales Coast Path. That is right.
1934. However, there is provision here for councils to work together to designate such paths. That has happened, Lord Morrow, in County Fermanagh, where additional waymarked ways have been developed. There are provisions giving councils the opportunity and a discretionary power to enter into agreements with landowners to designate waymarked ways. The Countryside Access and Activities Network provides public liability insurance for those waymarked ways. So opportunities are there in existing legislation, and we do not feel that the Bill requires additional access clauses.
1935. **The Chairperson:** What do you think, members? Are you happy with the explanation?
1936. **Mr Hamilton:** Yes.
1937. **Mr Campbell:** You said when you started that you had not been inundated with such requests. Does that mean that you did not have any requests?
1938. **Mr K Bradley:** I cannot think of any. Obviously, that was not a part of what we consulted on, but people were not commenting on it. Obviously, the Ulster Federation of Rambling Clubs (UFRC) used the opportunity to lobby for it. As the Chair has pointed out, access powers were granted in the English Bill. We have not been inundated by requests from anybody. There is, obviously, the odd occasion when someone is aggrieved that access was denied him, or something like that. Such cases are obviously referred to the local council. However, we have any such representation except from the UFRC. It is the policy of the National Trust, which owns a lot of the coast — such as Murlough Bay and north Antrim — to open it up to the public.
1939. **The Chairperson:** Members, is it the case that we do not want to pursue this?
- Members indicated assent.*
1940. **The Chairperson:** We move to the next item, the provision of a limited right of third-party appeal.
1941. **Ms Cunning:** Can we clarify what this is in relation to? Third-party appeal is something that the Department has talked about previously with respect to planning. It is usually raised when it comes to authorisations but, as the Bill does not deal with authorisations, we do not see the relevance of it.
1942. **The Chairperson:** Is it not to do with designation of MCZs and planning?
1943. **Ms Cunning:** There is no appeal process, such as an appeal in a licence application. That is where third-party appeal is usually raised. There is an appeal in that anyone can take a judicial review. So I am not sure what the reference is to.
1944. **The Chairperson:** I have this to hand. It is from the Strangford Lough and Lecale Partnership (SLLP), which stated, under paragraph 2(3) with reference to appeals on monetary penalties:
- “reference to a tribunal is vague and suggests that convening such a body would be a rare event. We suggest that this will be frequent enough to require a permanent Appeals Commission properly and appropriately trained.”*
1945. **Ms Cunning:** That is what Ken referred to.
1946. **Mr K Bradley:** The Examiner’s point about the appeals body was that it would be hard. We said that we have agreement with the Lands Tribunal to do the appeals. It is very ad hoc. We envisage that they will be few and far between. Obviously, there is no point in setting up the mechanism for an appeals body that might never sit. We have agreement in principle with the Lands Tribunal that it will undertake any appeals.

1947. **The Chairperson:** We are talking of third-party appeals.

1948. **Ms Cunning:** If it is the SLLP, it seems to have raised that here:

“SLLP recommends that in the view of diverse ... ecosystems ... scientific and technical complexity ... all bodies and persons have the right third party appeal.”

1949. Yes, but the word “appeal” is wrong. Anybody has the right, if they feel aggrieved by a marine plan, for example, to take a challenge to the High Court. We talked about that. The definition of “aggrieved person” would include anybody — NGOs or anybody. We are content that that is what it referred to. The third-party right of appeal is not really the real context of what we are talking about. The terminology is a bit wrong.

1950. **Lord Morrow:** Are you simply saying that, rather than a third-party appeal, anybody and everybody has the right to appeal here?

1951. **Ms Cunning:** “Right of appeal” is the wrong wording. I think that we mean “challenge” — to be able to challenge a plan or challenge the MCZ. An appeal is usually when somebody has made an authorisation decision. We are content that that is covered by “aggrieved person”.

1952. **Lord Morrow:** Fair enough. So they can air their grievances.

1953. **Ms Cunning:** Yes.

1954. **The Chairperson:** Are members content with that explanation?

Members indicated assent.

1955. **The Chairperson:** The third point is the integration and co-ordination of marine functions. I know that you talked about the interdepartmental group. However, that does not convince us that that group has enough legal status or good terms of reference. We do not even know the terms of reference. It seems to be very ad hoc. We would be very keen to see a mechanism or body whereby there would be co-ordination

of the marine functions to implement a Bill, although maybe not as much as a marine management organisation (MMO). Marine Scotland is a good model. Can we not think of something like that that would be situated in government to deal with this? We are not talking about a quango; we are talking of something within government.

1956. **Ms Cunning:** Absolutely. Chair, you are aware that the Minister would actually prefer an MMO. However, the marine directorate option is being looked at. We have confirmed that we will take forward whatever we can. That option still requires Executive agreement and agreement from the other Departments. Therefore, we cannot write that on the face of the Bill, but we can definitely work towards it. We are working towards developing all the different options for increasing the integration of marine management, with MMO being at one end, the current status quo at the other, and any other option in between, including a new directorate. That is actively being pursued.

1957. **Mr K Bradley:** Or even more integration within DOE itself.

1958. **The Chairperson:** Would members be happy if we asked our secretariat whether we could look into that ourselves to see whether we could put in an amendment? It might strengthen the hand of the Minister in future if the Committee asked for that at this stage.

1959. **Mr Hamilton:** We have to be very clear about what we are asking for. What do you propose we ask for?

1960. **The Chairperson:** We could ask for an organisation that is similar to Marine Scotland.

1961. **Mr Hamilton:** This is a vexed issue for us all, and the various parties and individuals have taken positions on a marine management organisation. I do not think that those positions are going to shift between now and the Bill's Consideration Stage. In my view, the model that we looked at when we were in Scotland has more merit than an

- MMO, but establishing such a model is fraught with difficulties.
1962. You could set up a marine directorate in the Department tomorrow morning if the Minister so desired, but it would not tie all marine responsibilities together. That point goes back to the core problem that we identified. In fact, setting it up would require a transfer of functions from one or several Departments. That is where it gets complicated. That requires Ministers to give up power, which they do not like to do. There are former Ministers here, who, I am sure, were not rushing to give up power when they were in their Departments.
1963. There is a political aspect to it as well, because it would require a Minister from one party to give power to a Minister from another, which would only complicate the matter further.
1964. Brenda is not able to say what we as politicians can say about this, but that is the political reality. Short of a wholesale reorganisation of Departments in Northern Ireland, the Department can look at options and have discussions with relevant colleagues around the Executive table about what can be done.
1965. **The Chairperson:** We are looking at a review of the Departments, so perhaps it is timely to look at that.
1966. **Mr Hamilton:** I am happy to have that discussion. *[Laughter.]*
1967. **Mr Campbell:** On another occasion.
1968. **Mr Hamilton:** For the record, I do not need to state my position on that; I think that it is very clear.
1969. Who knows whether wholesale reorganisation will happen? It may, and it may produce a new Department in which a marine directorate with all responsibilities could easily be created, so there would be no problem. However, we are not there, and it is not easy to get there.
1970. You could put any amendment that you wanted into the Bill to create anything like that, but it is not going to create what you want. You are not going to get agreement to create an MMO; that is perfectly clear. You are not going to be able to create a marine directorate. You do not need legislation to do that, anyway; it could just be done. Even if you tabled an amendment or put it as a recommendation in the report, it would require the Minister to get other colleagues to transfer the functions to him, which is not going to happen that easily either.
1971. I do not know whether the Committee, when it is looking at preparing a report, will want to discuss having a section that explores the options. Brenda spelled out the range of options, and the Committee can decide on or encourage the exploration of those options.
1972. **Mr Campbell:** I do not disagree with Simon at all. The political and practical realities are that, whatever about the proposition or the amendment that might be tabled, the inevitable outcome will not be what we might like it to be. However, when we come to formalise the position, I presume that the matter could be raised in the subsequent debate.
1973. You are going to get to that conclusion only if the possibility is engendered and if there is some discussion about whether there is a possibility of this happening over the first five years after the Act's enactment. If not, so be it. The problem is that an amendment will not carry any practical weight or have any practical outcome. You would be raising an issue, but it would be like a straw man, in my view.
1974. **The Chairperson:** That is a means to raise the issue, however.
1975. **Mr Campbell:** It is, yes. The alternative is to suggest something that you would hope would have some strength. My view is that it would not have any, because the practical reality is somewhat different to what you would like it to be.
1976. **Mr Elliott:** It is an extremely difficult issue. Having listened to what the officials said last week, I think that it is going to be quite difficult to get a

- manageable system in place and on which all Departments, agencies and sectors are at one. I did not raise it at the time, but I noted the responses to schedule 1. The response from the Committee for Agriculture and Rural Development shows that it is not very confident about DOE and the Department of Agriculture and Rural Development (DARD) singing from the one hymn sheet. It was concerned that, even though DOE would be asking for guidance from the Department of Agriculture, there was nowhere to suggest that it had to take that guidance on board; in fact, DOE could just ignore the guidance. I am assuming that it is the same for other agencies or Departments.
1977. **Lord Morrow:** It is probably the same for all the Bills as well.
1978. **Mr Elliott:** That is right. So, it is an extremely difficult issue to get over. Since I am relatively new to the Committee, I have not seen the different options for a marine management organisation, so I am not totally clear about it. Are we talking about something that is fully blown with all the required statutory powers? Or, are we talking more about an advisory board that has some statutory powers or an advisory board that has no statutory powers at all? That is what I am trying to get to. I do not know whether there is a better system that we could put in place that would force the Departments to work and manage the process together. I think that I said this last week, so it is no shock to the officials, but they did not fill me with confidence that it would work as it stands.
1979. **The Chairperson:** Marine Scotland is a department in its own right. It takes in a number of functions, including licensing for fishing and aquaculture. So, it certainly takes in some of the functions that affect marine issues.
1980. **Mr Elliott:** So, is it a stand-alone department?
1981. **Mr Hamilton:** No. It is a directorate of the Department. It is under their Departments that deal with the environment and agriculture. Scotland has only six Departments, and since it has fewer Departments, it can do that.
1982. **Mr Elliott:** OK. So it could be similar to the likes of the NIEA.
1983. **Mr Hamilton:** No, it is separate altogether. They have the Scottish Environment Protection Agency (SEPA); Marine Scotland is independent.
1984. **Mr Elliott:** I mean in the sense that the NIEA is an agency of DOE. In other words, it would be an agency.
1985. **Mr Hamilton:** Yes. It is like Planning Service, I suppose.
1986. **Mr K Bradley:** You could argue that the function would sit easier under DARD, since it has a greater responsibility in the marine environment.
1987. **Ms Cuning:** Not with us having planning and, then, the marine conservation zones. That is another of the issues. Sorry, Ken; I am more aware, because we are looking at such issues. For example, who would the sponsor Department be if there were an MMO and everyone were giving up functions to it? We have to look at practical things such as that. Who would be paying the money towards it? Who would have the sponsor team that is responsible for it? Which Minister or Ministers would be responsible for it? That is what we have to look at for the MMO.
1988. With regard to the marine directorate, we have to look at which Department it would sit in, for instance. If the Departments were reviewed, maybe the Departments of Environment and Agriculture would be combined, and it would sit more naturally there. There are a range of things to be considered.
1989. **Mr Boylan:** Thank you. We could go round the houses on this issue. From my point of view, we are bringing forward legislation, and, in the absence of an MMO, we want to see how we are going to manage the issue properly. We need to see what is coming forward on paper. I would like to see that. I am not in

- favour of going down the route of having another quango for the sake of it. There is expertise in the Department. We might call for and need expertise from outside the Department at times, but I would like to see on paper exactly where we are going to go with it. There is no point in merely looking at a piece of legislation.
1990. We were over in Scotland, and that is fair enough. That was grand, but I do not think that a similar body is an issue for us at the minute. We are looking at it at the moment, but I would like to see something that shows how we are going to manage all this, and I also want to see who might be involved in it all. Last week, we had the debate about Departments operating in silos. It is right that that happens, because they have their own responsibilities. However, this is definitely a major cross-departmental issue. So, to be honest, I would like to see all that information before we make any decisions. Any Member is entitled to bring an amendment to the House, if they wish, but I would like to see all that information first.
1991. **The Chairperson:** We will bring that issue back.
1992. I am looking at some questions that an NGO forwarded to me, one of which was: in the absence of an MMO, how will clause 23 act as an effective sanction against a public authority when it fails to comply with its duties?
1993. **Mr K Bradley:** Irrespective of whether there is an MMO or another system, one public authority can take another to court. Irrespective of whether that public authority is DOE, a regulatory authority or an MMO, it will still have the same problems and issues.
1994. **Mr Elliott:** I asked that specific question twice last week. I asked whether an MMO could actually take a Department to court over a particular issue or a breach of an MCZ. The clear answer that I got was that it could not. That concerns me, because I thought that such a body would have the powers to do that.
1995. **Mr Hamilton:** It depends. You could establish it and give it those powers. It depends on the legislation.
1996. **Mr Elliott:** Not if it is an agency.
1997. **Mr Hamilton:** No, that is a different beast altogether. “MMO” is a phrase that is used in this debate to describe something that is outside government.
1998. **Mr K Bradley:** It is an arm’s-length body.
1999. **The Chairperson:** Brenda, will you give us some information about the interdepartmental group? None of us is feeling very confident about it. What about its terms of reference? For example, how often has it met in the past year, and what has it decided on?
2000. **Ms Cuning:** I thought that we provided you with the terms of reference, but I will check that.
2001. **The Chairperson:** I know that it does not have any legal status.
2002. **Ms Cuning:** No, there is no legal status. It is just a mechanism that we have used with other Departments so that we can co-ordinate our activities. I would have said that we have been doing that for about two years, but, actually, it has been going on since about 2008. The group came together when we were working on the Marine and Coastal Access Act 2009. So, we will liaise with the Clerk and, if we can provide more information on the group, we will.
2003. The group usually meets quarterly. It has no legal status, and it is quite ad hoc. The idea behind it is that everybody brings any marine issues to the table. For example, DETI brought its strategic environmental assessment (SEA) to the table, and we discussed that. We brought the Bill to the table, and we discussed that. It is just officials talking and trying to work out any issues before they become problems. It is not a legal body, but it is the best mechanism that we have at the moment.

2004. **The Chairperson:** What about transparency? Does the group circulate minutes?
2005. **Ms Cunning:** No, and that is because we have done it on a very ad hoc basis. The minutes are usually action points. A question on this was raised, because some of the stakeholders had the perception that we were suddenly proposing the group as a new body that would somehow take over. That is not what it is. It is a mechanism that we have at the moment, and we use it to help to co-ordinate between Departments. We are not saying that it is a legal body or that it exists in place of an MMO; it is just how we work together at the minute.
2006. **Mr K Bradley:** Being able to thrash out issues rather than having to go through a formal process has worked very well in consultations.
2007. **Ms Cunning:** Yes, rather than writing to a Department, we can actually have a discussion.
2008. **The Chairperson:** So, it is very much a group of consultees.
2009. **Ms Cunning:** No. It is more about working together.
2010. **Mr Elliott:** Could a mechanism be put into the Bill to provide for a memorandum of understanding between Departments? Although I am not disagreeing with you when you say that the group is a good forum for airing your views and getting issues into that domain, I hear from officials in DOE and DARD about other matters, which I will not name at the moment, that there does not seem to be that same level of co-operation. Unless we have something pretty firm to allow — rather, to insist on — that co-operation, from what we have heard today, it may not work.
2011. **Ms Cunning:** In the Bill, there is a requirement that we consult other Departments on the marine plan. There is a requirement for those Departments to have their policies in a marine plan, and there is a requirement that they abide by that marine plan. That is as legal as the Bill gets at the moment. Underneath that, we will try to work together on it. As you say, MOUs are developing between DETI and DOE, for example.
2012. **Mr K Bradley:** That applies to duties as well.
2013. **The Chairperson:** Have we lost our quorum?
2014. I will just go over some of the questions that have been put forward, as this is our last chance to ask them of you. What guidelines and principles will Northern Ireland be following or using to achieve an ecologically coherent network of marine protected areas of the Northern Ireland inshore region at a local scale?
2015. **Mr K Bradley:** That is a strange question, because you need scale to create an ecologically coherent network, and after that, you can ask how you can do it on a local scale. It is slightly strange.
2016. Northern Ireland and the rest of the UK are working towards having an ecologically coherent network of marine protected areas by 2020. How do we define what such a network will look like? What species and habitats will it have, and how much of those will make up a network? That is obviously open to debate, because the project has to be scientifically led.
2017. The school of thought in the UK, as well as further afield in the likes of France and the South of Ireland, is that we should work in biogeographical areas. In other words, a species is not pertinent solely to the UK, France or the South. We are looking at a bigger picture and are asking what makes a coherent network. That network may include parts of France or parts of French or Belgian waters. That is the sort of conversation that we have had with the Joint Nature Conservation Committee (JNCC), Natural England and the Department for Environment, Food and Rural Affairs (DEFRA).

2018. We are trying to come up with some sort of scientific rationale, and that will probably be based on the OSPAR agreement, which sets out eight different principles of ecological coherence. So, it is about how we can take that to a local level. We may have habitats or species that are unique to Northern Ireland, but that would not make a coherent network. It is a difficult question.
2019. **The Chairperson:** OK. I am worried about our quorum, because Simon needs to go. If we have any further questions we will put them to you in writing. Do members need any more information from the Department?
2020. **Mr Boylan:** We need information about costs and resources. Did we get any information about that?
2021. **The Chairperson:** Yes. We will now conclude the informal clause-by-clause analysis of the Bill. The Department will be asked to respond to any outstanding questions and to provide draft amendments over the next week, after which the Committee will undertake its formal clause-by-clause consideration of the Bill. That is scheduled for 21 June.
2022. I thank the three officials for coming along over the past two weeks. I remind you that we need your responses by 15 June.

21 June 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Cathal Boylan
 Mr Gregory Campbell
 Mr Tom Elliott
 Mr Chris Hazzard
 Mrs Dolores Kelly
 Lord Maurice Morrow of Clogher Valley
 Mr Peter Weir

Witnesses:

Mr Ken Bradley *Department of the*
 Ms Brenda Cuning *Environment*
 Mr Angus Kerr
 Ms Gerardine McEvoy

2023. **The Chairperson:** I welcome back the officials from the Department of the Environment (DOE). I welcome Angus Kerr, Brenda Cuning, Ken Bradley and Gerardine McEvoy. You are all very welcome.

2024. I will go through each of the clauses and the schedules to seek the Committee's position on them. This is our last opportunity to discuss the Bill. Our decisions will be final, and the Committee Clerk will then produce a report. The officials are here to answer any questions that you might have.

Clause 1 (The Northern Ireland inshore region)

2025. The Chairperson: The Committee was content with this clause, having received clarification on how the Bill would apply in Lough Foyle and Carlingford lough. Is the Committee content with clause 1?

2026. **Mr Boylan:** I missed the original discussion of the first few clauses; unfortunately, I could not make it that day. I would like some clarification on sustainable development and climate change relate to clause 1.

2027. **The Chairperson:** Cathal, we are going to come on to that next.

2028. **Mr Boylan:** Sorry.

2029. **The Chairperson:** I asked whether members are happy with clause 1.

2030. A number of organisations suggested that the Bill should be extended to include an overarching aim or general duty to take sustainable development and climate change into account when implementing the Act. The Department insisted that that was not necessary, as both those duties are required by existing legislation. The Committee requested more information on that from the Assembly's Research and Information Service. Members have been provided with a research paper that indicates that the Northern Ireland (Miscellaneous Provisions) Act 2006 places a sustainable development duty on all public authorities by requiring them to have regard to any strategy or guidance that is issued on the matter, including the sustainable development strategy. However, the paper notes that, although there are several binding provisions for sustainable development, there is no reference in the Bill to the Northern Ireland (Miscellaneous Provisions) Act 2006 to inform the reader of that duty. The paper also indicates that there is no direct duty in the Bill to deal with climate change and that any connection between the Bill and climate change will be dependent on the regard that is given to sustainable development. It is noted, however, that the sustainable development strategy makes a strong connection to the importance of adapting to and mitigating climate change, and the UK Climate Change Act 2008 places a duty on DOE to develop a programme for adaptation to climate change.

2031. How would members like to proceed? The Bill Clerk is here, and we could ask her to comment on the approaches that we can take.

2032. **Mr Boylan:** I thought that this was the formal clause-by-clause consideration, but I will stand corrected on that.
2033. Are you saying that the gist of this issue is covered in other legislation?
2034. **Ms Brenda Cuning (Department of the Environment):** Yes.
2035. **Mr Boylan:** Obviously, there are some concerns that we are not dealing with those issues properly and that the legislation is not working properly, so there is an opportunity to introduce them in the Bill. Is it a major problem for us to introduce them in the Bill, and what will the consequences be if we do?
2036. **Ms Cuning:** It would not be a major problem. The Office of the Legislative Counsel (OLC) has advised us that, in some ways, that would be unnecessary duplication, because we already have a sustainable development duty under the Miscellaneous Provisions Act. However, you can have replication in other legislation. OLC said that it could give rise to problems if the provision were phrased differently. For example, if you had two duties, how would they work together, even if there were a slight difference in the wording? You would have to be cautious if you were going to introduce any level of duplication, because you would be duplicating something that is already in existence.
2037. OLC also said that, because there are some specific references in the Bill to sustainable development, you would need to be careful how a general duty might interact with those specific references.
2038. I mentioned the marine policy statement (MPS). I do not know whether the Assembly researcher touched on that in the paper. Under the Marine and Coastal Access Act 2009, the marine policy statement is a statutory binding document, so it is a legal document. It was produced in 2011, and, right from the very first page, it emphasises sustainable development and climate change. For example, it states that marine plans, which must be made in accordance with the marine policy statement, will ensure:
- “resources are used in a sustainable way in line with the high level marine objectives”*
2039. that set out the whole range of sustainable development. It goes on to discuss how to:
- “mitigate the causes of climate change and ocean acidification and adapt to their effects”.*
2040. That is on the first page of the marine policy statement, but there are references throughout it to sustainable development and climate change. So, the marine policy statement has legal effect on how we produce marine plans. That is why we think that it is not necessary to introduce that level of duplication into the Bill.
2041. **Mr Boylan:** I am not in favour of duplication. Obviously, the key issue is the management of the process and how it is implemented.
2042. Thank you, Chair. I just wanted clarification, because I missed the discussion of the first few clauses.
2043. **The Chairperson:** There is clearly a general duty in the Marine (Scotland) Act 2010.
2044. **Ms Cuning:** I am sorry, I am not aware whether Scotland has the same duty on other public authorities as we do. If you think of it, you will find that the Department already has a duty to carry out any function on sustainable development or to contribute to it. I am not sure what Scotland’s position is on that, unfortunately.
2045. **The Chairperson:** I was looking at the next item. At the end of the meeting, we will be looking at the Planning Bill, which has a clause on sustainable development. If we have the opportunity now to make this amendment to add to the Bill rather than having to add another amendment at some stage, similar to the situation with the Planning Act, I do not see why we cannot put that emphasis at the very beginning to make it much clearer that we want to see sustainable development and climate

- change. The mitigation of climate change has not been mentioned at all in the Marine Bill.
2046. **Ms Cunning:** You are correct; the words “climate change” are not used. However, the issues that have to be kept under review include all the physical changes that happen to the marine environment in Northern Ireland, no matter what the cause. So, that means that it acts as a catch-all. The worry is that if we start introducing a specific reference to climate change, should we then introduce a reference to biodiversity, energy security and food security, which are the big issues that face the marine environment? That is why we thought that it was better not to have specific issues listed. If you do that, where do you stop? It is possible to introduce those amendments, but that is just not the Department’s position at this time.
2047. **Mr Weir:** Rather than something mentioned twice, it is always the preferred option to have a single unitary reference. If something is clearly covered, I would be wary of making a second reference to it; it is not good practice to have a second reference. Problems perhaps arise, through no intent, if subsequent or different pieces of legislation that are covered by the overreaching piece do not refer to the matter. At a later stage, such as in a court challenge on a different piece of legislation, some inference could be drawn, because it is specifically referred to in one piece of legislation but not in the other, even though it is meant to cover both. From a legislative practice point of view, that is why they tend not to reiterate something if it is already covered by law. It could lead to unfortunate and unintended inferences that could have some implication if a court were trying to interpret something later.
2048. **The Chairperson:** The research paper states that there is no mention of the Northern Ireland (Miscellaneous Provisions) Act 2006.
2049. **Mr Angus Kerr (Department of the Environment):** It is not always practice to cross-reference legislation in other legislation. The assumption is that it is in place and that it applies.
2050. **The Chairperson:** I am concerned that it is not clear enough that we are bringing in two very important issues that are going to face us in the next decades and that we are not setting that out clearly. That does not strengthen the legislation. We have the opportunity to add those issues now, and we must remember that a large number of responses asked for that. Are we going to ignore that?
2051. **Mr Hamilton:** I do not support their inclusion, for different reasons. First, they are elsewhere already. Peter’s point is entirely right. The only way to deal with this issue is to remove from legislation all other references and include in this Bill exactly the same references, word-for-word. Secondly, there is the added complication, which Brenda spelled out, that if you put those two particular duties into the Bill, you create a hierarchy in the Bill and you almost have a trump card for all the other interests. I do not mean outside interests; I mean public policy governmental interests in the marine, such as energy security and so on. I think that there is the potential to create an unnecessary tension in the Bill if you do not do it by removing the issue from everywhere else. If there is legislation or guidance elsewhere that covers this, that is fine, leave it, because it is too complicated to lift it from there and put it in here.
2052. I do not want to take away from the importance of the issue or the value that those who have raised it have put on it, but I think that that is something that can come out in the debate. It could be put into our report, or you and others could raise it during Consideration Stage. I am sure that the Minister would respond appropriately to that. We may ignore it as an amendment, but we are not going to ignore the issue.
2053. **The Chairperson:** A discussion in the House is not the same thing. We are discussing putting it into the legislation.

2054. **Mr Hamilton:** I agree, but I do not see any practical way in which you could put it into the legislation without causing a different problem somewhere else. That is a personal view, which others share.
2055. **The Chairperson:** What problems would it cause if we added that general duty?
2056. **Ms Cunning:** It would raise the issue of duplication. As was mentioned, it could also be confusing. If one thing is specifically mentioned in this Bill but not in another, would that mean that the Bill would seem to be giving weight to one thing rather than all the issues that have to be considered for marine legislation? Also, if the sustainable development duty were in the Marine Bill but not in, for example, the regulations for the water framework directive, would that mean that you would have less of a duty under the water framework directive? No, you would not. You would still have to carry out your functions to achieve the same development. That is the concern. It does not mean that we cannot do it, but it is not straightforward. We do not lift things from other pieces of legislation in case we give more weight to one thing over another.
2057. The marine policy statement has lots of references to sustainable development. The high-level marine objectives on how to achieve sustainable development through a protected environment, economic development and sound science are all set out. Those are covered in the high-level marine objectives in the marine policy statement, which have legal effect in how we produce marine plans.
2058. **Mr Boylan:** You should not have to reference one piece of legislation in another if other pieces deal with a particular issue. That is basically what you are saying. However, it could be argued that, if there is a feeling that the existing legislation is not being adhered to and implemented properly, in the absence of putting it in this Bill — I mentioned duplication — we should mention in the House that we should marry those pieces of legislation and work together to ensure there is an overall plan. I am not saying that this is the overarching policy, but that sort of message should be getting out, because the fear is that the legislation that is there is not being properly implemented. So, in the absence of not putting the matter in the Bill, I would certainly it to be referred to in the House. However, I know that you have some reservations about that.
2059. **Mr Kerr:** If the concern is, as you rightly say, about implementation and the purpose of the Bill and what we are trying to achieve, in a sense, those are a separate from asking which legislation such a clause should go into and what its wording should be and so forth. That needs to be looked at as we go forward with the implementation of the Bill through the marine plan and the guidance and policies that will come forward. We need to try to get a commitment throughout government to make sure that the spirit of this legislation and the same level of duty are brought forward. I am not necessarily sure that that would be any closer if we introduced a separate sustainable development duty in the Bill. There are other challenges for government in trying to achieve that, which, as you say, could be highlighted and which would require work across a number of fronts.
2060. **Mr Ken Bradley (Department of the Environment):** As well as the sustainable development duty, there is a sustainable development strategy and an implementation plan. Again, aspects of the Marine Bill, such as licensing and marine conservation, would sit in the implementation plan of the sustainable development strategy.
2061. **The Chairperson:** There is no harm in reiterating and making it clear that all the policies and planning will have sustainable development and climate change mitigation at the forefront of their thinking.
2062. **Mrs D Kelly:** What would be the point of a Marine Bill if it was not about sustainability?

2063. **The Chairperson:** It is about sustainable development.
2064. **Mr Campbell:** We have a straight choice to make. I suppose that we have three choices, but one would be ludicrous. If we were to start to list some issues only to be accused of not listing them all, we have a catch-all situation, which is the current position, or, as you suggested, Chair, we could make a specific reference to sustainable development and climate change, and then run the risk that certain groups and campaigners would ask why that and not something else was singled out. It seems to me that, however vague the catch-all phrase is, it at least leaves you less open to the accusation of some sort of partisanship.
2065. **The Chairperson:** Members, I will ask the Clerk of Bills to outline the approaches that we can take.
2066. **The Clerk of Bills:** Procedurally, it is clearly open to the Committee to recommend an amendment as it sees fit. However, I advise that the approach is quite different in legislative terms to that in policy terms. If you bring forward a policy document on the marine, you would expect it to refer to all the interrelated policies of the Department and the Executive.
2067. In legislation, it is quite different. Typically, the procedural approach with legislation is that the other existing binding duties stand and you do not cross-reference. There are reasons why drafters avoid duplication or cross-referencing in the statute book, notably to prevent any kind of confusion in court, should an issue come to court. The court will want the clearest statement of the legislatively binding provisions. Where there are a number of different provisions that express the duty differently, that can make for confusion or a lack of clarity.
2068. A pre-existing duty in the Northern Ireland (Miscellaneous Provisions) Act 2006 says:
- “A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland”.*
2069. It continues in more detail, but the bottom line is that that provision covers all public authorities exercising all their functions.
2070. You have the option to restate in each piece of legislation that comes before DOE that you are acting in conformity with that provision. However, there is a difficulty. What would happen if that changes and the provision is repealed and you have cross-referenced the Marine Bill to the 2006 Act? If that provision were repealed and, let us say, a sustainable development Act were brought forward, there would be a much greater task for the drafter. You would then have to go through the statute book to check all the cross-references that you made to the 2006 Act. So, it carries dangers.
2071. I appreciate the point about policy and that you would like to see a complete statement of all the relevant material and the interrelationships. In policy terms, that makes sense. You might, therefore, expect to see this reference as part of the contextual background information in an explanatory and financial memorandum (EFM) or an explanatory note, but the situation is different where there is a clear, pre-existing statutory obligation on sustainable development.
2072. The climate change provisions are relevant. Section 60 (1) of the Climate Change Act 2008, which discusses the programme for adaptation to climate change in Northern Ireland, says:
- “It is the duty of the relevant Northern Ireland department to lay programmes before the Northern Ireland Assembly setting out—*
- (a) the objectives of the department in relation to adaptation to climate change,*
- (b) the department’s proposals and policies for meeting those objectives, and*
- (c) the time-scales for introducing those proposals and policies,*
- addressing the risks identified in the most recent report under section 56.”*

2073. Again, those are further details. That is binding at all times and is unchanged by whether the issue is referred to in this Bill. I can certainly produce a draft amendment. The Chairperson referred to the Planning Act (Northern Ireland) 2011, in which, at the suggestion of the previous Committee, there was a duplicated reference to sustainable development. So, the Committee is at liberty to choose to do that again. I just wanted to bring that to your attention.
2074. **The Chairperson:** It is up to members. I seem to be in the minority.
2075. **Mr Hamilton:** For ease, may I propose that we support clause 1 as drafted and without amendments?
2076. **Mr Boylan:** I just want to make a final point about the clause. If the reference was not written down or is not in the other legislation, we could certainly look at it, but the issue is about how we deal with it. We know what is there, and the Bill will start to highlight what we want to achieve. That is what we need to say in the Chamber. It might have been that it was not drafted anywhere else or that there was no legislation for it, but there clearly is.
2077. The Bill Clerk made a valid point about the difficulty with cross-referencing another piece of legislation that is subsequently repealed. We understand where the issue arose, but the point is in how you implement and deal with the situation.
2078. **The Chairperson:** Simon recommended that. The Committee could also recommend that, during the debate, the Minister should refer to that Act and remind everyone that it places a duty on all statutory bodies to have sustainable development and climate change adaptation in mind when making policies.
2079. **Mr Elliott:** Chair, you could make that point. Indeed, any Member could.
2080. **The Chairperson:** We can ask the Minister to make it.

2081. **Mr Campbell:** I am sure that the Minister would be happy to comply.
2082. **Lord Morrow:** At length, I suspect.
2083. **The Chairperson:** I can reiterate that point in my speaking notes. I am concerned that a large number of organisations made that point. It was made strongly, particularly when we had the workshop with the voluntary sector.
2084. **Mrs D Kelly:** Perhaps they should read the explanation that has been outlined in Committee. If they did, they would understand the thinking behind it.
2085. **Mr Hamilton:** Amen to that.
2086. **The Chairperson:** We will obviously put that in our report.
2087. For clarification and for Hansard, I will put the Question again.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clause 2 (Marine plans for Northern Ireland inshore region)

2088. **The Chairperson:** We were content with the Department's explanations on vague or weak wording, the possibility of more than one plan and the time period allowed for comment after the launch of a plan. Do you have any questions?

Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

Clause 3 (Amendment of marine plan)

2089. **The Chairperson:** There were no particular comments on clause 3.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Withdrawal of marine plan)

2090. **The Chairperson:** The Department agreed to consider an amendment to clause 4 that would require it to publish

its intention to withdraw a marine plan on the DOE website and to consider rewording the clause so that a marine plan could not be withdrawn unless another plan had been produced or will be produced. The Department's response indicates that it will table an amendment that will require it to publish the withdrawal of a marine plan on its website. However, it does not intend to amend the clause to require it to withdraw a marine plan only when another plan has been produced, is pending or if there are extraordinary circumstances.

2091. The Department also sent the Committee an e-mail, which states:
2092. "Clause 4 deals with the conditions which must be met for the withdrawal of a marine plan. Clause 2(2) requires that the Department must seek to ensure that every part of the Northern Ireland inshore region has a marine plan in effect. Therefore, if the Department withdrew a plan, a new plan would be required under clause 2(2). A marine plan would likely only be withdrawn for the purposes of replacing it. The Department is content that the provisions of clauses 2 and 4, when read together, deal with the issue of replacing a withdrawn plan."
2093. Are members content with the Department's response?
- Members indicated assent.
2094. **The Chairperson:** Is the Committee content with Clause 4, subject to a departmental amendment to publish its intention to withdraw a plan on its website?

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 4 agreed to.

Clause 5 (Duty to keep relevant matters under review)

2095. **The Chairperson:** Members were content with the Department's

explanations of the inclusion of a set time period for review of the marine plan and the use of clearer terms.

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 agreed to.

Clause 6 (Decisions affected by a marine plan)

2096. **The Chairperson:** We were content with the Department's explanations of the clarity of the terms used, the requirement for consultation with affected parties, the introduction of the principle of mitigation or compensation for negative impacts and the requirement for reasons to be stated for decisions taken by public authorities.

Question, That the Committee is content with the clause, put and agreed to.

Clause 6 agreed to.

Clause 7 (Monitoring of, and periodical reporting on, marine plans)

2097. **The Chairperson:** We were content with the Department's explanations about the independent reporting on the plan and the requirement for reporting ending in 2030.

Question, That the Committee is content with the clause, put and agreed to.

Clause 7 agreed to.

Clause 8 (Validity of marine plans)

2098. **The Chairperson:** The Department agreed to consider the time period and the grounds for judicial review. The Department's response indicates that it will amend the clause to allow legal challenge of the marine plan up to 12 weeks after its publication but that the grounds for a legal challenge should remain as drafted.

2099. Are members content with the Department's response?

Members indicated assent.

2100. **The Chairperson:** We agreed to consider recommending that the Minister

stresses during Consideration Stage that there is a recognised process for engagement throughout the preparation of the marine plans and that the High Court option should not be considered an alternative.

2101. **Mrs D Kelly:** I am sure that you will be at pains to point that out.
2102. **Mr Hamilton:** Probably the only one.
2103. **The Chairperson:** Is the Committee content with clause 8, subject to a departmental amendment to extend the period during which a legal challenge can be made to up to 12 weeks after the plan has been published? The Committee recommends that the Minister stresses during Consideration Stage of the Bill that there is a recognised process for engagement throughout the preparation of the marine plans and that the High Court option should not be considered an alternative.
2104. **Mr Hamilton:** There is also the opportunity to change a marine plan through the Bill. So, if somebody does not like it, they can make the argument to change it.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 8 agreed to.

Clause 9 (Powers of the High Court on an application under section 8)

2105. **The Chairperson:** No issues were raised about clause 9 that were not addressed under clause 8.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clause 10 (Interpretation of this Part)

2106. **The Chairperson:** We were content with the Department's explanation for not including a definition of "sustainable development" in this clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

Clause 11 (Designation of marine conservation zones)

2107. **The Chairperson:** The Department agreed to respond to the possibility of designating historic sites and submerged landscapes as marine conservation zones (MCZ). In its response, the Department stated that the overall protection regime currently operating in Northern Ireland is robust enough to protect Northern Ireland's marine assets. The Department also said that it will not be tabling an amendment to include the possibility of historic sites being designated as MCZs. Do members have any comments on that?
2108. **Mr Hamilton:** The Department's argument is based entirely on the grounds that there is sufficient protection elsewhere. However, that protection is distinct from marine protection. Is that right? You are not protecting the marine under other provisions.
2109. **Mr K Bradley:** That is to do with the protection of the artefacts, or whatever they may be, that are in the seabed
2110. **Mr Hamilton:** It is because the Girona is on the seabed and because it has marine life around it.
2111. **Mr K Bradley:** Under the Protection of Wrecks Act 1973, the Girona and all the things in it are protected. Anyone who wants to dive it can get a licence from the Department. The Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 allows the Department to schedule any other artefact in the same way as a monument on land can be scheduled. It could schedule a shipwreck or a piece of ship that is sitting on the seabed for the protection of what is in it. The Department has had that power since 1995, but it has never used it to schedule any seabed monument or object that is on the seabed. The

- Department does not feel that there is any point in adding another tier of legislation to allow it to protect something on the seabed because it has historic or archaeological importance. We feel that that power is there already and that the Department has the power to use it.
2112. **Mr Hamilton:** I would like clarity on that. Does that mean that there is sufficient legislation to protect a ship of some renown or historic value? I will continue with the Girona as an example. Irrespective of what grows on it, can a ship of that stature be protected under existing legislation because it has such stature?
2113. **Mr K Bradley:** That is correct.
2114. **Mr Hamilton:** So, that is covered by existing legislation. If we accept that, the only other reason to make that provision in this Bill would be if there were a shipwreck of, maybe, a small boat that is not of historic significance but on which or in which something starts to live. Am I right in thinking that that ship can still be designated because it has some habitat around it and marine life living in it and not because it is an old boat that has sunk?
2115. **Mr K Bradley:** It is basically habitat in its own right.
2116. **Mr Hamilton:** Yes. So, it is immaterial whether it is a rock or a ship.
2117. **The Chairperson:** The Bill Clerk has suggested that, if we wanted to make an amendment, it would be more appropriate to make it to clause 12.
2118. **Mr Hamilton:** I was trying to steer away from that.
2119. **The Chairperson:** We have been lobbied for an amendment on this matter by one of the NGOs. The Bill Clerk will give us a quick briefing on this.
2120. **The Bill Clerk:** For the purposes of debate at least, if you want to amend, the better and more obvious place might be clause 12, where it gives the grounds for designation. Having said that, I advise members that the design of the Bill is very different from that of the Scottish model. The Marine (Scotland) Act 2010 is much bigger, and the model created under that Act is completely different. It provides for three types of marine protected area, one of which is a nature conservation model. There is a separate section dealing with historic areas and marine protected areas that are of an historic nature. To tack on an archaeological reference to that conservation model might be a little odd in the context of the flow and logic of the Bill. It would be sufficient for debate purposes, but, if the Committee wants to move towards a Scottish model, which represents a much bigger piece of work, you would expect government to have to come back and do a bigger revamp of the related clauses. However, you could insert a reference to archaeological or historic features into clause 12 to make your point.
2121. Another point to consider is the overlap with the other statutes. Article 4 of Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 creates an offence where any actions result in the unauthorised:
- “demolition, destruction or disturbance of, or any damage to, a scheduled monument”.*
2122. That can include any site comprising the remains of any vehicle, vessel, aircraft or other moveable structure. You will recall that the Department was advised that the Scottish Government do not have equivalent powers.
2123. Under article 30 of the same order, intentional or reckless damage to historic monuments can carry a maximum prison sentence of up to two years. That is on the statute book already. I appreciate that submissions have said that there are potential failings with that, but I am not in a position to advise any further at this time.
- Question, That the Committee is content with the clause, put and agreed to.*
- Clause 11 agreed to.*

Clause 12 (Grounds for designation of MCZ)

2124. **The Chairperson:** The Department agreed to consider changing “may” to “shall” and to include the words “cultural consequences” in clause 12(7). The Department indicated that it is willing to amend the clause to make it a requirement to consider social and economic factors and to include reference to cultural considerations. We have been provided with a further written response from the Department that reiterates its proposed approach for scientifically justified conservation objectives to reflect the purpose of an MCZ and to determine the level of protection that is required for each site, thereby negating the need for highly protected MCZs.
2125. Are members content with the Department’s response?
2126. **Mr Boylan:** Most of the people who responded to the Bill thought that MCZs were a key issue. I am sure that there is legislation to protect the archaeological issues.
2127. **Mr K Bradley:** The 1995 order.
2128. **Mr Boylan:** To move on to what Simon said, which is a key element, evidence and research could show that a boat should become a habitat. That means that there could be many boats in that situation. Where that area’s designation is concerned, if I were in the fishing industry, I would be looking at a series of such boats so that they could be clearly identified. When we look at this clause, or at this part of the designation, are we saying that, if evidence is brought forward showing that a boat has sunk and become a natural habitat, it will be in statute right away? Are we clearly saying that, once it is identified, it will be designated for protection?
2129. **Mr K Bradley:** We are looking at the marine conservation zones in the overall content of an ecologically coherent network in the UK. That network will comprise of representative species, as well as rare and vulnerable species. In your example of where you came across a shipwreck that contained a habitat

of that species, obviously we would consider that and look at its socio-economic and cultural aspects before designating it. So, just because the shipwreck contains a habitat, that does not mean that it will be designated as an MCZ.

2130. **Mr Boylan:** That is what I am teasing out.
2131. **Mr K Bradley:** There are numerous shipwrecks out there, so do you designate each one? There could be dozens or hundreds; we do not know.
2132. **Mr Boylan:** Exactly. You could have 10 in a small area.
2133. **Mr K Bradley:** It really depends on what they contain and how that fits in with the bigger picture.
2134. **Mr Boylan:** That message needs to come out in the Chamber, and it needs to go out to the people who raised the issue.
2135. **The Chairperson:** Where are you going to place the word “cultural”?
2136. **Mr K Bradley:** It is going in at clause 12(7), and it will read “may have regard to economic, social or cultural consequences”.
2137. **The Chairperson:** Is it going to be difficult to define “cultural” in law?
2138. **Mr K Bradley:** No. We do not have to define it. We checked that with the OLC, and it said that it is not necessary to define it. We do not define “social” or “economic”, so we do not define “cultural”.
2139. **Mr Hamilton:** Have you agreed to change “may” to “must” in that subsection?
2140. **Mr K Bradley:** Correct.
2141. **The Chairperson:** OK, so Simon has won another point.
2142. **Mr Hamilton:** Yes; I am racking them up.
2143. **The Chairperson:** Is the Committee content with clause 12, subject to a departmental amendment making it a requirement to consider social and

economic factors and to include a reference to cultural factors?

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 12 agreed to.

Clause 13 (Further provision as to orders designating MCZs)

2144. **The Chairperson:** Members were content with the Department's explanation of the definition of "seashore" and taking account of coastal erosion. We also agreed to consider recommending that, during Consideration Stage of the Bill, the Minister stresses the importance of the MCZ designation process.

2145. **Mr Elliott:** I still have concerns about clause 13(3)(a), which states:
"the area of seashore adjoins the area of sea".

2146. I know that there was a definitive explanation of that, but I still have concerns.

2147. **The Chairperson:** You can say that at Consideration Stage. Is the Committee content with its recommendation that, during Consideration Stage, the Minister stresses the importance of the MCZ designation process?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Consultation before designation)

2148. **The Chairperson:** The Committee was content with the Department's explanation of its duty to consult and the process that it will follow.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Publication of orders)

2149. **The Chairperson:** We were content with the Department's explanation of how it will identify, inform and engage with stakeholders.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Hearings)

2150. **The Chairperson:** No issues were raised on this clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Review of orders)

2151. **The Chairperson:** The Department agreed to consider an amendment that would allow it to review, revoke or amend an MCZ order itself. The Department's response indicates that the OLC advised it that the current wording is adequate to allow the Department to revoke or amend a designation order. Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Creation of network of conservation sites)

2152. **The Chairperson:** Members were content with the Department's explanation of the contribution of Northern Ireland's MCZs to the UK MCZ network target. We were provided with a further written response from the Department justifying its proposed approach to ensuring that the designation of MCZs enabled it to meet its obligations under the marine strategy framework directive (MSFD). However, I think that we raised previously the issue of the Northern Ireland region. We are happy to contribute to the UK MCZ network, but what about our own

- region? There are species and features here that may not be across the UK. Are we going to forget about the special features in the Northern Ireland region?
2153. **Mr K Bradley:** No, we are not. Again, it comes back to balance. I will go back to Cathal's point: we are not going to designate every piece of sea. We will look at our overall requirement under the marine strategy framework directive to ensure good environmental status by 2020. That is where the ecologically coherent network comes in. That looks at UK waters and beyond, and we call that a biogeographical area. Northern Ireland cannot look at its own small piece of territorial waters in isolation; it must look at the whole pond, shall we say. After that, if there are unique features that are specific to Northern Ireland that do not exist anywhere else in the UK or further afield, we will look at designating those. Our first objective is to meet our European requirements under the marine strategy framework directive, but that gives us the flexibility to look at other elements. If, as you say, there are specific or unique features, we will look at those, but our first objective is our European commitment. Again, that shows the flexibility of the process. It is a compromise between economic, environmental and cultural aspects.
2154. **The Chairperson:** Will we also look at our own special features and use those as a building block for the UK network?
2155. **Mr K Bradley:** Yes, that is correct. In monitoring our European sites, we came across new species of sponges off Rathlin Island that were previously unknown. They could become part of an MCZ.
2156. **The Chairperson:** There is a concern that there is a risk that our focus will not be on our own network and that we will think of all the UK waters rather than just Northern Ireland waters.
2157. **Mr K Bradley:** No. We must also be mindful that an MCZ can be designated for a multitude of species. Species that lead to the UK commitment and those that are specific to Northern Ireland could be in the same zone. That is the flexibility of it all.
2158. **The Chairperson:** Are members content with the Department's response?
2159. **Mr Boylan:** It all needs to be evidence based. It is all right talking about MCZs and everything else, but the key element is the evidence base.
2160. **Mr K Bradley:** That is correct.
2161. **Mr Boylan:** It is grand saying that today as we are going through the Bill, but the main issues are where we are with it, how we will start the process and when we will start to implement it. That is the message that needs to be sent out.
2162. **Mr K Bradley:** That is a very good and valid point, and, again, it bears out the Department's policy. Any MCZ will have to be based on good, sound, scientific evidence of what is out there. That will be the starting point.
2163. **The Chairperson:** If the legislation suggests that our primary focus is contributing to the UK network, is there a potential difficulty that we will focus only on that and that we will not think of our own special features?
2164. **Mr K Bradley:** No, that is our top priority. The flexibility gives us the potential to take other factors and interests into account.
2165. **The Chairperson:** I know that the NGOs are quite concerned about that point.
2166. **Mr K Bradley:** We should bear in mind that marine conservation zones will take other factors, activities and responsibilities in the marine environment into account.
2167. **The Chairperson:** Is there any way that we can assure the NGOs of what you are saying? Can we assure them that we will not just be thinking about contributing to the UK network?
2168. **Mr Bradley:** At the end of the day, no one knows what the overall network will look like. No one knows what range of species there will be or which areas will be designated. At this stage, we cannot

say whether it will be 2%, 10% or 50% of Northern Ireland waters, although it probably will not be 50%. We cannot give such an undertaking until we know exactly what is out there, which leads me back to Cathal's point. That will be our starting point. We have some evidence, but we do not have the full picture of what species or habitats are in Northern Ireland territorial waters.

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clause 19 (Reports)

2169. **The Chairperson:** The Department agreed to consider replacing the word "restricted" with the term "affected" in clause 19(2)(c). However, the Department's response indicates that it believes that the term "affected" would be too broad and outside the policy remit of the clause. Therefore, the Department wants to retain the word "restricted".
2170. Are members content with the Department's response?
2171. **Mr Elliott:** I would like a further explanation of the Department's response. We are talking about a report, not more specific issues, so I cannot understand why it would be beyond the remit of the clause to include the term "affected" rather than "restricted". I could maybe understand it if it were more specific, but, since it is about a report that is coming to the Assembly, I cannot figure out why the term "restricted" should be used instead of "affected".
2172. **Mr K Bradley:** The point of the report is to give the Assembly an update or briefing on the number and extent of each MCZ. In designating an MCZ, we also need to set out the levels of protection and how other activities are restricted. That is the point of the report. The Department will identify a site and agree the conservation objectives, which will determine the level of protection. It will also determine what activities can or cannot happen in that site. The term "restricted" is in the clause because, obviously, certain activities would need to be restricted to protect the feature. "Affected" is much wider, and that comes back to climate change. Activities could be positively affected; we would not know how they are affected. So, this element is about what the Department has done in the designation process, what it has achieved, and what activities are restricted. Other Departments can then see what we are doing and why. "Affected" is a broad term, and the areas that it covers would be very difficult and time consuming to deal with. Another point is that the activity could be affected after we designate the MCZ.
2173. **Ms Cuning:** Not only that, but we might not know whether it has been affected. A company that is considering laying cable, for example, might look at the map and see that there is an MCZ in a particular area and decide not to lay the cable there but somewhere else. That affects that company's decision-making process, but we would not know about that. We can just say that we have "restricted" cable laying in that MCZ. So, you can assume that it has had an effect, but we would not be able to report on the specific effects, because we would not know about them.
2174. **Mr Elliott:** I do not think that you would be expected to report on anything that you did not know was affected. You could not do that anyway.
2175. **Mr K Bradley:** That is the reason why we are not prepared to make a change; "affected" is such a wide term.
2176. **Mr Elliott:** If you know that something is affected but not significantly restricted, you are not going to report it. In other words, the fishing industry, for example, could be affected in some way, but you are not going to report it because, in the Department's terminology and assessment, it is not "significantly restricted". Again, it will come back to subjective terminology and to what you determine as being "significantly restricted" or "affected". Although

- fishermen may say that they feel that something is “significantly” restricting them, you may believe that it is not, and, therefore, it will not go in the report. That is what concerns me.
2177. **Mr K Bradley:** If a fishing activity were restricted, we would obviously have that in the report. The purpose of the report is to set out what activities can or cannot happen in an MCZ.
2178. **Mr Elliott:** Ken, you are not getting me. That is your interpretation. Your interpretation might be that it is not significantly restricted but affected, so you will not report it.
2179. **Mr K Bradley:** By “restricted” we mean the restrictions that will put in place to protect the feature. In other words, we may give the latitude and longitude of the area where you may not bottom trawl. That is a physical restriction, and that is what the Department is reporting on.
2180. **Mr Kerr:** There could always be a dispute about our interpretation of a word, irrespective of what word we were to use. If we were to change the term to “affected”, you may think that something is affected, and we may not, or the fishing industry may think it is positively affected, negatively affected, or whatever. So, there is always going to be an issue about interpretation.
2181. **Mr Elliott:** “Affected” will catch much more than “restricted”.
2182. **Mr K Bradley:** As Angus said, there could be a positive effect.
2183. **Mr Elliott:** There could be.
2184. **Ms Gerardine McEvoy (Department of the Environment):** As Ken said, maybe “affected” will be taken up more at the designation stage. This is a report on the MCZs that are designated. Therefore, the designation order would have the restrictions and the conservation objectives in place, so anything that is affected would, hopefully, be teased out in the designation process. As you outlined, fishermen, or anyone else who would be affected, will, hopefully, have been taken through the consultation. This is more the final product.
2185. **Mr K Bradley:** The finished article.
2186. **Mr Elliott:** That is no reason for you not to report on the outcomes and on what is happening around it. Just because it is dealt with at the consultation stage, that is no reason for you not to report on it. I have to say that I do not buy that argument.
2187. **The Chairperson:** I think that the point is that restrictions are so much easier to identify than elements that are affected positively or negatively.
2188. **Mr Hamilton:** I tend to agree with Tom’s argument. Although I understand the point about how much more difficult it may be to designate or conjure up what is “significantly affected” as opposed to “significantly restricted”, I think that the language in the clause is unnecessarily negative. We all realise that some people will be “significantly restricted”, but that is why it almost flashes in lights. That causes concern, worry and alerts danger and so forth. Tom, I do not think that anyone is arguing about the use of the word “significantly”; it is the terms “restricted” or “affected” that are the issue. “Significantly” means that there must be a high threshold.
2189. **Mr K Bradley:** In legislative terms, “significantly” means anything that is more than trivial.
2190. **Mr Hamilton:** There is a lot of trivia in this, but it is not necessarily useful for pub quizzes. I understand Tom’s argument, and the term “affected” is more relevant than “restricted” . However, I would be keen to hear what others think.
2191. **Mr Campbell:** I do not have a strong opinion either way. It might help me to formulate an opinion if I could hear two or three examples of issues that would be subject to a report under the term “restricted” but would not under the term “affected” and vice versa. If I could hear some examples of the differentiation through the use of either

- word, it might allow me to formulate an opinion.
2192. **Mr K Bradley:** The report will outline the Department's MCZ programme to the Assembly. It will identify where each MCZ is, where the boundaries are, their conservation objectives and what, in the Department's opinion, has to be restricted to protect that feature. That is why the term "restricted" is used. I take the point that it sounds negative, but that is what people will focus on and be interested in.
2193. As Brenda said, we might not know whether an area has been affected. She gave a very good example, and I am trying to think of others. An MCZ may be designated and an order might be put in place, but something could arise later that could have an effect. We would be unaware of that as no one would have told us about it. However, if an area is an MCZ, people would steer clear of it as they would know that the activity would be detrimental. By default, the MCZ would be protected, but we may not know every eventuality.
2194. To repeat, the purpose of the report is to let people know why the MCZ is there, why it is important and what activities have been physically restricted.
2195. **Ms Cunning:** It will also allow people to respond. They can tell us that we have restricted certain activities and what the impact of that has been. It is almost a discussion. By placing the report before the Assembly, we will tell people what we have done, and they can then come forward and tell us that a factor we considered when we designated an MCZ has had x, y and z effect. It could have led to an increase in costs for a company, meant that it had to change its decisions or affected the fishing industry in a way that was unforeseen when the area was designated. It will enable that discussion.
2196. **The Chairperson:** So, are you saying that, after the report is produced, people can tell you how the designation has affected certain industries or activities?
2197. **Ms Cunning:** Yes.
2198. **The Chairperson:** Tom, are you content with that?
2199. **Mr Elliott:** Well —
2200. **Mr Boylan:** Some of the members are restricted and some are affected, but I want to try and tease this out. *[Laughter.]*
2201. **Mr Hamilton:** Some more significantly than others. *[Laughter.]*
2202. **Mr Boylan:** We have bounced back and forward on this matter. Clearly, it was highlighted by the renewables sector. I am reading through the arguments, and, after hearing some of the explanations, I would not like to be part of that sector. Will you try to clarify exactly what its point is?
2203. **Mr K Bradley:** That probably goes back to Brenda's point. Perhaps an MCZ has been designated, and someone may want to put a wind turbine in it later. They might decide to try to get a licence to put the wind turbine in that MCZ, but that would then be detrimental to the feature. So, they may move their plans away from that area. So, obviously, that would have an effect, but the Department would not know about it. The Department may not be able to adhere to that, because it may not have enough information. We could then be criticised for not including in the report an effect that we did not know about. That is where we are coming from. This is not meant to hoodwink anybody in any way. We want the report to basically state the outcome of the MCZ process, where the MCZ is, what its features are, why they are important and what activities we feel we need to restrict to ensure the safety of those features. Those are all within the Department's bailiwick, shall we say, and we can, hopefully, report on them. Something could happen that is outside our control that may affect the area, such as a storm, but we would not know about it.
2204. **Mr Boylan:** I agree, and I understand that part of it. So many things could happen.
2205. **Mr K Bradley:** That is right.

2206. **Mr Boylan:** I agree, and this is wide-ranging. The issue for us is to bring in a piece of legislation that will give everybody an opportunity. Obviously, the renewables sector is one such group. Looking at it from that point of view brings us back to research, identification and everything else. We should also be looking at the renewables sector and at how we consider the whole issue of where that energy can be generated.
2207. **Mr K Bradley:** That is correct. The comment on that clause got slightly confused, because this is a report on the finished article, but maybe the respondents felt that it would apply during the designation process. I could be wrong, but I think that that is the case.
2208. **Mr Boylan:** It would be reasonable to think that from that starting point. That is what we should be looking at.
2209. **Mr K Bradley:** Account will obviously be taken, through the designation process, of the renewables industry and every other activity. So, I think that the issue was slightly confused.
2210. **Mr Boylan:** Exactly.
2211. **Ms McEvoy:** Of course, there may be no restrictions on any MCZ. There may even be two or three with no restrictions. At least the process is open and transparent enough for you to be able to say that, for socio-economic reasons, you may have to restrict x or y.
2212. The Chairperson: Socio-economic and cultural issues.
2213. **Mr Hamilton:** I just want to look at what will happen in practice and at why this is not acceptable to the Department. A report has to be produced that must contain information about what is “prohibited or significantly restricted”. Clause 19(2)(c) refers to:
- (i) any licensable marine activity;*
- (ii) fishing for or taking animals or plants from the sea;”*
2214. So, we are talking fishing, renewables and maybe one or two other activities. It is not massive amounts of activities.
- The clause is not being specific about the report — I am sort of thinking aloud a bit — but refers to producing a report that contains that information. It does not say how that information has to be formatted in the report. You can take evidence from those sectors about their views and include in the report how they believe themselves to be affected, as well as restricted.
2215. **Mr K Bradley:** That information would have been readily available during the designation process. We would have consulted widely.
2216. **Mr Hamilton:** This is a report about the reality of the situation. Say Gregory is a renewables man who puts a lot of turbines off the north coast. He may have a view about the designation of an MCZ in that area, but it does not happen in practice or is worse in practice. The report allows for that situation to be picked up. So, this is about what actually happens, as opposed to Gregory’s opinion beforehand.
2217. I do not think that that is covered. You said that it may have been affected in one way or another during the process, but what actually happened? It is an opportunity to pick up all those things retrospectively. Maybe this is a case when the legislation is not necessarily the place to have the answer, but it may be something that comes out elsewhere —
2218. **Mr K Bradley:** It might come out through the guidance.
2219. **Mr Hamilton:** Yes; that might show what the report actually looks at. What does the report do? The fishing industry or whoever may put out a whole lot of possible effects that they believe could happen. I am sure that it would be in their interest to put all those effects out before an MCZ were designated, particularly if they think that it is going to restrict their activity. However, what happens in reality?
2220. So, that is how the term “affected” could be used. The clause could say “significantly restricted or affected”. If you changed the word to “affected”, would restricted be included?

2221. **Mr K Bradley:** It probably would, yes. Again, this report on the finished article; it is on the MCZ when it has been designated and everything is in place and has been set out.
2222. **Mr Hamilton:** I think that any report looking back at the relevant period should have a retrospective on what people thought was going to happen.
2223. **Mr K Bradley:** That is fine, but we could come to the next report the following year, which could show that something that we were not aware of could have affected a site. Somebody might say that the Department designated that site a year or two ago and that a particular thing had since affected it but that we did not put it in the report.
2224. **Mr Hamilton:** Regardless of whether it was restricted, part of me still thinks that we would want to know what affects the site, particularly if it was unforeseen. I would not be so worried about criticism that something had happened but it was not in a previous report, for instance.
2225. **Mr Campbell:** Especially if it had been unforeseen.
2226. **Mr Hamilton:** Yes. I think that we are being unduly sensitive to criticism.
2227. **Mr Kerr:** The issue here is a concern that there are some benefits in broadening the definition, because you may be able to catch more issues. That can be set against our concern that, as a result of that extension, we may end up missing certain things and not being able to capture or, in fact, fulfil what the clause intends to achieve. I suppose the narrower approach that we had taken to begin with, and with which people are most concerned, related to where MCZs might restrict and have a negative effect. So, it is very important to capture that.
2228. The debate here is about what would happen if we were to broaden that out. You might find out some other useful and interesting pieces of information, but we may not be able to meet our requirements, because we are not aware of all the potential impacts.
2229. **Mr Hamilton:** If people are not aware of something, they cannot be criticised for not being aware of it. What do you do if those who are affected are not making you aware of it?
2230. **Mr Kerr:** I only wish everyone were as reasonable. I know that we would be asked, “Why are you not aware of it? Why have you not spoken?” [Laughter.]
2231. **The Chairperson:** I understand the difficulties. How do you measure it, because it is such a broad term?
2232. **Mr K Bradley:** It would also require the Department to commit resources to carry out further work to find out whether a site is affected, and if it is, how significantly. For example, is it a beneficial or a negative effect?
2233. **The Chairperson:** I am aware of the time, members. Is the Committee content with clause 19?
2234. **Mr Hamilton:** Can we see the guidance and have some clarity from the Minister about that between now and Consideration Stage debate? We would also like the Minister to discuss during that debate any guidance on what will be included, how you would look at issues that were raised during the designation process and whether they were factors. We would like the guidance to state how the report would look, what it would look at and how the issues that were raised during the designation process would be covered in a written report, regardless of whether they were restricted.
- Question, That the Committee is content with the clause, put and agreed to.*
- Clause 19 agreed to.*
- Clause 20 (General duties of public authorities in relation to MCZs)**
2235. **The Chairperson:** We were content with the Department’s explanation on how it will implement and oversee the general duty on public authorities. We got a letter about that from the Committee for Agriculture and Rural Development, which was concerned that the 28-day requirement for public

authorities to wait before carrying out acts that may hinder achievement of the conservation objectives of an MCZ would disadvantage the Department of Agriculture and Rural Development (DARD). DARD's response indicates that it believes that that period is reasonable.

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Duties of public authorities in relation to certain decisions)

2236. **The Chairperson:** Members were content with the Department's explanation of suggestions for compensatory measures.

Question, That the Committee is content with the clause, put and agreed to.

Clause 21 agreed to.

Clause 22 (Advice and guidance by the Department)

2237. **The Chairperson:** Members were content with the Department's explanation of the guidance that is to be issued.

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Failure to comply with duties, etc.)

2238. **The Chairperson:** The Department agreed to consider amending the word "may" to "must", which would make it a requirement for the Department to request an explanation from a public authority for its failure to comply with MCZ duties. The Department's response indicates that it is willing to table an amendment that makes it a requirement for a public authority to provide a written explanation for its failure to comply with the duties required in an MCZ.

2239. Are members content with the Department's response?

Members indicated assent.

2240. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 24 (Byelaws for protection of MCZs)

2241. **The Chairperson:** The Department agreed to consider including an interpretation of the term:

"any other part of Northern Ireland".

2242. The Department's response indicates that it does not believe that it needs to include an interpretation of that term, because the boundaries of the by-law will be confined to the limits of the MCZ, which will be defined in the designation order.

2243. Are members content with the Department's response?

2244. **Mr Elliott:** If an MCZ is to be confined to the marine environment, I have no idea why the Department put that term in the Bill. It is very confusing.

2245. **The Chairperson:** It is a catch-all phrase.

2246. **Mr K Bradley:** It is legislative speak.

2247. **Mr Elliott:** I am really worried now. *[Laughter.]*

2248. **Mr Boylan:** Is that a catch-all for the anglers?

2249. **Mr Hamilton:** We got the explanation that it might include small islands and such things. If that were to be reiterated at Consideration Stage, it could take away any confusion.

2250. **The Chairperson:** The Committee also agreed to consider recommending that, at Consideration Stage, the Minister stresses that the provisions of by-laws will be appropriate to meet the objectives of an MCZ, but will not exceed what is required.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 24 agreed to.

2251. **The Chairperson:** Is the Committee content to recommend that the Minister stresses at Consideration Stage that the provision of by-laws will be appropriate to meet the objectives of an MCZ but will not exceed what is required?

Members indicated assent.

2252. **Mr Boylan:** I have no problem supporting the clause. However, after seeing some of the comments, I feel that it is important that we get the information and the guidance out to the people whom this will impact. Anglers and other groups are mentioned. I do not know whether the point about the by-laws should be highlighted in the Chamber. However, whatever the case may be, it is vital that those people realise exactly what the situation is.

2253. **The Chairperson:** We can reiterate that during the Consideration Stage debate.

2254. **Mr Elliott:** I still have concerns about clause 24(3)(e). I know that it was indicated at a previous meeting that that was lifted directly from the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. I just want to put that on record.

Clause 25 (Byelaws: procedure)

2255. **The Chairperson:** Members were content with the Department's explanation on its proposed by-law procedures.

Question, That the Committee is content with the clause, put and agreed to.

Clause 25 agreed to.

Clause 26 (Emergency byelaws)

2256. **The Chairperson:** The Department agreed to provide information on what will constitute an emergency when introducing emergency by-laws for existing MCZs. The Department's response indicates that an emergency by-law will allow the Department to stop an unforeseen and potentially damaging activity, such as a one-off powerboat race close to a bird-nesting site or an organised spearfishing event on a

protected reef. Are members content with the Department's response?

Members indicated assent.

2257. **Mr Weir:** I am perfectly content. Is there much of a history of spearfishing?

2258. **The Chairperson:** I would like to see it.

2259. **Mr Weir:** I know that we get the odd invitation, but I do not know whether mine has gone astray.

2260. **The Chairperson:** It is quite a skill.

2261. **Mr Weir:** I do not doubt that. I may show a degree of prejudice, but I tend to associate it with a more tropical climate or Robinson Crusoe. I have not seen a great deal of it in my experience of the north Down coastline.

2262. **Lord Morrow:** You are not there on the right day.

2263. **Mr Boylan:** You could send Jim Shannon in; there would be no birds left.

2264. **Mr Hamilton:** He would not use a spear.

Question, That the Committee is content with the clause, put and agreed to.

Clause 26 agreed to.

Clause 27 (Interim byelaws for MCZ)

2265. **The Chairperson:** We were content with the Department's explanation of by-laws to protect the MCZs that are under consideration.

Question, That the Committee is content with the clause, put and agreed to.

Clause 27 agreed to.

Clause 28 (Byelaws: supplementary)

2266. **The Chairperson:** No issues were raised about clause 28.

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Clause 29 (Hearings)

2267. The Chairperson: No issues were raised about clause 29.

Question, That the Committee is content with the clause, put and agreed to.

Clause 29 agreed to.

Clause 30 (Offence of contravening byelaws)

2268. **The Chairperson:** We were content with the Department's explanation of proposed fine levels for the contravention of by-laws.

Question, That the Committee is content with the clause, put and agreed to.

Clause 30 agreed to.

Clause 31 (Offence of damaging, etc. protected features of MCZ)

2269. **The Chairperson:** We were content with the Department's explanation of protection provided by this Bill compared with the Wildlife and Natural Environment Act (Northern Ireland) 2011.

Question, That the Committee is content with the clause, put and agreed to.

Clause 31 agreed to.

Clause 32 (Exceptions)

2270. **The Chairperson:** Members were content with the Department's explanation of applying the sea-fishing defence to shallower waters. I think that there were issues about confining the limit to 0 to 6 nautical miles.

Question, That the Committee is content with the clause, put and agreed to.

Clause 32 agreed to.

Clause 33 (Fixed monetary penalties)

2271. **The Chairperson:** Members were content with the Department's explanation of the level and implementation of fixed monetary penalties.

Question, That the Committee is content with the clause, put and agreed to.

Clause 33 agreed to.

Clause 34 (Fixed monetary penalties: procedure)

2272. **The Chairperson:** We had no issues with clause 34.

Question, That the Committee is content with the clause, put and agreed to.

Clause 34 agreed to.

Clause 35 (Fixed monetary penalties: further provision)

2273. **The Chairperson:** No issues were raised with clause 35.

Question, That the Committee is content with the clause, put and agreed to.

Clause 35 agreed to.

Clause 36 (Enforcement officers)

2274. **The Chairperson:** The Department agreed to consider incorporating clarification of the meaning of "member state" as it relates to the Bill. The Department's response indicates that references to "member state" are references to membership of the EU and that it does not believe that a definition is required.

2275. Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 36 agreed to.

Clause 37 (The common enforcement powers)

2276. **The Chairperson:** No issues were raised about clause 37.

Question, That the Committee is content with the clause, put and agreed to.

Clause 37 agreed to.

Clause 38 (Repeals and transitional provisions)

2277. **The Chairperson:** I know that Simon wants to make a point about clause 38.

2278. **Mr Hamilton:** I cannot remember whether it was last week or when we last met to go through the Bill, but I raised an issue about why Strangford lough would become an MCZ. I teased out the point that there is still a process to go through. A letter that the Committee received from the Department stated:
2279. “Strangford Lough will become the first MCZ under the Marine Bill.”
2280. Of course, we discussed that it will not become an MCZ. It is likely to become an MCZ, and I anticipate that it will. If Paddy Power were to give me odds on that I would take them, but I daresay that he has probably closed the book. I appreciate that it will become an MCZ, but we need to go through a process. However, that was not the point that I wanted to raise.
2281. In clarifying that, I did not go into the substance of why we are getting rid of marine nature reserves. It is well known that Strangford lough is a marine nature reserve, and it strikes me that that is a good designation. If you were to ask people, they would understand what a nature reserve is; ergo, they would probably appreciate what a marine nature reserve is. It has a sort of a cache and a currency as an entity, so it is almost marketable as a brand for the area in question. With no disrespect to anyone, the term “marine conservation zone” does not really have that, so the use of that term seems to be a regressive step. I appreciate that it is more, if not as much, about the protection of the marine environment. That is a given. However, why are we getting rid of a designation that has some local, national and, perhaps, international, recognition or understanding and replacing it with something that does not? Over time, it may get that recognition, but the term “marine conservation zone” sounds very clinical, and I keep thinking of demilitarised zones. It sounds very industrial or clinical and is not in keeping with what it is there to do. People understand the term “nature reserve”.
2282. **Mr K Bradley:** That is a valid point —
2283. **Mr Hamilton:** I should declare an interest as a representative of the area, and another member here should as well.
2284. **Mr K Bradley:** I take the point that the term “MCZ” is not as sexy as “marine nature reserve” (MNR). So, that is fair enough.
2285. The legislation for marine nature reserves came in for Northern Ireland in 1985 and slightly before that in the rest of GB. Only three sites have been designated in the whole of the UK, and Scotland did not designate any. That was because it was felt that, although the areas that have been identified are quite special, through time, the term did not fit the bill. You alluded to the level of protection, and marine conservation zones will do a much better job of providing that protection. The MNR legislation allowed for only by-laws to deal with unregulated activity, and, with by-laws, you obviously have only very limited fines and other punishments.
2286. You are right. The marine conservation zone legislation will overtake the MNR legislation, really because that is not seen as fit for purpose. It is not strong enough, and there is no point in having two different national designation processes for marine nature reserves and marine conservation zones. As we know, marine conservation zones will be about considering more than just the flora, fauna and special habitats; they will take in other things. Marine conservation zones have evolved from the 1985 legislation and our experience with marine special areas of conservation under the habitats directive. The designation process is set in stone, and the boundaries and the level of protection, etc do not change.
2287. So, although the term “marine conservation zone” may not be as sexy as “marine nature reserve”, at the end of the day, it will be a much better product. That is where we are coming from.
2288. **Mr Hamilton:** I accept that. That looks at the issue from a particular perspective, and I appreciate that. However, there are other perspectives, one of which is that

- the area has a branding. You said that it is one of three in the whole of the UK, so it has a status beyond the norm.
2289. **Mr K Bradley:** It is now one of one, because the other two have been abolished.
2290. **Mr Hamilton:** That is right.
2291. You almost make the counterargument by saying that there will be more MCZs, so it almost dilutes its status as something above and beyond the norm. I am almost making an argument that there should just be something called a “marine nature reserve” and that it be nothing. However, I appreciate that there has to be something applied to it.
2292. We are worried about raising it with the Minister. He might come back and say that he wants to make it a national park. [Laughter.] If it puts my property value back, I will have to think about that. However, I worry about raising the issue with the Minister too much.
2293. **Lord Morrow:** That is in case you get a long reply.
2294. **Mr Hamilton:** I represent the area, and those of us there understand that it has special status. We appreciate that it is likely to become an MCZ and that, with that, comes greater protection than is the case now. However, the term “marine conservation zone” does not just have that “you know what” or “je ne sais quoi” that says that it is special. It is going to be an MCZ along with I do not know how many other sites around the coastline that are not of the same significance.
2295. **Ms McEvoy:** Each MCZ will be specific for its own designation. I appreciate what you say about Strangford lough being unique. However, those unique features will still be retained in the MCZ.
2296. **Mr Hamilton:** It does not sell. It is all about —
2297. **Ms McEvoy:** How would you cope, for example, with the stakeholder? If you keep it as a marine nature reserve, for example, with the enforcement powers of an MCZ, there could be some confusion should people not understand the by-laws, the offences and the new legislation.
2298. **Mr K Bradley:** Strangford has a plethora of designations, as you know.
2299. **Mr Hamilton:** It does. Why can it not have —
2300. **Mr K Bradley:** One more?
2301. **Mr Hamilton:** Another one, yes.
2302. **Ms McEvoy:** That is because, in fairness, they are both for the same sort of provisions.
2303. **Mr K Bradley:** It is duplication.
2304. **Mr Hamilton:** I have heard the Minister talk very fondly of Strangford lough, and there is a piece of legislation before us that dilutes its status.
2305. **The Chairperson:** The fact is —
2306. **Mr Hamilton:** I am not stupid. I understand that it retains that status and protection. However, as something to market —
2307. **Mr K Bradley:** I understand your argument, but it is based on something that is slightly different to the purpose of the Bill, which is the conservation of flora and fauna.
2308. **Mr Hamilton:** Yes, exactly. OK. However, in passing this Bill, no one is offering me anything that retain that status for that area. You are retaining the environmental status of it. No doubt, the marine nature reserve status was not concocted for marketing or branding purposes either. It was made for environmental purposes, and it has proven to be somewhat deficient in that. The marine nature reserve status has, over time, developed a cache that was not the original intention. We are removing it and not replacing it with anything.
2309. **Mr Kerr:** In a sense, is this not straying into the question of how you market or sell a particular area? Maybe this can be got round in the implementation of the MCZ, how it is launched, the publicity that surrounds it and through interaction

- with some of the other Departments in how they handle it. I am thinking of the Department of Enterprise, Trade and Industry (DETI) and the Tourist Board and how they try to get that message across.
2310. **Mr Hamilton:** If we allow the clause to go through, which I suspect we will, —
2311. **Lord Morrow:** I am not here. *[Laughter.]*
2312. **Mr Hamilton:** If it were the Fermanagh lakelands — *[Laughter.]* I appreciate that there is a marketing issue. However, you can find speeches by the Minister, other representatives and others outside this place extolling the virtues of Strangford lough as a marine nature reserve, not because of the protections that it offers — far from it — but because it is called a “marine nature reserve”. Rightly or wrongly, what it actually is and how it is perceived are entirely different. We are losing that, and we need to be aware that we are losing it. I hope that, in time, the term “marine conservation zone” will be perceived as snappy, snazzy and sexy as “marine nature reserve”. However, I am not so sure that it will be, and I remain to be convinced that that will be the case. Other names were suggested for MCZs. The Scots went for “marine protected area” (MPA). However, that does not add to it either, because everybody else would still be a marine protected area.
2313. **Mr K Bradley:** Do you not think “marine national park” sounds good? *[Laughter.]*
2314. **Mr Hamilton:** *[Inaudible.] [Laughter.]* I just want to put it on record that someone is bound to say that we have lost something. I am saying that, and I want to recognise that that is happening. It is not what we originally intended from a marine nature reserve, but we are losing it nonetheless.
2315. **Mr K Bradley:** I fully appreciate and respect your point, and I understand where you are coming from. However, as I said, that is slightly outside the remit of the Bill, which is about conservation.
2316. **Mr Hamilton:** Angus is right. There is a role for some bodies, and I have pushed the Tourist Board and others on Strangford lough, as I did with Fermanagh, Lough Neagh and other places. In the past, we did not recognise them as a tourism product.
2317. **The Chairperson:** Simon, I am conscious of the time.
2318. **Mr Hamilton:** I know. Let me make a final point.
2319. **The Chairperson:** Can you wrap it up quickly?
2320. **Mr Hamilton:** None of those features will ever be able to be designated as marine nature reserves. They will be called something completely different that will not have the same international recognition. Thank you. I have made my point.
2321. **Mr Boylan:** I support some of Simon’s comments; although, mind you, he made a good case for a marine national park. You could make a good case for Strangford lough to be conserved by Europe and so forth, because it is a unique case. The Marine Bill does not give it that status; rather, I think that it dilutes it. Not only should you have conservation and protection but you have the promotion and everything else that goes with it. I think that the Minister will need to highlight that. I think that Simon was correct, in that Strangford lough should not be tied in with the other MCZs or whatever other areas we will look at.
2322. **Mr K Bradley:** I accept that Strangford lough is a slightly different case than all the rest of the marine protected areas. If you look at it, the UK-wide legislation was introduced in 1985, and only three sites were ever designated. That speaks for itself; it did not do what it said on the tin, nor did it offer the necessary protection. As you said, as a default, the term “marine nature reserve” was used as a marketing tool, and that is fine. However, the MNR legislation is not fit for purpose, and that is why we have proposed to repeal it on a UK-wide basis and replace it with something that gives more protection. In marketing terms, an MCZ does not carry the same weight,

but the purpose of the Bill is to give protection

2323. **Mr Boylan:** The issue was not that the legislation was not fit for purpose; unfortunately, there was neglect, and different things should have been looked at and implemented down through the years. The situation in Strangford lough went too far, and it should have been dealt with years ago. I hope that we will be proactive, rather than reactive, in bringing this forward.

2324. **Mr Hamilton:** The point that I made was not about protection. I have confidence in the level of protection that will be offered by the new designations.

2325. **The Chairperson:** Strangford lough will be the first MCZ to be designated, which will obviously give it special status. Perhaps that will give you some comfort, if not enough.

Question, That the Committee is content with the clause, put and agreed to.

Clause 38 agreed to.

Clause 39 (Interpretation of this Part)

2326. **The Chairperson:** Members were content with the Department's explanation of the definition of seashore and of how the inclusion in an MCZ of land that is not covered intermittently by water might be interpreted.

Question, That the Committee is content with the clause, put and agreed to.

Clause 39 agreed to.

Clause 40 (Special procedure for applications relating to generating stations)

2327. **The Chairperson:** Members were content with the Department's explanation of how the DOE and DETI will work together and of what guidance will be produced for timelines.

Question, That the Committee is content with the clause, put and agreed to.

Clause 40 agreed to.

Clauses 41 to 44 agreed to.

Clause 45 (Crown application)

2328. **The Chairperson:** We were content with the Department's explanation about consultation with the Crown Estate.

2329. **Mr Boylan:** Who was consulted with?

2330. **Mr Weir:** Francie Molloy.

2331. **Mr Boylan:** When we were in Scotland, there was talk of a coastal fund. I believe that there is a coastal fund here.

2332. **Ms Cuning:** There is.

2333. **Mr Boylan:** I agree with the whole idea of a coastal fund and with what Scotland is doing in the absence of looking at the issue of the Crown Estate. There is a coastal fund to support those areas, but, when we were in Scotland, we did not know that there was such a fund here.

2334. **Ms Cuning:** There is. I think that it is for approximately £450,000, but do not quote me on that. The Crown Estate has put out calls for communities to receive money from it.

2335. **The Chairperson:** If there are no other comments, I will put the question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 45 agreed to.

Clause 46 (Interpretation)

2336. **The Chairperson:** No issues were raised about this clause. If there are no comments, I will put the question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 46 agreed to.

Clause 47 (Commencement)

2337. **The Chairperson:** The Department indicated that it was proposing to introduce an amendment that would allow the whole Act to come into force on receipt of Royal Assent. Are members content with the Department's proposed amendment?

Members indicated assent.

2338. **The Chairperson:** As there are no further comments, I will put the question.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 47 agreed to.

Clause 48 (Short title)

2339. **The Chairperson:** No issues were raised about this clause. As there are no comments, I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 48 agreed to.

Schedule 1 (Marine Plans: Preparation and Adoption)

2340. **The Chairperson:** We were content with the Department's explanations of the issues that were raised about schedule 1. However, the Department indicated that it would propose an amendment to introduce a savings provision so that work that is done in preparation for the marine plan before the Bill comes into force will not be lost. The Committee sought information on what work had been done to date and what work was likely to be done before the Bill obtained Royal Assent.

2341. We were also to consider recommending that the Minister commit to a time frame for the introduction of a plan during Consideration Stage. In its response, the Department provides its proposed amendment to introduce the savings provision. The amendment requires that any work that is done on the marine plan in advance of Royal Assent must be done in accordance with clauses 1 to 11. An update of work that has been done to date on the plan has also been provided, and the Department has provided, in confidence, a copy of the statement of public participation.

2342. Are members content with the Department's response?

Members indicated assent.

2343. **The Chairperson:** The Committee also agreed to consider recommending that, during Consideration Stage, the Minister commit to a time frame for the production of the marine plan. As there are no comments, I will put the Question.

Question put, That the Committee is content with the schedule, put and agreed to.

Schedule 1 agreed to.

Schedule 2 (Further provision about fixed monetary penalties under section 33)

2344. **The Chairperson:** We were content with the Department's explanation of subordinate legislation raising powers in the schedule and the Department's proposals for tribunal. Is the Committee content with schedule 2?

Question, That the Committee is content with the schedule, put and agreed to.

Schedule 2 agreed to.

2345. **The Chairperson:** Other issues were raised about the integration and co-ordination of marine functions. Most other issues that stakeholders raised have been addressed to the Committee's satisfaction, including coastal access and appeals. However, last week the Committee asked the Department to provide more information on the work that it has done to date looking at the better co-ordination and integration of marine functions. The Department's response indicates that it continues to chair the interdepartmental marine co-ordination group, which remains the principle forum for ensuring co-ordination between the Departments that have marine functions. A further response from the Department informed the Committee that the group has met six times in the past 18 months. In addition, the Department continues to progress the necessary work on developing a full business case to advance the Minister's view that the full benefits of the Marine Bill can be realised only if they are implemented in an integrated and independent way. The main options that the business case is

- considering the status quo, a marine directorate and a non-departmental public body (NDPB).
2346. Members, how do you want to proceed with this matter? We could suggest introducing a new clause that would require the Department to review the implementation of the plan after five years to see whether we need to include different options on co-ordination.
2347. **Mr Hamilton:** I am content with what has come back from the Department. Even though I disagree with the Minister's approach, it is appropriate. He is trying to make a case, and it is up to him to develop it and sell it to others. I am content to leave the schedule as it is and to not suggest an amendment.
2348. **Mr Elliott:** Chair, will you explain a wee bit more your suggestion to have a review? I thought that legislation could be reviewed at any stage.
2349. **The Chairperson:** That suggestion involves a review of the Bill that would create the opportunity to look at whether there is a need for different options. Maybe the Clerk of Bills can expand on that.
2350. **The Clerk of Bills:** We could introduce a new clause that says something along the lines of, "The Department shall, within so many years of the date on which the Bill receives Royal Assent, lay a report before the Assembly on the operation of the Act." In addition, you could, if you wanted, refer to, "including a report on the effectiveness of measures to co-ordinate the exercise of functions." Such a new clause could perhaps say something like that.
2351. **The Chairperson:** That would give us an opportunity to look at it in the primary legislation.
2352. **Mr Hamilton:** The issue is not about the operation of the Act; it is about what can be agreed. You can review it in a week, a year, five years or whatever, and the issues will basically be the same. The issue is whether you can get agreement about a different way. The letter that came back from the Department spelled out that, basically, there are three options. First, there is the Minister's preferred option, which is to have an integrated and independent organisation, as he calls it. That is basically an MMO. The second option is to have a marine directorate, and the third is to do nothing. A fourth option, of course, is to have a departmental working group.
2353. **Ms Cunning:** That is what we are doing now.
2354. **Mr Hamilton:** It is not doing nothing.
2355. **Ms Cunning:** It is doing nothing else.
2356. **Mr Hamilton:** It is doing nothing different. The issue is about making it work. It is not about how it works in practice, because some people, including the Minister, prefer other options. That position will not change in a week, a year or five years. It is fine to review how the marine plan works in practice, because that will be looked at fairly objectively without political issues being brought to the forefront. This is a political issue, not an environmental or operational one.
2357. **The Chairperson:** The review could look at the operation of the Bill and at whether the interdepartmental group is going to be effective. Many members expressed concern and doubt about whether the interdepartmental group will have any teeth in implementing the legislation. Rather than being a body that will oversee the Bill's implementation, it is very much a voluntary, almost consultative, group. The Bill covers something like six Departments, so the question is about whether there is a need for a co-ordinating body that is strong enough to enforce the Bill and to make all the Departments do the work that the Bill wants them to. That review may give us the opportunity to say that we should look at it all again.
2358. **Ms Cunning:** The Bill requires the marine plan to be reviewed and reported on every three years. So, if your marine plan was not working because you were not getting the necessary co-ordination or buy-in from other bodies, the report

- will emphasise that. We are talking about reviewing and reporting on the plan every three years, and, every six years, the whole marine planning process will be reviewed. That is a big part of the Bill. Obviously, our not having the right co-ordination and structures will be reflected in how the marine plan operates. So, I think that that may be captured in some part through the Bill as it stands.
2359. **Mr Elliott:** I have always tried to find a practical way to do this. Based on what I heard from officials in the past couple of weeks, and this on the record, I do not think that how they are planning to do it will work. However, we have nothing else on the table. The Bill Clerk may be able to advise us on whether there is any mechanism to put in the Bill that a memorandum of understanding between Departments to achieve a better delivery mechanism must be brought to the Assembly. I do not hold out great hope for any review, because I just do not think that that is workable either. I just wonder whether there is any possibility of building in a memorandum of understanding that will come to the Committee, through the Departments, and then go to the Assembly. Is that possible, or is it beyond the Bill's scope?
2360. **The Clerk of Bills:** I can certainly look at drafting something like that for the Committee to look at.
2361. **Mrs D Kelly:** If I am reading my papers correctly, it looks as though the Marine (Scotland) Act 2010 consolidates the functions. I think that such a provision is needed. I mean no disrespect to the officials here, but I would not stake my life on there being collaboration across Departments every three years to review whether there has been significant progress. If you waited three years for a report that just tells us that Departments have not done what they said they would, you may be back to waiting another three years before there is any affirmative action.
2362. **Mr Elliott:** Oh ye of little faith.
2363. **Mrs D Kelly:** I know; I am a cynic of bitter experience.
2364. **The Chairperson:** Yes, and Strangford lough is a good example of that.
2365. **Mrs D Kelly:** So, if the Bill Clerk is going to look at that, we may want to make some comparisons with the Scottish example. There is a need to tie the process down a lot sooner and more firmly than it is now.
2366. **The Chairperson:** Marine Scotland is like a Department on its own —
2367. **Mrs D Kelly:** I understand.
2368. **The Chairperson:** — that brings in lots of functions. Are members happy for the Bill Clerk to draft an amendment, and if so, in what form?
2369. **Mr Hamilton:** I think that what Tom said was sensible in the context of where we are. He is asking how we can examine and strengthen what will be in place. The only thing that we are going to be able to legislate for and that is going to pass is what is currently available. How can we strengthen that? I think that that is what Tom was saying. If it is saying, and if the Committee agrees with it, I am happy with that.
2370. **The Chairperson:** It is about trying to strengthen the interdepartmental group.
2371. **Mr Hamilton:** Yes. If that is what we are talking about, that would be a positive way forward when this all comes into practice and when something comes back from the Department about what is going to happen and we are discussing with Departments x, y and z how we can better integrate and work together.
2372. **The Chairperson:** Yes. Perhaps it will give a bit more status to the interdepartmental group.
2373. **Mr Hamilton:** Yes, the point is to see how it can be worked on and strengthened.
2374. **The Chairperson:** Members, we need to move on.
2375. **Mr Boylan:** Excuse me, Chairperson.

2376. **The Chairperson:** I am sorry, Cathal, I missed you out.
2377. **Mr Boylan:** I was listening to what Dolores said. The officials could come back in five years, and, to be honest, there could still be no change. It is about implementation and how we go about that process.
2378. I agree with looking at a memorandum of understanding, because there is some merit in that. However, any Committee can call officials up at any point. I would like to see the bones of how we are going to achieve it. It would be a big piece of work to set the targets on a red, amber and green (RAG) system. We need to include such a system. It is about how we test how things are working. All I am saying is that it could happen one, two, three, five or 10 years.
2379. Are we doing this clause-by-clause consideration only for the Bill to sit on the shelf like the others? This Committee has had past experience with certain situations, particularly where the Department and a certain Bill are concerned. We need to find out how that happens. Although it is all right saying that we have set in stone a five-year review or something else, I want to see how it will be implemented. It is not about getting a report that says that things are going well but that we need to do things quicker.
2380. The memorandum of understanding might be useful, because the responsibility lies across four Departments.
2381. **Mr Hamilton:** Is there an issue there? We cannot legislate to enforce a memorandum of understanding on other Departments. You could suggest an amendment, but that will require Executive approval. That is the potential sticking point.
2382. **The Clerk of Bills:** If that were a departmental amendment, the implications for other Departments would require it to go to the Executive, but a Committee amendment would require the support of the House.
- Effectively, however, the Executive would take a position on it.
2383. **The Chairperson:** There is not going to be a departmental amendment, so it will have to come from the Committee.
2384. Will we try that, and if any —
2385. **Mr Hamilton:** Rather than just looking at a legislative solution, we should work with the Department to get something that does not necessarily require a legislative change that may not happen in reality. Rather than table an amendment, we should get some assurances about how we can review or enhance it.
2386. **The Chairperson:** If we put it in the Bill, it will strengthen our hand in achieving that.
2387. **Mr Hamilton:** It would, but I am just making the point. These things are based in the reality of what will or will not pass. It is not to say that I want to knock the point down, but you may put it as an amendment. You could suggest it to the Committee, but it may not get the Committee's support. If it does not get support here, it may not get broader support.
2388. **The Chairperson:** We can try that.
2389. **Mr Boylan:** I understand what you are saying. It is all right saying that DOE will come up for a review after five years, but all the other Departments have a responsibility to do their bit. Trying to get them all to work together to achieve this is the key. DOE can do its bit, but the other Departments need to do theirs. To be honest, that is the issue for us.
2390. **Mrs D Kelly:** I think that Strangford lough is a case in point. It crosses a couple of departmental responsibilities, and look where we have got to with that.
2391. **Lord Morrow:** It is a nightmare.
2392. **The Chairperson:** Members, if you are happy, we will ask the Bill Clerk to draft a form of words that we can look at next week.

2393. Another issue to consider is the common-law right of navigation and fishing. We have been provided with correspondence from the Northern Ireland Renewables Industry Group (NIRIG). In addition to information on the economic benefits of the renewables sector, NIRIG has suggested that clauses be added to the Bill to ensure that offshore renewable energy projects are protected from common-law rights during construction. It suggests that similar provision already exists in the energy legislation for England, Scotland and Wales but that the equivalent legislation for Northern Ireland is not sufficiently robust to override common-law rights.
2394. A written departmental response to this issue is provided. Officials will supplement that orally if you want them to. The Department indicated in its response that this issue is the responsibility of DETI, which is taking action to address it.
2395. Are there any questions on that?
2396. **Mr Boylan:** I have one. It is all very well saying that this is for another Department, but we have an opportunity to address this issue, and I would like to see greater clarification and concrete proof that it will work. It is all right saying that the issue rests with DETI, but we have an opportunity to address it, as it is a genuine concern.
2397. **Ms Cuning:** Absolutely. We are not saying that we will hand it over to DETI and that we will do nothing about it. DETI has been in discussions with us and with the marine licensing side of the Northern Ireland Environment Agency (NIEA) since February or March, and it has published details of that in the offshore renewable energy strategic action plan (ORESAP).
2398. This is a recognised issue, and DETI is bringing work forward to deal with it. It is not just about public rights of access; it involves safety zones, decommissioning and a whole raft of things that are in GB legislation but not in Northern Ireland legislation. It is in the energy legislation, but not on the marine side.
2399. I know that NIRIG mentioned sections 12 and 13 of the Marine Coastal Access Act 2009, but those are about transferring functions from energy legislation to the MMO. However, we do not have those functions or those parts in Northern Ireland legislation. DETI is working to bring that forward and is looking at the gaps that we have. We can probably start decommissioning under marine licensing, but we need to look at legislative options for safety zones and public rights of access. DETI is already working on that. So, that is not really something that we need to put in the Bill, because DETI is already working with us to put it into the energy legislation so that it will be equivalent to the GB legislation. It is not in the Marine Coastal Access Act 2009, so it will not be in the Marine Bill. Given that it is not mirrored there, it should go into the energy legislation, as is the case in the rest of the UK.
2400. **The Chairperson:** So, it is covered.
2401. **Ms Cuning:** It will be. DETI is actively working on it.
2402. **Mr Boylan:** Can you put a date on the completion of that work?
2403. **Ms Cuning:** I do not know. The ORESAP talked about the possible need to bring forward new primary legislation. Obviously, the energy sector will worry about that when it starts building turbines. However, that will not happen until 2015 or 2016 at the earliest, once it goes through the whole process. So, DETI is working to get the provision in place before then. It is on DETI's to-do list.
2404. **The Chairperson:** Are members content with that?
- Members indicated assent.*
2405. **Mr Boylan:** Obviously, we should write to DETI and let it know that we need to be kept informed on how that process progresses.
2406. **The Chairperson:** During the briefing from the Belfast Harbour

- Commissioners and the British Ports Association, members asked that the Department provide an update on the maintenance dredging protocol. The Department has provided a response in which it indicates that the Department for Regional Development (DRD) is taking the matter forward. It points out that the protocol will set out the best practice for maintenance dredging activities by the commercial port authorities in assisting them to fulfil their statutory obligations and ensure compliance with the habitats, birds and water framework directives. The Department indicated that, before a licence is granted for disposal of dredged material, the applicant must demonstrate that sea disposal is the best practicable environmental option. The Department also indicated that it encourages applicants to consider a number of alternative options before considering disposal at sea. Members, are you content with the Department's response, or do you wish to consider an amendment to the Bill about dredging and disposal at sea?
2407. **Mr Boylan:** I thought that this was a good enough suggestion. This is the issue of having to go seven miles out from Warrenpoint to dispose of dredged material. Other than putting something on the matter in the Bill, is there no way of looking at other legislation that could try to address that?
2408. **Ms Cuning:** It is already addressed under marine licensing. Our colleagues in the marine licensing team have told us that disposal at sea is the last option. This was raised by the ports authorities, who said that disposing dredged material at sea cost them a lot of money, and they asked whether it could be recycled and reused. When they come to the marine licensing team for a licence for disposal, the team asks whether they have considered other options such as reusing and recycling. On occasions, other options such as beach nourishment have been worked out. So, it is already working. I do not know what else the ports authorities might want on that, because the marine licensing team already asks them to come back to it and tell it what their other options are and that sea disposal should really be the last option. It asks whether they can reuse the material somewhere else. As David Knott from the Belfast Harbour Commissioners pointed out, dredged material is sometimes not suitable for use. It is mucky material and has to be dumped at sea. If that is the case, that is what happens, but the licensing team encourages the port authorities to try other options. It is not a case of licensing forcing people to dispose at sea.
2409. **Mr Boylan:** I accept that explanation, but, if that option exists and the port authorities understand that, why did they bring the issue before the Committee? Perhaps we can respond to them to find out. I thought that it was a reasonable suggestion.
2410. **Ms Cuning:** Absolutely, and we are glad that they brought it to us.
- Long title agreed to.*
2411. **The Chairperson:** Referring back to an earlier discussion, is it possible that the long title might be changed to include a reference to sustainable development?
2412. **Ms Cuning:** No. We asked the OLC about that, because we thought that it was quite a good suggestion. The long title has to be very much to the point so that it shows the Bill's provisions. It provides provisions on marine planning, conservation zones and streamlining of licensing. That is all that it can include. We thought that you could amend it.
2413. **The Chairperson:** It was intended as a compromise.
2414. **Mr K Bradley:** We tried that as well, but, unfortunately, we cannot do it.
2415. **The Chairperson:** I wanted to satisfy myself about that.
2416. That concludes formal clause-by-clause consideration of the Marine Bill. A Committee report will be brought back to the Committee next week. Thank you very much for staying with us throughout the process. Thank you for your expertise and for working with us.

28 June 2012

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
 Mr Simon Hamilton (Deputy Chairperson)
 Mr Gregory Campbell
 Mr Tom Elliott
 Mr Chris Hazzard
 Lord Morrow
 Mr Peter Weir

2417. **The Chairperson:** We will now move on to the draft Committee report on the Marine Bill. If members wish, the Committee Clerk will be able to go through the report.
2418. We have also been provided with a copy of a draft Committee amendment on a memorandum of understanding (MOU) among Departments and public authorities on the integration and co-ordination of marine functions. Before we start our discussion, I want to ask members whether they would support an amendment for the introduction of a marine management organisation (MMO). I ask that because I want it on the record.
2419. **Mr Weir:** On the record, no.
2420. **Mr Hamilton:** On and off the record: no is the answer.
2421. **The Chairperson:** Tom has just arrived, so for his sake, I will ask again whether members would support the introduction of an MMO. I want it on the record.
2422. **Mr Hamilton:** No takers.
2423. **The Chairperson:** No takers; Tom, no?
2424. **Mr Weir:** Chair, do you want us to sign an affidavit that you fought valiantly for it? *[Laughter.]*
2425. **The Chairperson:** No.
2426. **Mr Hamilton:** If you want me to, I will say in the debate that you were heroic in your attempts. *[Laughter.]*
2427. **The Chairperson:** Like a broken record.
2428. **Mr Hamilton:** I will say that we were sick to death —
2429. **The Chairperson:** Shut up.
2430. **Mr Campbell:** Unless you want to second it.
2431. **Lord Morrow:** Just say that she was valiant in defeat.
2432. **Mr Elliott:** Chair, I apologise for being late. However, for the record, my concern is that the proposals that will be in place may not work, and I have said so at each of the last three meetings. I would prefer to see some sort of management process, or a better management process. I am not saying that it must be an MMO, because I think that there are too many different forms of those. We have not reached a conclusion even on what form it may take. I would liked to have seen the Department and officials come up with a better structure that is able to better manage the process and the situation because I am not convinced that what they are talking about will actually work. The difficulty is that I do not think that the officials and the Department are convinced either, so I put on record my concern that what we are going to get may not work. I would like to see something but we do not have anything positive to approve. That is the difficulty.
2433. **The Chairperson:** OK. We have certainly taken up your suggestion to look at a memorandum of understanding. May we look at that?
2434. **The Committee Clerk:** The Clerk of Bills was meant to be here. It may be better to wait until she is here to explain the new clause, a copy of which is included in your papers. I know that she looked at the idea of a memorandum of understanding or some sort of approved practice that would facilitate the better integration of marine functions across Departments. She put forward the proposal that is in members' papers. You may want to take a moment to read that. If she is able to get here and talk you through it, we can come back to it. I would prefer it if the Clerk of Bills goes through it.

2435. **The Chairperson:** Shall we wait until she arrives?
2436. **Mr Hamilton:** As you know, Chair, I have to leave at about 10.30 am. In case the Clerk of Bills does not arrive and we do not debate it before I go, I have a concern that can be taken up by you and colleagues when she arrives. I have never disagreed with Tom's point that it will be incredibly difficult for the Department, alongside other Departments and agencies, to make this work as fully as people would want. There are inherent difficulties in achieving that. However, because we do not necessarily see that as a 100% solution does not mean that we want to support another option, namely an MMO that we think is worse. There are possibilities in the middle that may work but, for various reasons, are not possible. Tom's suggestion last week that we should look at an MOU was quite good.
2437. The proposed new clause goes a bit further than requiring an MOU. As I said at the time, I do not think that it is possible to legislate for that anyway. The wording that I am concerned about in proposed new clause 1A(1) is "enter into arrangements". I interpret that as allowing the Department, failing all other things, to get into an interdepartmental working group on what it intends to do. That would be an arrangement. Equally, a marine directorate or an MMO would be an arrangement. I have two issues with that. The first is that that would allow them to do or what they want or propose to do at the minute, and does not oblige them to do something more. The second is that I want some clarity that the creation of an MMO would still require the agreement of everyone, including those on the list. We are talking about the Department of Agriculture and Rural Development (DARD), the Department of Culture, Arts and Leisure (DCAL), the Department of Enterprise, Trade and Investment (DETI), the Department for Regional Development (DRD), etc. I and others would not agree to that.
2438. I am saying that I do not want it to be so rigid that it inhibits them from doing what is likely to become the ultimate reality: the creation of an interdepartmental working group. Equally, I do not want it to be so flexible that it allows the creation of an arrangement without the agreement of all those public authorities. Shall I briefly recap?
2439. **The Chairperson:** Yes.
2440. **Mr Hamilton:** As I said last week, my concern was that I did not think that we could legislate for an MOU to be created. You cannot say that a memorandum of understanding should be created when somebody is saying that we cannot do it. So, the word "arrangements" is the only sort of hang-up. However, that may be too strong a word. I am content with it and the spirit of it, but, as I said, I do not want it to be so rigid that it prevents the Department doing what is likely to happen, which is to set up a interdepartmental working group. Given the circumstances that we are in, 99 times out of 100 that will be worked through and that is what will come. As long as the proposed new clause allows the Department to do that, it is fine, and I think that it does. Equally, I do not want the proposed new clause to be so flexible that it permits the establishment of something else or some other type of arrangement without the agreement of departmental stakeholders that are listed in proposed new clause 1A(3).
2441. **The Clerk of Bills:** As Simon said, it would not really have been feasible to draft an amendment that would legislate for the creation of a memorandum of understanding. It is hard to see the logic of requiring people, in law, to agree to something. The proposed new clause was designed to create a degree of flexibility, so that it would elevate what is going on with the statutory duty to take steps to promote co-operation. However, it also leaves the appropriate degree of flexibility, so that Departments and the Department can work it out with its stakeholders how exactly they wish to proceed. It is designed to give

- that enhanced flexibility and to ensure that what is going on at present can be put on a statutory footing of sorts in an attempt to meet its other obligations.
2442. I greyed out proposed new clause 1A(2) to distinguish it. I did not feel that you would necessarily ask me to do that, but I wanted to bring it to your attention that that is one way that would potentially give the Assembly an opportunity to examine what is being done more clearly, and to see whether the Department is meeting its requirements on co-operation and co-ordination. If you were to exclude proposed new clause 1A(2), it would restate and give some statutory underpinning to what is going on at present. If you add the reporting requirement, it would potentially create a little more scrutiny.
2443. I draw your attention to the use of “shall”. That was drafted as a one-off, but it could easily be further changed if you wanted to have a longer potential status. If I were to change “shall” to “may” and indicate that the first such occasion that that would happen would have to be within one year, that would give it a longevity that it does not presently have. However, again, I felt that your brief was really to do something for the immediate and short term. Likewise, the report is drafted as a one-off report, but you could require that to be published at intervals of three years thereafter, unless or until some other arrangements were put in place.
2444. **Mr Hamilton:** I am content with the way that it is drafted. I want to seek clarity. One of the other arrangements that could be entered into is a marine directorate, which the Minister could set up today if he wanted to. It would not have full authority for all the marine aspects, unless he got certain powers from other Departments, and if those Departments did not agree to that, it would not happen. Given that I know that the Minister has a very strong view on something on which I have an equally strong opposing view, my concern is the proposed new clause is not sufficiently broad to allow him to enter into arrangements with relevant public authorities. He cannot go away on the basis of this and create an MMO.
2445. **The Clerk of Bills:** Absolutely. The type of legislative amendments that would be required to create a marine management organisation would be quite significant. As the member said, it would also require the appropriate approvals from the various Ministers who would cede authority to any kind of non-departmental public body (NDBP). To be established, an NDBP requires its own legislation and interdepartmental agreement. It would also be cross-cutting in nature and, presumably, formal Executive approval would be required for all those mechanisms. So, there is no question of anything happening without co-operation.
2446. **Mr Hamilton:** Yes. There would be a financing issue as well. In that spirit, I think that the proposed new clause is good. It captures exactly what Tom has said consistently, which the rest of us agreed with. We know that the likely arrangements are not as satisfactory as people would want them to be, but it underpins the Committee’s and the Assembly’s intent that something should be done that is as broad and agreeable as possible across all the stakeholders.
2447. **The Chairperson:** They can still say that we already have an arrangement in the form of an interdepartmental group. How much does this strengthen the current interdepartmental working group?
2448. **The Clerk of Bills:** If, for example, an interdepartmental group was abolished, this would maintain a continuing obligation to create some sort of arrangements, so it underpins it to that extent. Secondly, the addition of clause 1(A)(2), if members were content with that, would add an additional element in the form of a report for scrutiny, which would enhance the degree to which the Assembly might be able to look at the arrangement and examine whether it meets the needs of all concerned.
2449. I would caution that this is drafted as a one-off situation, so, once those arrangements are entered into, the

- Department would have exercised its duty under this amendment and would no longer be under that duty. If you are looking for any kind of longevity, you would change that “shall” to “may” and we would then create another obligation to do it the first time within a year of Royal Assent.
2450. **Mr Campbell:** I want to clear up a distinction, if there is one. It is just a “shall” and “may” distinction. I imagine that there would probably not be a difficulty, whichever route we agreed to go down, within a year. However, let us say that there was a problem within the 12-month timescale. What would happen under “may”? What would happen if the “may” cannot be enacted within 12 months?
2451. **The Clerk of Bills:** It usually works with a “may” followed by a “shall” somewhere else, in this instance, so the first thing that you would do is to give the power to the Department to do something. That is why you often use “may”; you are saying that the Department has the power to do something. Then, you may say after that that the Department “shall”, within 12 months, enter into those arrangements for the first time and “shall” review those within so many months. The “may” makes it look like a possibility, but when you read on down, that is where you make it clear that it is an obligation.
2452. **Mr Campbell:** It becomes an imperative.
2453. **The Clerk of Bills:** Yes, when you take the bits together. We could do that, if members would like to.
2454. **The Chairperson:** It is a start. I am happy with that.
2455. **Mr Hamilton:** I am content with it.
2456. **The Chairperson:** “Shall” is stronger than “may”.
2457. **Mr Hamilton:** We have some certainty that they will enter into an arrangement. There is an existing arrangement that they can carry on with. I know that some people are not necessarily satisfied with that. I do not think that there is any risk in putting a “shall” there.
2458. **The Clerk of Bills:** It will bind them once, to do it the first time, after which it has lapsed, effectively, and has no more legal effect. I did that, because I understood that, from what the Committee was saying, the Minister was already looking at various approaches, and that this was a short-term measure until the Minister concludes his current work. That is why it is done in that way. I just wanted to bring to your attention that there are other options to give it longevity if you wished.
2459. **The Chairperson:** The Minister may be preparing a paper, but it may not be accepted by the Executive. There is a big question mark there. The status quo may stand as it is, or as is proposed in the Bill. Maybe, in the long run, we should secure that better in the wording of this Bill. What would that wording be changed to?
2460. **The Clerk of Bills:** It would say that the Department may enter into arrangements, followed by a new subsection saying that it shall enter into those arrangements for the first time, or within one year. You might put in a repeating duty to review those arrangements every so many years, if you wished.
2461. **The Chairperson:** That would copper-fasten it a bit more.
2462. **Mr Hamilton:** Either/or, Chair, I am happy enough.
2463. **The Chairperson:** Tom, what do you think?
2464. **Mr Elliott:** It is going some way. I know that it is probably impossible to do, but it is important that the Committee is kept informed. I know that there is no way of building that into the legislation. The new clause 1A(2) is vital, because we need to know after a time how it is functioning and operating. That is crucial, and the Assembly and the Committee need to know exactly how it is working. I am struggling to think of a mechanism that would make it work or

would ensure that it will work. I suppose that this is probably the best attempt that we can make.

2465. **The Chairperson:** Anybody else? There are no queries.
2466. **The Clerk of Bills:** I will adjust that slightly to reflect the longevity.
2467. **The Chairperson:** Are members happy with that? Will we come back to it next week?
2468. **The Clerk of Bills:** We need to produce a final report for you to agree at next week's meeting because it is the day before the deadline for the Committee Stage. If you are absolutely sure that that is what you want done with this amendment, I will incorporate the revised amendment into the report. You will have an opportunity to see it next week. I could circulate it by e-mail in advance of that.
2469. **Mr Weir:** That seems sensible.
2470. **The Chairperson:** That is quite useful. I agree with Tom: it is important that we keep 1A(2) in the review.
2471. Members, do you need the Clerk to go through the report, or are you happy with it as drafted?
2472. **Mr Weir:** We have the draft in front of us. I think that we are happy with what the report covers. We will do the formal sign-off next week.
2473. **The Chairperson:** OK. I had a quick glance, and there is nothing new in it. It is very well done. It captures what we have been saying.



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Committee for the Environment

Report on the Marine Bill Volume Two

**Together with the Minutes of Proceedings, Minutes of Evidence
and Written Submissions relating to the Report**

**Ordered by the Committee for the Environment to be printed 5 July 2012
Report: NIA 57/11-15 (Committee for the Environment)**

Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2011 has been as follows:

Ms Anna Lo MBE (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Gregory Campbell¹
Mr Colum Eastwood²
Mr Tom Elliott³
Mr Chris Hazzard⁴
Mrs Dolores Kelly⁵
Mr Francie Molloy
Lord Morrow
Mr Peter Weir

1 Mr Gregory Campbell replaced Mrs Paula Bradley on 20 February 2012
2 Mr Colum Eastwood replaced Mr John Dallat on 18 June 2012
3 Mr Tom Elliott replaced Mr Danny Kinahan on 23 April 2012
4 Mr Chris Hazzard replaced Mr Willie Clarke on 8 May 2012
5 Mrs Dolores Kelly replaced Mr Patsy McGlone on 23 April 2012

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List of Abbreviations

ANIFPO	Anglo Northern-Irish Fish Producers' Organisation
ARD	Committee for Agriculture and Rural Development
BASC	British Association for Shooting and Conservation
BHC	Belfast Harbour Commissioners
BPA	British Ports Association
CAI	Countryside Alliance Ireland
CAL	Committee for Culture, Arts and Leisure
CBC	Carrickfergus Borough Council
CIL	Commissioners of Irish Lights
CMA	Centre for Maritime Archaeology (University of Ulster)
CNCC	Council for Nature Conservation and the Countryside
CP	Community Places
DARD	Department of Agriculture and Rural Development
DETI	Department of Enterprise, Trade and Investment
DOE	Department of the Environment
DRD	Department for Regional Development
GP	Green Party
GTG NI	Gun Trade Guild Northern Ireland
HIS	Honorable Irish Society
HS	Historic Scotland
IMCG	Inter-departmental Marine Coordination Group
IFA	Institute for Archaeologists
IFSA	Irish Federation of Sea Anglers
LLWC	Larne Lough Wildfowling and Conservation
MCNI	Marine Conservation Northern Ireland
MCS	Marine Conservation Society
MCZ	Marine Conservation Zone
MMO	Marine Management Organisation
MNR	Marine Nature Reserve
MOU	Memorandum of Understanding
MPA	Marine Protected Area
MS	Marine Scotland
NFFO	National Federation of Fishermen's Organisations
NICVA	Northern Ireland Council for Voluntary Action
NIEA	Northern Ireland Environment Agency
NIEL	Northern Ireland Environment Link
NIFDA	Northern Ireland Firearms Dealers Association
NILGA	Northern Ireland Local Government Association
NIMTF	Northern Ireland Marine Task Force
NIRIG	Northern Ireland Renewables Industry Group
NISMBAG	Northern Ireland Schools' Marine Bill Advocacy Group
NT	National Trust
RYANI	Royal Yachting Association Northern Ireland
SEPA	Scottish Environmental Protection Agency
SFF	Scottish Fishermen's Federation
SLLP	Strangford Lough and Lecale Partnership
SNI	Sport NI



Northern Ireland
Assembly

Appendix 3

Written Submissions

Belfast Harbour Commissioners Submission

Belfast Harbour

Chief Executive Officer: Roy Adair

Harbour Office
Corporation Square
Belfast, Northern Ireland
United Kingdom, BT1 3AL

Tel: +44 (0)28 9055 4422
Fax: +44 (0)28 9055 4411
Email: info@belfast-harbour.co.uk
Web: www.belfast-harbour.co.uk
Text phone: 028 9032 2013

Department of the Environment
Marine Policy Team
Planning Policy Division
3rd Floor
Millenium House
17 – 25 Great Victoria Street
Belfast
BT2 7BN

27th April 2012

Draft Northern Ireland Marine Bill – Consultation Response from Belfast Harbour Commissioners

Belfast Harbour Commissioners (BHC) was first constituted by the Belfast Harbour Act 1847 with the underlying purpose of operating, maintaining and improving the Port of Belfast.

The powers and duties of the Board are limited to those conferred by the various Belfast Harbour Acts and Orders 1847 to 2002 and any relevant public general Acts such as the Harbour Acts (Northern Ireland) 1970. In common with other ports in Northern Ireland and Great Britain whose management is similarly constituted, the Port of Belfast is commonly referred to as a 'Trust Port'.

Belfast Harbour is Northern Ireland's principal maritime gateway and logistics hub, serving the Northern Ireland economy and increasingly that of the Republic of Ireland. Around 60% of Northern Ireland's seaborne trade and 20% of the entire island's is handled by Belfast Harbour. More than 17 million tonnes of cargo is handled per annum and the Harbour receives around 5,500 vessels each year.

Belfast Harbour;

- Is the principal gateway for Europe and beyond, for imports and exports for Northern Ireland's manufacturing and construction sectors
- Is the principal entry point for retail and consumer goods for the Northern Ireland market and beyond
- Handles over 80% of Northern Ireland's petroleum and oil imports

- Is Northern Ireland's principal passenger ferry port with 1.3 million ferry passengers, including tourists, using the port's ferry services each year
- Handles over 50% of Northern Ireland's ferry & container traffic
- Is Northern Ireland's leading dry bulk port, for imports of grain and animal feeds, coal, fertilisers and cement, and exports of scrap metal and aggregate material.
- Hosts approximately 40 cruise vessel visits to Northern Ireland each year.

Belfast Harbour generally welcomes the proposed Marine Bill and looks forward to a commonsense approach to marine planning, licensing and enforcement which will be characterized by transparency, open stakeholder dialogue and consistency in application with decision making based on sound science and socio-economic priorities.

Belfast Harbour Commissioners submit the following comments for consideration in response to the consultation questions.

General comments

Belfast Harbour considers it necessary to highlight the following issues:

- Ports are absolutely critical to the well being of the NI population and the success of our economy. Belfast Harbour Commissioners therefore will pay close attention to the development and subsequent implementation of the intent and content of the Marine Bill.
- Safety of navigation is paramount. Nothing within the proposed Bill should be allowed to diminish existing or proposed measures to ensure safe navigation of vessels within Harbour limits or in the approaches to any commercial harbour.
- Belfast Harbour Commissioners must be consulted during the development of a Marine Plan and prior to any subsequent revisions.
- Belfast Harbour strongly supports the principle of marine plans that will result in an efficient and transparent planning regime that is consistent with the Marine Policy Statement and effectively dovetailed with terrestrial planning.
- Belfast Harbour recognises the necessity for Marine Conservation Zones (MCZ's), however these must not result in the impairment of existing activities such as shipping and port operations that are essential for the social and economic well being of Northern Ireland.
- MCZ's should not mitigate unfairly against necessary and appropriate port development activities.

- MCZ's must only be established on the basis of sound science and in accordance with the Marine Policy Statement and wider Government policy on sustainability. It is imperative that the requirements for sustainable development and growth are adequately protected.
- The Bill should explicitly recognise and take account of the UK Marine Policy Statement and the National Ports Policy Statement.
- The plan will need to be synchronized with other existing marine spatial plans in the Irish Sea including those outside UK Government jurisdiction.

Belfast Harbour supports the general principles of Marine Plans and MCZ's, although we do have reservations regarding the designation, management and potential impact of MCZ's. We note that the the Bill is concerned with establishing a process and does not include detail about what marine plans will contain. We strongly support the need for any Marine Plan to prioritise sustainable development in accordance with the UK Marine Policy Statement and draft Northern Ireland Marine Position Paper in order to protect and promote efficient marine commercial activity.

The plan must take into account the trade forecasts within the UK National Ports Policy Statement which indicate substantial growth over the next 25 years. Research commissioned by Belfast Harbour has underlined the potential local impact and necessity for Northern Ireland ports to increase capacity in order to meet expected demand.

The plan should be risk management based and not prescriptive in nature. It should not, for example, set out a detailed development strategy for ports which have to operate within a very dynamic business environment. Such matters should be addressed within the National Ports Policy Statement and individual Port Master Plans.

The Marine Plan should focus on, for example, a description of current activity, location and nature of protected sites, societal needs and existing development plans in a manner that endeavours to resolve potential conflicts, provides greater certainty to developers and ensures that the planning and consents regimes are transparent and efficient. Developer certainty is an important requirement that is lacking in the current planning regime, the creation of a new Marine Plan provides a unique opportunity to address this weakness.

Specific comments

Part 2 – Marine Planning

Clause 2 (1) - Propose that the wording is changed to: "Department shall prepare a marine plan..." rather than "may". Belfast Harbour believes that a single plan is more likely to result in a consistent and holistic approach to stakeholders needs.

Clause 2 (10) (d) and (e) - This clause requiring DETI and DRD to be statutory consultees is essential. Additionally, Belfast Harbour consider it essential that all

Statutory Harbour Authorities and Competent Harbour Authorities within the Marine Plan area must be statutory consultees within this process.

Clause 7 (2) - Consideration should be given to an independent review conducted independently of the Department to ensure objectivity.

Part 3 – Marine Protection

Clause 11 (1) - This statement is very wide ranging and requires qualification following further stakeholder dialogue.

Clauses 12 and 13 - MCZ's should be designated only in accordance with prevailing Marine Policy Statements that have been adopted by the Northern Ireland Executive.

Clause 12 (7) - Belfast Harbour are concerned about the introduction of an additional type of protected area taking into account the existing network of Ramsar Convention, Natura 2000 sites, Areas of Special Scientific Interest (ASSI's) and Marine Nature Reserves. Although the Bill is concerned with process rather than detail it is essential that economic and social consequences are clearly identified and fully taken account of during decision making on MCZ location, extent and restrictions. It is strongly recommended that the wording is changed from "may have regard to any economic or social consequences..." to "shall have regard..." Practical experience in England and Wales supports this recommendation, as ultimately socio-economic factors have had to be taken into account when selecting MCZ's especially when alternative options have the same ecological worth.

To avoid problems that have occurred in other parts of the UK, no sites should be designated prior to finalisation of a marine plan as it is the plan that should inform MCZ designations.

Data submitted in support of an MCZ designation must be presented in a manner that is accessible and understandable to non technical interested parties, it must demonstrate the possible consequences for activities and developments already identified within the Marine Plan in order to allow informed decision making.

MCZ Designation Procedure

There is a duty to consult on the selection of MCZs with the opportunity for stakeholders to provide written and oral evidence. This requirement should be extended to the subsequent management measures which need to be proposed concurrently. It will be impossible to respond meaningfully on designation if the impact of the measures cannot be assessed until after the designation is in place. This activity will be less adversarial if commercial operators have input to this stage of the process and can reach consensus on the resulting management measures.

Clause 14 (6) appears to be very draconian and will allow the Department to circumvent the previously stated controls including provision of advance notice and consultation prior to designation. This clause should be removed or very specific rules for application incorporated into the Bill.

Duties of Public Authorities

Clause 20 (4) - The word "insignificantly" needs to be clearly defined as this term is open to different interpretations.

Clause 21 (10) - The definition of "damage" is imprecise and not consistent with the normally accepted definition.


Byelaws

Clause 26 - The use of emergency byelaws is contentious as this does not require the Secretary of State's confirmation and may allow byelaws that conflict with other policy statements to be introduced. The wording should be amended to take account of this anomaly.

Conclusion

Belfast Harbour Commissioners welcome the introduction of this Bill and subject to the concerns that we have raised in this response support the general objective to introduce an improved marine spatial planning system.

We look forward to further engagement with the Department and remain available to discuss the concerns that we have identified above.



David Knott
Safety & Environmental Manager

British Association for Shooting and Conservation Submission

24 April 2012

FAO Alex McGarel
Room 245
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sirs

Basc Response to Environment Committee Call for Evidence on NI Marine Bill

The British Association for Shooting and Conservation (BASC) is grateful for the opportunity to respond to Environment Committee's call for evidence in relation to the Marine Bill and we look forward to working with the Department of the Environment and other stakeholders as the process moves forward.

BASC was founded in 1908 as the Wildfowlers Association of Great Britain and Ireland and is the UK's largest shooting association. BASC is constituted as an Industrial and Provident Society and has a membership in excess of 129,000. BASC is the representative body for sporting shooting in the UK. It aims to promote and protect sporting shooting and the well being of the countryside throughout the UK and overseas. It actively promotes good firearms licensing practice, training, education, scientific research and practical habitat conservation.

BASC believes that all who shoot should conduct themselves according to the highest standards of safety, sportsmanship and courtesy, with full respect for their quarry and a practical interest in wildlife conservation.

BASC's expertise in shooting matters is widely recognised and we are routinely consulted by a variety of government departments and agencies and other non-statutory bodies, for example the Northern Ireland Environment Agency, the Department of Agriculture and Rural Development, the NI Forest Service, Queens University Belfast, The National Trust, The Ulster Wildlife Trust and the Ulster Farmers Union.

While BASC welcomes aspects of the NI Marine Bill, which will undoubtedly benefit marine life and biodiversity, we have concerns in relation to parts of the Bill that are ambiguous and therefore open to misinterpretation and potential abuse.

Amendment 23 to the 2010 Wildlife and Natural Environment Bill was a pertinent example of how legislation may not have been tabled to specifically curtail country sports within, surrounding or adjoining ASSI's but, if it had been passed into law it would undoubtedly have affected many aspects of country sports. The draft Marine Bill contains clauses that have the potential to significantly and unnecessarily impact not only on wildfowling and access to wildfowling, but also other country sports.

There are 11 BASC-affiliated wildfowling clubs around the coast of NI, with a joint membership of approximately 500 wildfowlingers. Additionally, BASC wildfowling clubs on Strangford Lough and Lough Foyle administer a permit scheme that facilitates wildfowling by non-club members and an increasing number of 'shooting tourists'. The very successful permit scheme on Strangford Lough is run in conjunction with The National Trust and has been in operation since 1965. Some members of the Lough Foyle club are disabled shooters who have special access requirements. Many of these clubs lease shooting rights from landowners and estates including the Crown Estate and The Honourable The Irish Society. Some clubs own the land that they manage for shooting and the encouragement of quarry and other wildlife species.

BASC is concerned that the legitimate rights and the cultural, social and economic worth of the NI wildfowling community has not been considered in the drafting of the Marine Bill. BASC is also concerned that NI wildfowlingers have no representation on the current NI Marine Task Force.

Regarding the draft Bill, BASC would draw particular attention to Clauses that contain specific areas of concern for the interests of the wildfowling community:

Clause 2 – Marine Plans for NI Inshore Region

2(9) - A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

BASC recommends that a marine plan should come into effect 21 days after it has been published by the Department in accordance with Schedule 1. A marine plan should come into effect only after an agreed period of time has elapsed and not on publication, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed. It is easier and much less disruptive to amend a marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan could be postponed.

Clause 8 – Validity of Marine Plans subsections 4 and 5

8(4-5) - A person aggrieved by a relevant document may make an application to the High Court.....

BASC recommends that an alternative means of challenging a marine plan is provided, e.g. a path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to either the NI Environment Minister or the Secretary of State for NI.

BASC feels it is not acceptable for anyone challenging a plan to be forced to prove the plan's faults to the High Court in the first instance. An individual wishing to challenge a plan could be prevented from doing so due to the potential cost implications incurred from High Court action.

Clause 11 & 12 – Designation of MCZ's

With the agreement of the Secretary of State Clause 11(1) allows the Department to designate any area of sea, or any island in the sea, falling within the NI inshore region as an MCZ if it "thinks that it is desirable to do so.

BASC recommends that clause 11(1) be reworded – inserting the words "after consultation with key stakeholders, registered with the department". If abused these Clauses could prohibit or seriously restrict wildfowling and access to wildfowling on or around the coast of NI.

Clause 12 – Grounds for Designating MCZ's

12(5) - conserving marine flora, fauna or habitat whether or not any or all of them are rare or threatened.

12(7) – *in considering whether to designate an area as an MCZ, the Department may have regard to any economic or social consequences of doing so.*

BASC recommends that the Department must have regard to cultural, social and economic consequences and that ‘conservation of flora, fauna or habitat whether or not any or all of them are rare or threatened’ disregards the principles of sustainable use of such features.

BASC seeks written assurance that any decision to designate an MCZ will be proportionate and based on good science and supported by evidence. Furthermore, BASC contends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure. For example where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.

Clause 14 – Consultation before Designation

14(4) – *The Department must consult (a) the Secretary of State; and (b) any other persons who the Department **thinks are likely** to be interested in, or affected by, the making of the order.*

14(6) – *In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)*

BASC recommends that the Department creates a register of interested stakeholders who must be consulted prior to any designation, even in urgent cases. BASC recommends that those with shooting interests are included in any consultation process.

Clause 15 – Publication of Orders

15(3) – *‘.....be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.’*

BASC recommends that the Department should be required to publicise their intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department.

Clause 24 – Byelaws for Protection of MCZ’s

24(2) – *Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region **or in any other part of Northern Ireland.***

BASC requests a written explanation on why the words ‘any other part of Northern Ireland’ have been included under 24(2) as the introduction to the draft Bill and Part 1 of same categorically specifies and defines the area that this legislation is designed to protect, i.e. – the NI inshore region. BASC would ask what relevance a piece of legislation dealing with the NI inshore region has to any other part of Northern Ireland?

24(4) – *The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.*

BASC believes that this provision has the potential to restrictively impact on the cultural, social and economic activities of many people particularly when the definition of ‘seashore’ contained within clause 39 is applied: “seashore” means (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity. Clause 24(4) could potentially extend the

MCZ into land that has no direct influence on the marine features that the MCZ has been designated to protect.

24(5) - Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.

BASC has experience of administering permit schemes for various shooting activities. BASC requests a written explanation on how the Department envisage administering such a scheme and what the financial implications would be.

24(8) - Byelaws under this section may make different provision for different cases, including (in particular): (a) different parts of the MCZ; (b) different times of the year; (c) different means or methods of carrying out any activity.

BASC is concerned that this wording allows the creation of higher protected areas without there being any requirement to justify the designation of such areas. BASC requests a written explanation on why higher protected areas are needed, and where and how they will be created.

BASC recommends that Clause 24 should be reworded in it's entirety to reflect the legitimate interests of wildfowlers

Clause 25 & 26 – Emergency Byelaws

Whilst Clause 25 sets out the consultation process prior to making byelaws, it also makes provision for consultation to be waived in cases of 'urgent need'. The procedure for enacting emergency byelaws is contained within Clause 26.

Whilst BASC recognises that there could be necessity for emergency byelaws e.g. pollution incidents, BASC recommends that there must be a form of emergency consultation prior to implementation and that a fast track system similar to the procedures for severe weather Special Protection Orders be established.

Clause 27 – Interim Byelaws

27(1) - The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks: (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and (b) that there is an urgent need to protect the feature.

BASC is concerned that the wording 'an area in Northern Ireland' could be misconstrued to include areas that do not fall within the NI inshore region and BASC recommends that this should be reworded to avoid confusion.

BASC seeks written assurance that proposals for interim byelaws will be proportionate and based on good science and evidence and subject to consultation with registered stakeholders. Furthermore, BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ byelaws.

Clause 31 – Offences

31(2)(a-d) refers to 'protected features' – given that specific flora and fauna are already afforded protection under the Wildlife (NI) Order 1985, the draft Bill seeks to introduce another layer of protection that will be confusing and difficult to administer and could lead to fewer successful prosecutions than would otherwise be the case.

BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985, this should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict legitimate activities.

Clause 32 – Exceptions

32(1)(c) – A person is not guilty of an offence under section 30 or 31 if the act which is alleged to constitute the offence was done in accordance with a permit issued by the Department (whether under section 24(5) or otherwise)

BASC has experience of administering permit schemes and seeks a written explanation of how the Department envisages administering such a scheme and what the financial implications might be.

Clause 39 – Interpretation

'Seashore' - (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity.

BASC proposes that this part of the definition of seashore should be removed as this wording could allow inclusion of large expanses of land that have little or no impact on the marine features that this draft Bill seeks to protect.

BASC is particularly concerned with the application of this definition to Clause 24(4) and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of this interpretation implies that an MCZ could in effect be extended through restriction/prohibition into any land adjoining the seashore; this raises the question - where would the MCZ stop?

The proposed interpretation of seashore could lead to severe negative impacts on landowners, user groups and other local businesses

Clause 45 – Crown Application

This Clause ensures that there will be no exemptions for holders of Crown Estate leases. BASC members who are holders of such leases have asked for confirmation that the Department have consulted with Crown Estate on this matter. BASC asks that the Department write to BASC to confirm that Crown Estate have been consulted in relation to the draft Bill.

Schedule 1

Statement of Public Participation

Sch1 5(8)(a) - Definition of 'interested persons' – 'any person **appearing** to the Department to be **likely** to be interested in.....'

BASC proposes that the Department retain a register of interested persons who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons being excluded or overlooked.

In conclusion, the foregoing concerns have been raised in a genuine bid to ensure that any future marine legislation is fit for purpose and inclusive of the cultural, social and economic aspirations of the community, especially wildfowling, who depend upon and engage in sustainable management of the rich marine resources of Northern Ireland.

BASC NI would welcome the opportunity to deliver a presentation to the Committee on the basis of all or parts of this consultation response..

Yours faithfully

Tommy Mayne
Director
BASC Northern Ireland

British Ports Association Submission

Northern Ireland Assembly Consultation on Marine Bill Submission by BPA

Summary of main points:

- Ports are essential to the NI economy and have a strong interest in the Bill's proposals.
- The BPA supports the principle of marine plans in as much as they can create a more efficient and transparent planning regime.
- Marine Conservation Zones should not inhibit sustainable development and growth.
- The Bill should recognise and reflect the UK Marine Policy Statement and the National Ports Policy Statement

This response is made on behalf of the members of the British Ports Association (BPA) in Northern Ireland, namely the ports of Londonderry, Larne, Warrenpoint and Coleraine. Between them these ports represent not only vital gateways into NI but also important centres for growth and regeneration; they will also be crucial in providing bases for the development of marine renewable energy. Their contribution is recognised in the DoE's draft Marine Position Paper which describes them as 'vital gateways for cargo, fuel and tourism..... essential to our economic development'.

Ports therefore have a strong and self evident interest in this Bill and coastal policy, especially as they affect the planning regime and port development. The new Bill marks a highly significant stage and we will be carefully monitoring its implementation which will be a long term process. It is the implementation process and practical effect of the Bill which concerns us more than the current drafting and we hope that during the debates on the Bill, Assembly members will have the opportunity to highlight the links between the Bill and the efficient working of the marine and terrestrial planning regimes.

Taking the Bill as a whole, we support the principles of its main recommendations concerning marine plans and Marine Conservation Zones (MCZs), although we set out some concerns below about the possible impact of MCZs. The Bill is concerned with establishing a process and does not, for example, include detail about what marine plans will contain. Although we do not propose changes to the Bill's wording in Part 2 on this point, we do nevertheless wish to put on record that a marine plan should adequately prioritise, entirely in line with the UK Marine Policy Statement, sustainable development and the need to protect and promote successful coastal commercial activity.

The plan should also take into account the trade forecasts within the UK National Ports Policy Statement which indicate substantial growth over the next 25 years in both ro ro and container traffic. This provides another example of the interweaving of planning regimes and national policy statements that marine planning will require. Marine planning cannot be an isolated exercise, but has to be placed in the context of broader policies and objectives.

The plan should be flexible and not overly prescriptive. It should not, for example, set out a detailed development strategy for ports which have to respond to market pressures and changes, many of which are unpredictable. The renewable energy market is an example of a new industry with new requirements requiring a planning regime which can respond quickly so that investment opportunities are not lost.

The plan should focus on, for example, a description of current activity, location of protected sites, existing development plans and so forth, and in ways that seek to resolve potential conflicts, providing more certainty to developers and generally making the planning and consents regimes more transparent and efficient.

Developer certainty is an important potential gain and the plan should prioritise this aim.

We note in **para 2 - (1)** the possibility of more than one plan; our strong preference is for a single plan bearing in mind the relatively small area concerned and the need for a coherent, holistic approach.

We note in **Schedule 1** the need, as is the case in other parts of the UK, for a Statement of Public Participation. We support wide consultation whilst at the same time recognise that dealing with conflicting views creates its own problems. This is where the Marine and Ports policy statements already referred to will need to apply consistency; the consultation process has to respect the framework already agreed.

As regards MCZs, we are concerned about the introduction of another type of protected zone bearing in mind the existing network of Natura 2000 sites and Marine Nature Reserves. Again the Bill is concerned with process rather than detail but it is absolutely vital that economic and social consequences [**para 12 (7)**] are clearly and demonstrably factored into decisions on site locations. To avoid some of the problems that have been evident in other parts of the UK, no sites should be identified in advance of finalisation of a marine plan as it is the plan which will produce new data to inform MCZ designations. Also, data in support of an MCZ should be provided in a way which is accessible to non technical consultees and clearly sets out the possible consequences for activities and developments already identified within the plan. The plan and MCZs are also closely related and cannot operate in isolation.

The use of emergency byelaws (**para 26**) is also a potentially difficult area, not requiring the Secretary of State's confirmation and potentially conflicting with sustainable development policies; this is another area we shall carefully monitor.

In conclusion we can support this Bill with the reservations expressed above. If successful, the Bill will be an integral part of both the marine and terrestrial planning systems, creating a better informed process which can deliver decisions more quickly and flexibly.

David Whitehead OBE
Director

25 April 2012

Carrickfergus Borough Council Submission

Dear Mr McCann,

RE: Response to Marine Bill

The NI Marine Bill is important legislation which will assist Northern Ireland in contributing to the legally binding requirements of the European Marine Strategy Framework Directive (MSFD) and the OSPAR Commission and is welcomed by Carrickfergus Borough Council. To achieve the MSFD and OSPAR outcomes the NI Marine Bill must be effective legislation, with adequate legal power, good management by Government, adequate expertise, financial capacity and enforcement powers to ensure that human activity can occur sustainably without compromising good environmental status. While it is encouraging progress that marine legislation is being considered, it is important that the bill is made as effective as possible. This Council concurs with many other organisations that have commented on this bill's progress to date and have some concerns that the bill in its current form has some weaknesses, and does not provide a framework for best practice in marine legislation. We have identified four particular areas of particular concern:

Firstly, the bill lacks an over-arching purpose, in contrast to other similar bills such as the Scottish Marine Act (2009). Scotland requires sustainable development of the marine area and consideration of climate change. The NI Marine Bill is being introduced to fulfil very specific goals and it would benefit following the Scottish example. The current lack of purpose could weaken the ability to provide cohesive and integrated legislation whose success can be monitored.

Secondly, currently the bill provides the legal framework for creating a network of marine protected areas to improve the UK Marine Area, rather than the local Northern Ireland Inshore region. This broad requirement could prove to be a weakness in the legislative power of achieving ecological coherence across local to regional (UK scales), as the other administrations are all working towards a network of sites at their local scale. Northern Ireland needs to create a network which improves the Northern Ireland inshore waters, and also contributes to the improvement of the wider UK Marine Area. Furthermore, the Scottish, English and Welsh administrations are all including highly protected areas as part of their network. If Northern Ireland included a specific clause for highly protected Marine Conservation Zones this would facilitate their legal status and the designation process.

Thirdly, there are indications that the Marine Spatial Planning (for strategic planning of our seas) process and the designation of the network of conservation zones are going to occur out of synchronisation with each other. Ideally, the Marine Conservation Zone process should occur as a nested part of the marine spatial planning process. Determining the future use of the seas should include concurrent determination of which areas should be conserved.

Lastly, the inter-departmental aspects of the bill including compliance of public authorities, and enforcement of byelaws for Marine Conservation Zone protection lead us to question whether the current marine governance structure is capable of effectively dealing with the practical implementation of the bill.

We believe that a NI Marine Management Organisation would be an effective mechanism for delivering the NI Marine Bill and achieving the aims of European Marine Strategy Framework Directive 'Good Environmental Status'.

Yours sincerely

John McCormick
Director of Development Services

Claire Connor
Acting PA to Director of Development Services
Carrickfergus Borough Council
Museum & Civic Centre
11 Antrim Street
Carrickfergus BT38 7DG

T: 028 9335 8038

F: 028 9336 6676

E: Claire.Connor@carrickfergus.org

W: www.carrickfergus.org

Commissioner of Irish Lights Submission

Reference Schedule 1 and Schedule 2 of Draft Northern Ireland Marine Bill

Dear Sir/Madam

The Commissioners of Irish Lights (CIL) is the General Lighthouse Authority for all of Ireland, its adjacent seas and islands. CIL carry out the obligations of the British & Irish Governments in relation to the provision of Aids to Navigation (AtoN) around the entire coast of Ireland commensurate with the amount of traffic and degree of risk under the Safety of Life at Sea Convention (SOLAS).

CIL operate and maintain extensive aids to navigation infrastructure on the Northern Island coast and offshore islands.

The new NI Marine Bill allows for the introduction of Marine Conservation Zones and these zones have the potential to place restrictions on general navigation and the maintenance of our stations. It is important that navigational safety is preserved and our personnel have clear access by sea and air to our stations to carry out maintenance, refurbishment and replenishment operations. Accordingly we respectfully request that the Commissioners of Irish Lights are included in the list of relevant authorities to be given notice where the Department decides to prepare a marine plan as described in Schedule 1.

For the same reasons as above CIL also wish to be included as consultees in the planning processes as described in Schedule 2

I would greatly appreciate acknowledgment of this communication.

Harry McClenahan

Capt H. McClenahan
Marine Department
Irish Lights Office
Harbour Road
Dun Laoghaire
Co Dublin
Ireland
Phone 00 353 (0)1 271 5542
Mobile 00 353 (0) 86 8201435
Fax 00 353 (0)1 271 5566
Email h.mcclenahan@cil.ie
Web www.cil.ie

Committee for Agriculture and Rural Development Submission

Committee for Agriculture and Rural Development

Room 244

Parliament Buildings

Tel: +44 (0) 28 905 21475

From: Stella McArdle,
To: Alex McGarel, Clerk, Committee for the Environment
Date: 24th April 2012
Subject: Committee response to the Marine Bill

The Committee for Agriculture and Rural Development recently received a request from the Committee for the Environment for comment on the Marine Bill.

The Committee for Agriculture and Rural Development received a briefing from a DARD official on the Bill at its meeting on 17th April 2012. At its meeting on 24th April 2012 it agreed the following response to be forwarded to Committee for the Environment. The evidence session with a DARD official was covered by the Official Report and will appear in due course on the Assembly website. This may be of interest to the Committee for the Environment.

1. The Committee agrees that the Marine Bill should provide a much needed framework for sustainable development of the marine environment. Fishing however, is a major economic activity which could be potentially impacted and displaced by the creation of Marine Plans and by Marine Conservation Zones (MCZ). There is particular concern around displacement of prawn fishing as bottom fishing would not be allowed in MCZs. The Committee note that DoE must consult with other Departments including DARD in the preparation of Marine Plans. The Committee believe that it is vital that the Bill allows for adequate, transparent and meaningful consultation with the fishing industry and that sufficient weight is given to that industry's needs and requirements.
2. The Committee note that there are multiple users of the marine environment, from fishing to renewable energy, to telecommunication cables, gas pipelines and areas with gas exploration licences etc. Ensuring that all are adequately consulted and that the ownership, responsibilities, activities and functions of each are known and transparent will be a difficult task and should not be underestimated. The Committee is concerned that the Bill is at a high level and does not deal with the detail that will be required for implementation, given the multitude of users, activities and responsibilities. Perhaps the Bill should make it clear that detailed guidelines, to be agreed by all relevant public authorities, will be required. The Bill appears to be vague in this area and this could lead to difficulties and / or tensions between various users at a later date. Furthermore, the Committee ask that consideration be given to a Marine Management Organisation specifically around users responsibilities, activities and functions.
3. The Bill notes that DARD and other Departments must have regards to the advice and guidance issued by DoE. However, there is nothing in the Bill that will allow that DoE must have regard for any advice issued by DARD. Thus while DARD can, for example, present a case for the fishing industry, DoE could discard this. While recognising that there needs to be a lead department, the Committee is concerned around proper consideration being given by DoE to any advice and guidance provided by DARD.
4. Clause 22 allows DoE to give advice and guidance to public authorities in respect of MCZs who are required to have regard to this advice or guidance. However, there appears to be no penalty or sanction if a public authority covered by the Bill, ignore the advice and guidance.

Given the ambiguous language of the Bill, this is a real possibility and the Committee believes that this aspect should be clarified.

5. The Committee are concerned that the Bill is not explicit about the need to create synergy and coherence between MCZ in Northern Ireland waters and those from other jurisdictions. The Irish Sea is managed by a number of administrations and developments should not be made in isolation. Failure to properly integrate plans from a variety of jurisdictions could lead to overly complicated MCZs and unnecessary disruption to the fishing industry.
6. The Committee did give some consideration to the issue of coastal flooding and erosion as well as the potential boundary of MCZs with farming land. It notes with concern that in certain parts of Northern Ireland, farmers are losing land due to coastal erosion and / or rising sea levels. Such land, once lost to the farmer, could in the future become part of a MCZ. The Committee would welcome inclusion in the Bill to how such circumstances may be dealt with in the future.
7. Finally you may wish to note that individual Committee members did receive correspondence from shooting and conservation groups who are concerned that they are not being adequately consulted and that, as a result, their interests, are not being taken into account.

Committee for Culture Arts and Leisure Submission

Committee for Culture, Arts and Leisure
Room 344
Parliament Buildings
Stormont
Ballymiscaw
Belfast BT4 3XX

Tel: +44 (0)28 9052 1783

Fax: +44 (0)28 9052 1355

From: Lucia Wilson
CAL Committee Clerk

Date: 18 May 2012

To: Alex McGarel, Clerk to Committee for the Environment

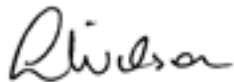
Subject: CAL Committee response to Marine Bill

Alex

At the meeting on 17 May 2012 the Committee for Culture, Arts and Leisure agreed its response to the Committee for Environment's call for Evidence on the Marine Bill.

The enclosed response was agreed, following evidence received from DCAL and Sport NI officials.

The Committee agreed to issue this response to the Committee for Environment.



Lucia Wilson
Clerk
Committee for Culture, Arts and Leisure

Enc.

Committee for Culture, Arts and Leisure

Response to Environment Committee's Call for Evidence on the Marine Bill

17 May 2012

Background

1. On 22 March 2012 the Committee for Culture, Arts and Leisure considered correspondence from the Committee for the Environment, seeking views on aspects of the Marine Bill that fall within the Department of Culture, Arts and Leisure's remit (DCAL).
2. The Committee took evidence from DCAL and Sport NI officials on 3 May 2012. The Committee also considered Sport NI's response to the Committee for the Environment on the Marine Bill.
3. The Committee also agreed at this meeting to submit a formal response to the Committee for the Environment's call for evidence. This response was formally agreed at the Committee meeting of 17 May 2012.

Issues Raised

4. Aspects of the Marine Bill that are of interest to the remit of DCAL are in respect of sport and inland fisheries.

Sport

5. The Northern Ireland Strategy for Sport and Physical Recreation, Sport Matters, sets the policy context for the development of sport and physical activity. The strategy highlights the importance of outdoor recreation, including the marine and coastal areas, in providing increased sporting activities.
6. The Committee heard that DCAL and Sport NI encouraged the Department of the Environment (DOE) to take account of the strategy in developing the Marine Bill, given the marine environment plays host to a number of sporting activities; and that DOE should liaise with Sport NI on the Bill's operational implications for sport. The Committee welcomes the contact that DOE and Sport NI officials have had on this matter to date.
7. The Committee has heard that Northern Ireland lags behind other European countries in terms of public access to our coastline. Sport NI believes the Marine Bill presents an opportunity to redress this issue. In addition, Sport NI, in partnership with the Northern Ireland Environment Agency, found that a recurring theme during the public consultation on an outdoor recreation action plan was limited walking and cycling routes and lack of access.
8. With regards to the operational aspects of the Bill, the Committee noted the concerns of both DCAL and Sport NI. Particularly, they are concerned that the implementation of bye-laws may unduly or unreasonably limit sporting activity in the marine environment.

Inland Fisheries

9. With regards to inland fisheries, the Committee notes that DCAL's main area of responsibility is in relation to the management of the coastal commercial salmon industry.

10. DCAL's inland fisheries group is engaged with the Interdepartmental Marine Co-ordination Group and DCAL is content that these arrangements for consultation have proved effective to date.

Committee Views

11. Given the significant role that the marine environment and coastal areas have with regards to outdoor sports and physical activity, the Committee is broadly supportive of the aims of the Marine Bill to improve marine conservation as this will have a positive impact on sporting and recreational activities using this resource.
12. The Committee believes that the Marine Bill provides an opportunity to legislate for improved coastal access, in line with other jurisdictions. DOE may wish to consider this in future drafts of the Bill.
13. The Committee recognises that planning and protection measures are required to ensure the long term sustainability of our marine environment. However, it believes that a balanced, considered and measured approach is needed in the development of bye-laws. The Committee is aware of the benefits that sport and recreation has to our physical and mental health. It is not the wish of the Committee that these bye-laws would unreasonably and unnecessarily limit the development of sporting activities in the marine environment.
14. Furthermore, the Committee appreciates the tourism value of marine sports and recreational access. Therefore, it believes full consultation on proposed bye-laws is essential before they become enforceable.
15. Comments were also made regarding: the costly appeals process against penalties particularly for small organisations or individuals; and also issues around the validity of long term leases, issued for activities such as wildfowling, in the event that these activities become restricted under the bye-laws.

Community Places Submission



Response to Consultation on the Marine Bill March 2012

**Community Places
24 April 2012**

Community Places Response to Consultation on the Marine Bill

Introduction

Community Places is the only regional voluntary organisation which provides independent and impartial planning advice to individuals and communities. We also facilitate community participation in planning and support community planning and development. Our submission on the Marine Bill focuses on the parts of the Bill which refer to community participation.

Comments

Community Places supports the introduction of Marine Planning and welcomes many of the proposals and aims of the Marine Bill particularly those that relate to the Statement of Public Participation (SPP).

We welcome the introduction of the Statement of Public Participation (SPP) within the Marine Bill paragraph 2.35 and schedule 1. The details in schedule 1 relating to the content of the SPP are also very welcome. However they should be set within a wider Departmental framework of quality standards for participation and engagement. This framework should be produced by the Department and draw on the Scottish National Standards for Community Engagement (Appendix 1).

We welcome the recognition in schedule 1 of the need for advice and assistance to facilitate community involvement (paragraph 8). Marine Planning is of necessity a complex and technical process. Community stakeholders in particular will require assistance to ensure their meaningful involvement. This should include the provision of independent and impartial advice and assistance.

Recommendations

1. The Department should publish a framework of quality standards for community engagement and participation.
2. This framework should draw on the Scottish National Standards for Community Engagement.
3. Paragraph 8 in Schedule 1 should include provision for making available impartial and independent advice and assistance for local communities and people.
4. Schedule 1 paragraph 5 should be amended to include an explicit commitment to consulting communities on the content of an SPP and any revisions to an SPP.

Appendix I

NATIONAL STANDARDS FOR COMMUNITY ENGAGEMENT

1. **INVOLVEMENT:** we will identify and involve the people and organisations who have an interest in the focus of the engagement
2. **SUPPORT:** we will identify and overcome any barriers to involvement
3. **PLANNING:** we will gather evidence of the needs and available resources and use this evidence to agree the purpose, scope and timescale of the engagement and the actions to be taken
4. **METHODS:** we will agree and use methods of engagement that are fit for purpose
5. **WORKING TOGETHER:** We will agree and use clear procedures that enable the participants to work with one another effectively and efficiently
6. **SHARING INFORMATION:** we will ensure that necessary information is communicated between the participants
7. **WORKING WITH OTHERS:** we will work effectively with others with an interest in the engagement
8. **IMPROVEMENT:** we will develop actively the skills, knowledge and confidence of all the participants
9. **FEEDBACK:** we will feed back the results of the engagement to the wider community and agencies affected
10. **MONITORING AND EVALUATION:** we will monitor and evaluate whether the engagement achieves its purposes and meets the national standards for community engagement

Council for Nature Conservation and the Countryside

An Advisory Council to the Department of the Environment

Room G-07, Waterman House, 5-33 Hill Street, Belfast, BT1 2LA

Tel: 028 9054 3184

secretariat-hillst@doeni.gov.uk

26 Apr 2012

Sean McCann
Assistant Clerk
Environment Committee
Room 247, Parliament Buildings
Stormont Estate
BELFAST, BT4 3XX

Dear Sean,

Marine Bill

Thank you for your letter of 12 Mar 2012 inviting our views on the proposed Marine Bill.

Introduction

The Council for Nature Conservation and the Countryside (CNCC) is the statutory body providing advice to the Department of the Environment on nature and countryside conservation issues, particularly as they affect Northern Ireland.

Our response takes the form of some general comments below and a more detailed examination of the Bill contained in the attached table.

General comment

The draft Marine Bill (the “Bill”) fails to identify an overarching aim/general duty against which the provisions and actions taken under the Bill can be assessed. We would favour an approach such as in The Marine (Scotland) Act 2010 (the “Scotland Act”) which 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:

(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*

In seeking to avoid any gaps between marine and terrestrial planning, the proposal to have regard for the other's jurisdiction is fully supported. However, this has potential to introduce confusion, since it is possible to envisage occasions where each authority assumes that the other has lead responsibility. In particular, the UNCLOS definition of the baseline for territorial waters purposes as the low water line may introduce confusion, as may the definitions given in Section 13 concerning NCZ boundaries. We would like to see reference to the UNCLOS definition in the guidance mentioned in Section 22, along with detailed case studies. In passing, we also believe that the Department's responsibility to provide guidance should be strengthened to "must provide timely advice and guidance". We note their record in this field is very poor; no guidance is yet available on the WANE Act some 8 months after Commencement, perhaps evidence that "may" in that Act has not been treated with the importance that it needs.

Whilst we appreciate that it is the Marine Bill that you are scrutinising, we would like to take the opportunity to express our worries about the resourcing of the implementation of the Act. These concerns are around the funding required to deliver the MCZ network. Table 2 on page 21 of the RIA show one off costs of £195k-£221k to establish the network and an annual cost of £163k for monitoring and enforcement thereafter. To our eyes, these seem extremely modest and seem to imply little or no additional staff and, given that the size of the network cannot yet be known, are speculative at best. It is also unclear whether the 2007 Scottish figures upon which these estimates are based have been adjusted for inflation. It should be noted that the MSFD and marine renewables industry has greatly increased the demand for marine experts and there is currently a skill shortage both nationally and internationally.

Yours sincerely,



Patrick Casement
Chairman

Item	Provision	Comments
Part 1		
Extent of NI inshore region	1(5)	<p>We note that the boundaries of the NI Inshore Area are to be determined by an Order in Council and feel that this will be an important step to clarify exactly where the boundary lies and particularly relevant in relation to the extent to which the Bill will apply to Lough Foyle and Carlingford Lough. Clear guidance is provided by the United Nations Convention on the Law of the Sea (UNCLOS) states: 'Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State'. It should be noted that, as a result of significant melting of polar ice-caps due to climate change, our coastline is likely to change quite significantly in the future, which will affect the boundaries.</p>
Part 2 – Marine Plans		
Overarching comment		<p>Whilst the intentions for the inshore region are covered, we can find no mention of the offshore region. Though this lies outside the responsibility of NI Government, we would like to see reference to which Department is responsible for coordination with adjoining administrations and governments, as without clarity there is a risk that the ecological coherence required by MSFD will not be achieved.</p>
Requirement to produce Marine Plans	2(1)	<p>We are concerned that Section 2(1) states that the Department 'may prepare' a marine plan. We believe that this runs counter to the purpose of the Bill, and that the word 'may' should be replaced by 'must'.</p> <p>Similarly 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. We believe that this should be an absolute requirement to ensure that marine plans covering all of the NI inshore waters will be prepared. The Scotland Act makes marine planning compulsory and is therefore more robust.</p> <p>We recommended that Section 2(1) is amended so that it reads as follows;</p> <p><i>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.</i></p>
Marine Plan to be in conformity with MPS	2(5)	<p>This section requires marine plans to be in conformity with any Marine Policy Statement or marine plan covering all of NI waters, 'unless relevant considerations indicate otherwise'.</p> <p>We are uneasy that this clause may allow departure from the MPS and would wish to see clarification of the scope of 'relevant considerations'. We presume that it carries similar meaning to 'material considerations' as used in terrestrial planning policy, but believe that without clarification there will be uncertainty and the possibility of litigation. A requirement for guidance on this matter should be included:</p> <p><i>2(5)(a) 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).</i></p>

Item	Provision	Comments
Withdrawal of Marine Plan	4	<p>We are concerned that it will be very easy for the Department to withdraw a plan as the duty on it is simply to inform parties and consult the other relevant NI Departments. There is no provision for other parties to appeal or even formally object to the withdrawal of a plan.</p> <p>We believe that the intention is that a plan should only be withdrawn where a replacement has been already been drawn up (for example covering a wider area or multiple plans replacing a single plan) but as framed the Bill does not legally require a plan that is being withdrawn by the Department to have a replacement. We recommend that the legislation should be amended to allow for withdrawal only where a replacement has been published (i.e. the new marine plan effectively revokes the former).</p> <p><i>4(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.</i></p> <p>We would prefer that the withdrawal of a plan was permitted only after wide consultation with interested parties and under specifically defined circumstances such as manifest error or availability of a replacement plan.</p>
Review of Marine Plans	5	<p>This section covers the duty to keep matters under review, including a number of interests which may come into conflict and prove difficult to balance, such as environmental, social and cultural and economic interests. To make the issues clearer and easier to implement, we suggest that Section 5 should be made subject to the overarching aims referred to in our general comment set out at the start of this response; ie sustainable development and climate change. We therefore suggest that Section 5(1) begins with the following words:</p> <p><i>'Subject Oalways to the general duties set out at Part 1 (6) and (7).....'</i></p> <p>In section 5(3)(b) we suggest that 'its natural resources' should be replaced by 'maintenance of its natural resources'. We are not clear what 'dependent on the region' means, and would prefer to see a clearer term used here.</p> <p>We are concerned that no time period for review has been included. We would suggest that plans should be reviewed every 5 years to keep pace with new and emerging issues. A five year period also provides sufficient certainty to rely upon the content of the Plan.</p>
Relevance of Marine Plans to decision-making	6(1)	<p>The comments on 2(5) above on clarification of the scope and meaning of 'relevant considerations' also apply here.</p>
Requirement to have regard to Marine Plans	6(3)	<p>This section makes clear that a public authority 'must have regard' to any appropriate marine plan in taking any decision which may affect the NI inshore region but which is not an enforcement or authorisation decision.</p> <p>We generally welcome the duty that this imposes, but believe that it is essential to give clarification of what 'must have regard' entails – it suggests that the authority is not actually required to comply with the marine plan as long as it appears to have considered it, and also that the authority is not required to justify any act which runs counter to the marine plan. We would propose the following addition which would reflect the requirements of 6(2);</p> <p><i>6(3)(a) 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</i></p>

Item	Provision	Comments
Interpretation	10	We recommend a clear definition of the term ‘sustainable development’ along the lines of the Brundtland Commission report: ‘development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs’.
Part 3 – Marine Conservation Zones		
Designation of MCZs	11(1)	<p>We have serious concerns about this section and its relationship to Sections 12 and 18. Under this section it appears that the Department has discretion with regard to declaring an area as a MCZ, while Section 18 states that there is a duty to do so if it meets certain conditions. We recommend that there should be a definite duty to designate MCZs in line with the policies for designation of Natura 2000 sites and Areas of Special Scientific Interest if marine protection is to have any value. We recommend that Section 11 (1) is amended as follows:</p> <p><i>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.</i></p>
MCZs	12.(1)	<p>We are concerned that the Bill appears to completely ignore marine archaeology and recommend that it should also be possible to include areas of archaeological importance in Marine Conservation Zones as is the case under the Scottish legislation. We suggest that Section 12(1) should be amended to read;</p> <p><i>(d) features of historic or archaeological importance</i></p>
Grounds for designation of MCZs	12.(1)	<p>As discussed above, we suggest that this should be amended to read;</p> <p><i>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...</i></p>
Grounds for designation of MCZs	12.(7)	<p>We have grave concerns about Section 12 (7) which we believe seriously undermines the concept of MCZs by allowing economic considerations to take precedence over environmental considerations where protection of MCZs is concerned. If the general duty on the Department under the Marine Bill is to ‘further the achievement of sustainable development’ and the ‘mitigation of and adaptation to climate change’ this means that it must give equal weight to environmental, economic and social considerations. It is remarkable that Section 12 (7) on designation of MCZs makes no mention of environmental concerns or consequences but does refer to taking into account economic and social consequences of designation.</p> <p>If Part 1 is amended as we suggest then this section is unnecessary. If, however, Part 1 were not amended then Section 12(7) should include specific reference to environmental as well as economic and social consequences. This should include the consequences of not designating an area as well as those of designating it.</p>

Item	Provision	Comments
Grounds for designation of MCZs	12.(9)	<p>We are concerned that, unlike the Scottish legislation, Section 12 does not include any guidance or instruction on designation criteria. We would recommend that the Department adopts the guidance developed by the Joint Nature Conservation Committee with help from Natural England to ensure conformity across the United Kingdom. We therefore suggest the inclusion of an additional subsection 12(9) referring to designation criteria along the lines of the provisions under the Scotland Act:</p> <p><i>12 (9) The Department must, following discussion with JNCC —</i></p> <p><i>(a) prepare and publish guidance setting out scientific criteria, to inform consideration of whether an area should be designated a MCZ, and</i></p> <p><i>(b) have regard to such guidance in exercising their functions under section 11.</i></p>
Further provision as to orders designating MCZs	13.(3)	<p>We believe that two further conditions should be added to this section, to enable effective management of the MCZ and enforce protection of the MCZ. We suggest the following wording:</p> <p><i>13(3)(d) Without the inclusion of the area of seashore, the effective management of the MCZ would be impossible or impracticable.</i></p> <p><i>13(3)(e) Without the inclusion of the area of seashore, enforcement of the full protection of the MCZ would be impossible or impracticable.</i></p>
Consultation on MCZs	14.(3)	<p>We believe that Section 14 (3) (a) is too narrow in only placing 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. We believe that this should also include those who are likely to be interested in the making of the order as in the Scottish legislation. This would include NGOs and other interested individuals who might have a legitimate role to play in consultation on designation of MCZs. We therefore suggest the following amendment:</p> <p><i>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</i></p> <p>We also recommend the establishment of clear timeframes for consultation. The model for ASSI designation is again relevant, with Section 28 of the Environment (NI) Order 2002 specifying a period of three months for responses to proposed ASSI declarations. We believe that this would represent a reasonable timescale for interested parties to respond.</p>
Consultation on MCZs	14.(4)	<p>We believe that the designation process should closely reflect the process for the designation of terrestrial and coastal areas as ASSIs in requiring independent scrutiny of the proposals for individual MCZs that are brought forward by the Department. In the case of ASSIs this is provided by CNCC, and we suggest that it should also fulfil this function with regard to MCZs. This would also have the benefit of close contact with progress and processes across the rest of the UK through CNCC's representation on JNCC, who are responsible, both for co-ordinating nature conservation across the UK, and for implementing the nature conservation activities in the offshore marine area.</p>
Publication of orders	15.(3)	<p>We recommend that Section 15 (3) (a) should also be amended as section 14(3)</p>

Item	Provision	Comments
Designation of MCZs	18	<p>We have several concerns regarding this section. While it sets out that the Department has a duty to designate Marine Conservation Zones (MCZs), it then goes on to impose a number of significant qualifications which weaken the general duty.</p> <p>Sections 18(2) and (3) set out the requirement that any MCZ designated in Northern Ireland must be taken together with MCZs designated under the Scottish Act and 2009 Act to ‘form a network’ which contributes to conservation in the overall UK marine area. We believe that this provides a clear loophole that would enable NI to avoid designating MCZs in situations where it could be argued that certain habitats or species are already protected adequately across the UK marine area as a whole through designations in English, Scottish, Welsh or offshore waters. We therefore recommend that the term ‘UK Marine Area’ in s18(3) should be amended to <i>‘the Northern Ireland inshore region in combination with the other areas forming the UK Marine Area’</i></p> <p>Section 18 also makes no reference to the possibility of designating some MCZs as highly protected sites. This is a serious omission and we recommend that 18(3) should also include the following:</p> <p><i>(d) that the network includes highly protected sites</i></p> <p>We believe that an explicit reference (and duty) to designate such highly protected sites is essential to avoid the significant risk that such sites would not be protected adequately. This is based on the evidence of past failures in protecting marine habitats that have been designated as SACs and Marine Nature Reserves.</p> <p>We recommend that Section 18(4) includes a further paragraph to include World Heritage Sites, given that the Giants Causeway WHS extends out to sea, and includes one of Northern Ireland’s most famous wrecks, the Girona galleass. This should read:</p> <p><i>18(4)(e) the whole or part of any coastal World Heritage Site as designated under the World Heritage Convention.</i></p>

Item	Provision	Comments
Duties of public authorities regarding MCZs	20	<p>We have grave concerns about two expressions that appear in Section 20:</p> <ul style="list-style-type: none"> • ‘capable of affecting (other than insignificantly)’ which appears repeatedly • ‘a significant risk of the act hindering the achievement of the conservation objectives stated for the MCZ’ which appears in s20(5) <p>We consider that these require much closer definition, and fear that if they remain undefined they could lead to litigation with subsequent high costs and serious delays to the process of designating and managing MCZs.</p> <p>We believe that this risk is entirely avoidable since a great deal of time and effort has been devoted to developing terminology and processes for dealing with similar issues with regard to Natura 2000 sites and to Environmental Impact Assessments, both of which relate to EU law, just as this Bill relates to the Marine Strategy Framework Directive. We suggest therefore that the wording in this section is brought into line with the wording used in transposing other relevant EU Directives, which has now been tested in the courts. Alternatively the wording used in the Environment Order with regard to ASSIs, which talks of acts that are ‘likely to damage’ the protected features, might be used.</p> <p>In addition Section 20 makes it possible for a public authority to carry out an act that it considers may negatively impact on a MCZ as long as it has notified the Department and then waited 28 days for the Department’s advice, which it is not obliged to heed. This needs significant revision to prevent serious damage to MCZs without the possibility of sanction or redress. In the first place we believe that many public bodies will lack the expertise to assess whether an act may negatively impact on an MCZ. We therefore suggest that the Department should be consulted whatever activity is considered within an MCZ. Public authorities must then wait 28 days for advice, which they would be bound to act on. Failure to comply with either component would lead to sanctions, including a requirement to carry out remedial work to reverse any damage incurred.</p> <p>Section 20(8) could continue to apply, but the authority would be required to provide clear evidence to the Department that the need to act was genuinely urgent.</p> <p>Accordingly, we would suggest the following amendments:</p> <p><i>(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 –</i></p> <p><i>(a) the protected features of an MCZ;</i></p> <p><i>(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent</i></p>

Item	Provision	Comments
		<p><i>(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.</i></p> <p>...</p> <p><i>(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.</i></p> <p><i>(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.</i></p>
Decisions relating to MCZs	21	As with Section 20 we would wish to see much clearer definition of the terms 'significant risk', 'other than insignificantly' and 'substantially lower risk'. Without definition these have the potential to lead to litigation.

Item	Provision	Comments
Decisions relating to MCZs	21.(7)	<p>Section 21(7) causes us significant concern, and has the potential to seriously weaken the protection afforded by designation as a MCZ if an applicant (who could be the authority itself!) can satisfy a public authority that three criteria can be met. The first criterion concerns choosing the lesser of two evils and prompts the question as to why it should be necessary to chose either. The second criterion is related to the familiar and recognised consideration of over-riding public interest, but is stated in ill-defined terms of unquantified public benefit that outweighs unquantified or defined risk of damage to the environment. The third criterion relates to mitigation, but fails to give any direction as to who will decide what constitutes 'equivalent environmental benefit', what criteria might be used to assess compensatory or mitigation measures, and who will monitor and enforce the measures undertaken. There is no indication as to where these compensatory measures should be carried out and what sanctions might be imposed if they are not carried out satisfactorily. Finally the suggested use of compensatory measures does not comply with the precautionary principle. Without clarification of these matters the criterion is effectively meaningless and will doubtless be eventually challenged in the courts.</p> <p>We recommend that if Section 21(6) cannot be met then the applicant must seek judgement from the Department rather than the public authority as to whether the criteria under Section 21(7) have been met. If the over-riding public interest criterion can be met, the Department should be required to assess the potential damage and the consequent compensatory measures that are required and where they should be carried out. The party that is authorised to damage the MCZ must be directly responsible for carrying out the measures, which must be monitored by the Department. Failure to fulfil the conditions imposed, which would include failure of the measures, would constitute an offence under Section 31.</p> <p>We would therefore suggest rewriting of s 20(7)(a) to give a much clearer sense of the need for over-riding public interest, and the omission of the clause 'or make arrangements for the undertaking' from s 20(7)(c).</p> <p>We believe that these provisions cannot take precedence over the over-riding public interest provisions of the Habitats Directive since the protection of EU designated habitats or species within an MCZ cannot be subject to compensatory measures.</p> <p>Finally we have doubts that it would be possible to operate Section 20(7) in practice, given that it requires a complicated interaction between Departments, which has proved extraordinarily difficult in the past. The experience of habitat destruction in the Strangford Lough SAC and the subsequent failure of two Departments to work together to instigate restoration measures is a salutary lesson.</p>

Item	Provision	Comments
Advice and guidance by the Department	22	<p>We welcome the requirement for the Department to provide guidance on this range of topics. However we believe that it is not enough for the Department to provide advice and guidance to other parties and public authorities, without there being a requirement for the recipient to act on that advice and guidance. Without that onus on the recipient there is little or no point in the Department preparing and issuing advice.</p> <p>We also believe that it is important that the Department publishes guidelines on how it will assess and evaluate potential damage and compensatory measures, and provides examples of possible activities that might be undertaken to provide equivalent environmental benefit. The publication of these guidelines should coincide with the enactment of the legislation to ensure that the Department is prepared for implementation and is not caught out when it is required to act.</p>
Failure to comply with duty	23	<p>The sanctions against a public authority where it has failed to comply with its duties which are set out in this section should be extended to cover the new general duties that we believe should be added to Part 1.</p> <p>We have grave concerns over Section 23(2) which we believe provides no sanction at all. As phrased it is merely a discretionary right for the Department to request an explanation for the failure of the public authority to protect the MCZ. We strongly recommend that the word 'may' is replaced with 'must'. In addition we believe that this section should set a timescale for the provision of a written explanation, and suggest that it should be within 14 days of the request.</p> <p>Finally there is no provision for any further action by the Department if it is not satisfied with the explanation given by the authority. The whole exercise is pointless if the authority is not subject to sanctions, and the Department is not given the powers to impose the necessary sanctions.</p> <p>We suggest that Section 23(2) is reworded as follows:</p> <p>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;</p> <ul style="list-style-type: none"> (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

Item	Provision	Comments
Bye-laws for the protection of MCZs	24 24 - 29	<p>Section 24(3)(f) fails to recognise that the marine environment is three-dimensional, with elements that do not lie on the sea-bed but exist in the water column above it. This needs to be clearly and explicitly articulated.</p> <p>Nowhere in these sections is there any mention of consultation on byelaws. This contrasts with Marine Nature Reserves where the Nature Conservation and Amenity Lands Order clearly states 'Before making byelaws under this article (ie Byelaws for the protection of marine nature reserves) the Secretary of State (now the Department) shall consult the Committee for Nature Conservation (now the Council for Nature Conservation and the Countryside)'. We suggest that CNCC should also be consulted with regard to byelaws for MCZs, which will effectively replace Marine Nature Reserves.</p>
Offences - byelaws	30	<p>We welcome the recognition that contravention of a byelaw should constitute an offence. However we believe that a maximum fine of £5,000 is not sufficient considering that some of the activities that might be prohibited or restricted by a byelaw could cause severe damage to a MCZ in a short space of time but lead to a relatively small fine.</p> <p>We would propose the following amendment:</p> <p><i>(2) A person who is guilty of an offence under this section is liable;</i></p> <p><i>(a) on summary conviction to a fine not exceeding level 5 on the standard scale</i></p> <p><i>(b) on conviction on indictment to a fine</i></p> <p><i>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.</i></p>
Offences	31	<p>We recommend that the offence of disturbance should be included within the general offences for MCZs under this section. At present it appears that disturbance of animals or plants within an MCZ is an offence only if a byelaw is in place (and it is not a mandatory requirement to impose byelaws). This should be included in Section 31(2)(a). We suggest the following wording:</p> <p><i>(2)(a) intentionally or recklessly kills, injures, or disturbs any animal in an MCZ which is a protected feature of that MCZ</i></p> <p>We welcome both the high level of penalty for offences in relation to MCZs and the inclusion of a provision requiring the courts set the penalty with particular regard to any financial benefit accrued by the person convicted. It is essential that members of the judiciary are suitably trained and provided with appropriate guidance to ensure that penalties are proportionate to the offence.</p> <p>We believe that courts should also be able to impose custodial sentences in line with the Wildlife and Natural Environment Act (NI) 2011, which recommends up to 6 months on summary conviction and 2 years on indictment.</p> <p>Finally we recommend that there is a mechanism for requiring compensatory and/or restoration measures to be carried out by those convicted in line with the 'polluter pays' principle.</p>

Item	Provision	Comments
Exceptions	32.(4)	<p>This section causes us serious concerns over the defence of acts done in the course of sea fishing. We are aware of many cases where this activity has caused serious damage to marine habitats and whole ecosystems: the Modiolus reefs in Strangford Lough is just the best known of these cases. This defence has the potential to totally undermine the objectives of setting up a network of MCZs, since sea fishing is probably the most likely activity to take place and the most likely to cause significant damage and disturbance. While we understand that this has been included because the Common Fisheries Policy allows all member states with historical rights to fish between 6 and 12 nautical miles offshore with equal access to domestic fleets and the Government is therefore unable or unwilling to restrict access to MCZs by foreign vessels who they would be unable to hold accountable for damage. However the situation does not arise with regard to the zone up to 6nm offshore, and so we believe that the sea fishing defence should only apply to the 6nm to 12 nm zone.</p> <p>We note that the Department has the discretion to amend or remove this defence, perhaps in anticipation of proposed changes to the Common Fisheries Policy, but this does little to allay our concerns. There is little certainty that the CFP will include the desired changes and the Department will certainly find it difficult to introduce further legislation to remove this defence.</p> <p>We would prefer Section 32(4) to be deleted, or at the very least the defence limited to a zone 6-12nm offshore.</p>
Fixed penalties	33	<p>We believe that fixed penalties are a practical solution to improving administration, but they will only be an effective tool in helping to enforce protection of MCZs if they are accompanied by clear guidance on matters such as the level of fines, the circumstances where they are applicable, and the issue of repeat offences. It is also essential that such guidance is available from the outset, so that it is in place when the Bill becomes law.</p>
Enforcement officers	36	<p>We recommend that the power to appoint enforcement officers should be a requirement rather than an option. In Section 36(1) the word 'may' should be replaced by 'shall'.</p>
Commencement	47	<p>The inclusion of this section without any explanation is unacceptable. We are greatly concerned that this critical part of the Bill could simply gather dust on a shelf if not enacted at the same time as the other Parts. These three parts are all equally important aspects of the Marine Strategy Framework Directive and should receive equal treatment. We recommend that this section should read:</p> <p><i>47. The provisions of this Act come into operation on the day after the day on which this Act receives Royal Assent.</i></p>

Item	Provision	Comments
Schedule 1 – Marine Plans: Preparation and Adoption		
Statement of Public Participation	5 6	<p>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.</p> <p>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).</p> <p>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.</p> <p>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'.</p> <p>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.</p> <p>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.</p>
Advice and assistance	8.(1)	<p>The Department is only under a discretionary duty to seek advice and assistance in formulating a marine plan and no specific bodies are listed. We recommend that this should be amended to:</p> <p><i>8(1) In connection with the preparation of a marine plan, or of any proposals for a marine plan, the Department may seek advice or assistance from any body or person in relation to any matter in which that body or person has particular expertise, but must seek the views of the relevant independent statutory advisory bodies.</i></p>
	8.(2)	<p>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.</p> <p>We consider that a more formalised structure to this consultation procedure should be implemented from the outset.</p>

Item	Provision	Comments
Independent investigation	13	<p>We have significant concerns over the framework for an independent 'investigation' to be carried out into any marine plan.</p> <p>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.</p> <p>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.</p> <p>The Bill must contain provisions for;</p> <ul style="list-style-type: none"> (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	14	<p>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'.</p> <p>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)</p>
Matters to which the Department must have regard	15.(1)	<p>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'.</p> <p>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)</p>

Item	Provision	Comments
Adoption and publication	15.(1)	<p>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.</p>
Departure from the draft plan	15.(4)	<p>We would welcome the inclusion of a 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.</p> <p>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).</p>

Countryside Alliance Ireland Submission



Marine Bill

Brief prepared for the Environment Committee

By

Lyll Plant

(Chief Executive, Countryside Alliance Ireland)

Countryside Alliance Ireland
The Courtyard
Larchfield Estate
Lisburn
BT27 6XJ

Tel: 028 9263 9911

23 April 2012

Introduction

Countryside Alliance Ireland is an expert and informed organisation, campaigning for the countryside, country sports and the rural way of life. We represent over 10,000 people throughout Ireland; many of those whose livelihoods and recreation are centred on rural activities.

Our vision of a vibrant and diverse countryside is based on the principle of responsible and sustainable use of our natural resources, coupled with local community support through meaningful consultation and proper stakeholder participation. We believe the proposed Marine Bill directly affects our members, the majority of whom participate in at least one form of responsible country sports.

Countryside Alliance Ireland believes the Marine Bill is *theoretically* a positive movement for NI marine life and biodiversity.

However, due to the ambiguity of the Bill, it has been left open to misinterpretation and potential abuse and therefore, we believe the Bill needs to be reviewed and significantly revised to ensure that the legislation is both transparent and fair.

Our prime concern is that the Bill provides an opportunity for unsympathetic parties to unnecessarily prohibit legitimate rural pursuits, resulting in adverse economic and social consequences for Northern Ireland.

Countryside Alliance Ireland is also deeply disappointed with the lack of representation from a diverse range of organisations on the Northern Ireland Marine Task Force and indeed, the complete disregard of those concerned with country sports.

The Marine Bill has a direct impact on many of those engaged in legitimate country sports activities and the lack of stakeholder inclusion at present means they have no representation within the current Task Force group.

Countryside Alliance Ireland welcomes any measures aimed at benefiting marine life and biodiversity, however, the Marine Bill as it currently stands will do nothing to improve the level of protection afforded to marine life in Northern Ireland.

Concerns and suggested changes

This brief outlines our concerns and highlights particular clauses that may be misconstrued. In addition, we have suggested appropriate changes to the draft Bill.

Clause 2, subsection 9

A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

Proposed change - *A marine plan comes into effect **21 days** after it has been published by the Department in accordance with Schedule 1.*

A marine plan should be implemented a suitable period of time after it has been published, and not at the same time as notification, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed.

Clause 8, subsections 4 and 5

A person aggrieved by a relevant document may make an application to the High Court.....

Proposed change - An alternative means of challenging a marine plan is needed, e.g. a path of communication with the Department should be the first step in any challenge.

Clauses 11 & 12

The Bill allows the Department to designate any area of sea, or **any island in the sea** (11), as a marine conservation zone (MCZ), with the agreement of the Secretary of State, and if it *“thinks that it is desirable to do so”* (12).

Proposed change – revise and reword clauses 11 & 12 to remove the ambiguity.

This is too vague and all encompassing and could potentially restrict legitimate activities, e.g. angling and shooting on the Copeland Islands, at Strangford Lough, Foyle area and Carlingford Lough.

Clause 12, subsection 5

A statement in subsection 5 reads, “.....include references to conserving the diversity of such flora, fauna or habitat, **whether or not any or all of them are rare or threatened.**”

Proposed change – remove the statement “whether or not any or all of them are rare or threatened” from paragraph (5).

This statement leaves the interpretation open for the possibility of an MCZ being designated on ‘a whim’. Irrefutable evidence must be provided to prove the necessity of an MCZ before one is created.

Clause 12, subsection 7

‘The Department may have regard to any economic or social consequences of doing so.’

Proposed change - clause 12, subsection 7 – should be re-worded as follows –‘The Department **must** (as opposed to ‘may’) have regard to any economic or social consequences of doing so.’

Rural activities, for example, angling, wildfowling and shooting, provide many economic and social benefits to the surrounding area. To curtail these activities would be to unnecessarily penalise many people within the MCZ, and beyond.

Clause 13

Subsection 3 allows an MCZ to include an area of the seashore if necessary.

Proposed change – we recommend this clause be amended. It is presently unclear as to whether the seashore can be included in an MCZ and therefore, how significant this clause could potentially be.

Clause 14, subsection 6

(6) In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b).

Proposed change – this subsection needs to be removed from the clause, consultation is necessary with all key stakeholders prior to designation.

Clause 15

'be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.'

Proposed change - publication of orders – more clarification is required to ensure that all relevant personnel are informed i.e. publication in the national press.

Clauses 24 – 31 inclusive – byelaws

Proposed change - **these clauses need extensive revision, rewording and indeed the removal of some proposals altogether.** In particular, clause 24 *Byelaws for protection of MCZs*, gives severe cause for concern.

If clause 24 is left as it is, any area in the NI inshore region or **any other part of NI** would be applicable to byelaws, and the provisions within them i.e. it could prohibit people and vehicles from entering or disturbing an MCZ. This clause (as currently worded) has the potential to unnecessarily curtail legitimate rural activities.

Clauses 24, 25, 26 & 27:

Clause 24, subsection 8 – this subsection allows the making of different provisions for different cases.

Proposed change – remove this paragraph from the Bill.

We understand from perusing legislation already in place in England, that the inclusion of paragraph 8 within the Marine Bill could allow for the implementation of 'reference areas' and therefore has the potential to curb wildfowling, angling and other related, legitimate activities.

Clause 25 – Byelaws for protection of MCZs

Clause 25 requires the Department to carry out public consultation before making any byelaws. However, immediately after this, the Bill allows the Department to make byelaws urgently, without having to comply with normal consultation and publication requirements, and without confirmation by the Secretary of State.

Proposed change – to remove subsection 10; *"nothing in this section applies where the Department thinks that there is an urgent need to protect an MCZ"*, from the Bill. This would remove the ambiguity.

Clause 26 – this clause reinforces the need for key stakeholder consultation prior to designation.

Proposed change – subsection 1 should be amended to include the term 'after consultation'.

Clause 27 – (1) Clarification required as to *'any feature in an area in Northern Ireland if the Department thinks'...*

Proposed change – reword this statement.

A severe lack of clarification could lead to the Marine Bill having power to designate any part of Northern Ireland, regardless of whether it is part of the inshore region or not, an MCZ.

Department of Agriculture and Rural Development Submission

Corporate and European Services Division Central Management Branch

Alex McGarel
Clerk to the Committee for the Environment
Room 245
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Dundonald House
Ballymiscaw
Upper Newtownards Road
Belfast BT4 3SB
Tel: 028 9052 4331
Fax: 028 9052 4884
Email: joe.cassells@dardni.gov.uk

Our Ref:
Your Ref:
Date: 3 April 2012

Dear Alex

Your letter of 12 March refers.

NI Marine Bill – Impact on DARD Responsibilities

General

In principle DARD welcomes the Marine Bill as it should provide a framework in which sustainable development of the Marine environment can take place in a coherent manner that respects the interests of all those who undertake activities within it.

Fishing is a major activity in our seas and hence this response has been prepared by the Department's Fisheries and Environment Division. However our Rivers Agency has responsibility for coastal flood risk management, and therefore it also has an interest in the Bill.

Both Fisheries and Environment Division and the Rivers Agency have made contributions to the Department's responses to the Department of the Environment (DOE) during the course of the development of the Bill. Both are also represented on the DOE's Inter - Departmental Marine Co-ordination Group where there is opportunity for all Departments to exchange views with the DOE on Marine Bill policy. The Department has therefore been working closely with the DOE and other Departments in the development of the Bill to this stage.

The Environment Committee has asked DARD for specific comments on clauses relating to Marine Planning and Marine Conservation within the Marine Bill. These specific points, and others, are discussed in the following sections and the Department's position on these matters has been made known to the DOE during the development of the Bill.

Marine Planning

Clause 2: Marine plans for Northern Ireland inshore region

Subsection (3) (a) defines a marine plan and requires that a marine plan must be prepared in accordance with the process set out in Schedule 1. Schedule 1 Paragraph 4 specifically states that DOE must consult the other relevant Northern Ireland departments at key stages during the plan preparation.

The Department believes that this is a highly important requirement and vital to the development of an integrated and coherent Marine Plan that respects all activities in the Marine Area.

The Department has stressed at various times the need for consultation with the fishing industry as it is likely to be significantly impacted by increases in other marine activities. Transparency is vital if marine users are to have confidence in decisions that are made downstream. It is important that where possible integration and synergies in marine activities need to be explored in order that displacement of existing activities, such as fishing, are minimised. Planning must be strategic rather than piecemeal in order to avoid unintended consequences.

The Department has been kept fully involved during the development of the Bill and along with the Rivers and Loughs Agencies is represented on a DOE led Inter-Departmental Co-ordination Group at which areas of concern can be raised and discussed.

The Department has stressed the need to include Marine Conservation Zone planning into the overall Marine Plan. For example, since offshore wind farm developments will lead to the exclusion of fishing activity it makes sense to try to consider these as Marine Conservation Zones as well if you are trying to meet some nominal amount of sea area conserved. Such an approach may reduce the total area lost to fishing and other activities.

In relation to the Flood Management Policy Review it has been accepted that there is a need for a strategic overview of coastal flood risk and erosion. Rivers Agency's work under the EU Floods Directive will ensure that coastal flood risk will be managed going forward. However, this leaves the matter of coastal erosion to be addressed and the Agency continues to seek assurance that this requirement will be realised through the 'Marine Planning' process.

Subsection (3) (b) defines a marine plan and requires that a marine plan must state the policies of the relevant Northern Ireland departments.

This clause is important and will help the public to understand the role and functions of various departments and agencies. DARD policies are outlined in the DOE's recent consultation entitled "Draft Northern Ireland Marine Position Paper". This can be sourced at the following link.

http://www.doeni.gov.uk/index/protect_the_environment/natural_environment/marine_and_coast/marine_policy.htm>

Clause 4: Withdrawal of marine plans

This clause enables DOE to withdraw a marine plan after consultation with the relevant Northern Ireland departments.

We have no objection to this Clause. Whilst there is provision to amend a Marine Plan it may be appropriate to withdraw a Plan completely and replace it and this Clause will provide for that. Departments will have the opportunity when consulted to explore the rationale for complete withdrawal of a Plan.

Clause 6: Decisions affected by a marine plan

This clause makes provision about the effect which any appropriate marine plans are to have on the taking of certain decisions by a public authority.

Subsection (2) requires that a public authority give its reasons if making decisions which do not follow the marine plan.

Subsection (3) requires a public authority to have regard to any appropriate marine plan when taking any decision which relates to a function capable of affecting the Northern Ireland inshore region that is not an authorisation or enforcement decision.

Clause 6 appears reasonable and necessary for the delivery of a Marine Plan and its objectives and ensures that Departments cannot lightly disregard the requirements of a Plan. However it is vitally important that during the development of a Plan that the implications of

the Plan on Departmental decisions and authorisations are fully understood and explained. As with so much in this Bill it is not the framework set by the provisions of the Bill that may lead to difficulties but the detailed implementation thereafter.

Part 3: Marine Conservation Zones (MCZs)

Clauses 11 to 13: Designation of MCZs

The Department acknowledges that the process for designation follows closely that contained in the UK Marine and Coastal Access Act 2009 and DARD is broadly content with this.

It should be noted that should management measures adopted within an MCZ affect fishing opportunities enjoyed by other UK Fisheries Administrations and/or other Member States, consultation will be required with these Administrations and, in the case of the latter, with the European Commission. It is therefore especially important that DARD is involved at an early stage in the designation process in case such impacts are likely.

Clause 14 Consultation before designation

We have previously expressed our reservations that a requirement to consult with other Departments at key stages, similar to that provided for in relation to Marine Plans under Schedule 1 Paragraph 4, is not provided for MCZ designation. The DOE maintained that the consultation arrangements set out in Clause 14 are adequate. However we gained assurances from the DOE that final decisions on MCZ designations must come before the Executive due to the cross cutting nature of their effects. We are content with the designation process and consultation arrangements outlined in the Bill on the basis of this understanding.

As with Marine Planning the general provisions in the Bill with regard to designation are acceptable but difficulties may emerge once implementation begins. We would like to highlight one example. It is the Departments view that designation of MCZs by the DOE in the NI inshore region and designation of MCZs by the Secretary of State in the NI offshore region should be integrated and considered as part of one process. We have responded to DEFRA on the matter of proposed MCZs in the NI offshore region and stressed this need for integration. This submission is enclosed for your information as it gives a useful background about the potential issues in relation to sea fishing. DARD has devolved responsibility for sea fisheries in the inshore and offshore part of the NI zone, whereas DOE has delegated responsibility for marine nature conservation only in the inshore area.

There is a danger that by not integrating these designation processes and not considering other developments such as offshore renewable energy within a single local planning process, activities such as fishing may be excluded from areas inappropriately and may be excluded from a larger area than is necessary. The NI fishing industry holds approximately 80% of the fishing opportunities in the Irish Sea and is therefore likely to be more affected than most by lack of integration of Irish Sea marine plans.

Our understanding is that marine nature conservation is ultimately a reserved function and any MCZ designations require the confirmation of the Secretary of State. For example, Clause 14.6 of the Bill allows the DOE to introduce MCZs where it thinks there is an urgent need to protect an area, without consultation with others apart from the Secretary of State. Furthermore Clause 26(1) provides DOE with powers to introduce emergency byelaws without confirmation by the Secretary of State.

Clause 20: General duties of public authorities in relation to MCZs

This clause places a general duty on public authorities to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs. The duty only applies so far as is consistent with the proper exercise of a public

authority's functions and only where such functions may have a more than insignificant effect on the MCZ. If a public authority thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the DOE.

Subsections (4) to (8) provide that a public authority must inform DOE if it intends to carry out an activity which might significantly hinder the conservation objectives of the MCZ. Where a public authority has notified DOE the authority must wait 28 days before deciding whether to go ahead as planned.

The Department is content with the arrangements set out in subsections (4) to (8). They are reasonable and are similar to the arrangements in the UK Marine and Coastal access Act 2009.

It is however important that the DOE takes due consideration of the responses it receives when consulting public authorities and works with them to address particular concerns where a proposed designation is likely to cause an authority particular difficulty in exercising its functions.

Subsections (9) to (10) require a public authority to inform DOE when it considers that an offence (in relation to which it has functions) has occurred that will or may significantly hinder the achievement of an MCZ's conservation objectives.

We agree with the necessity of having a requirement to notify the DOE of "relevant events" (as worded in the Bill) that may hinder the achievement of conservation objectives.

However the Bill also expects authorities to be able to judge the risk of such relevant events hindering the achievement of a MCZ's conservation objectives. These would need to be explored with the DOE during the designation process and some form of guidance agreed for each site.

Subsection (11) requires public authorities to have regard to any advice issued by DOE.

The Department notes that in the UK Marine Act public authorities are required have regard to advice or guidance given by, an "appropriate statutory conservation body" rather than the a Government Department (the DOE). In England these bodies would include the Joint Nature Conservation Council and Natural England. We understand that in NI there is no equivalent to these expert independent bodies and that is the reason why guidance falls to the DOE.

Clause 21: Duties of public authorities in relation to certain decisions

This clause applies to all public authorities with responsibility for authorising applications for certain activities capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters.

Subsection (2) requires a public authority to inform DOE if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ.

Subsection (3) states that no authorisation may be granted until 28 days have passed since notice was given.

Subsections (5), (6) and (7) impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions are met. These conditions are: there is no other way to carry out the act which is less likely to hinder the objectives; the benefit of the act to the public clearly outweighs the risk of environmental damage; and the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.

Subsection (10) requires public authorities to have regard to any advice or guidance given by DOE.

The Department notes that Clause 21 places broadly similar duties on public authorities here as apply to authorities under Section 126 of the UK Marine and Coastal Act.

The Department notes as previously that in the UK Marine Act public authorities are required to notify acts that might affect conservation objectives, to an “appropriate statutory conservation body” rather than a Government Department (i.e. the DOE).

Clause 22: Advice and guidance by DOE

This clause confers powers and duties on DOE to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties.

Subsections (1) and (2) specify the issues on which advice or guidance may be given and allows it to be issued in respect of one or more MCZs and to one or more authorities. Advice and guidance may be issued more generally on MCZs.

The Department again notes that in the NI Bill advice and guidance will be given by the DOE whereas in the UK Marine and Coastal Access Act such advice will be given by the “appropriate statutory conservation bodies”.

Clause 23: Failure to comply with duties, etc.

This clause enables DOE to obtain an explanation if it thinks a public authority has failed to exercise its functions to further (or where permissible, least hinder), the conservation objectives, or failed to act in accordance with the guidance provided by DOE. This clause has effect even when the public authority did not initially request the advice or guidance.

This is a reasonable requirement and should allow the Department to justify its actions and how it might come to a different conclusion than the DOE. Once again, there is a difference from the UK Marine and Coastal Access Act because there are no statutory conservation bodies in NI and the DOE must seek this explanation.

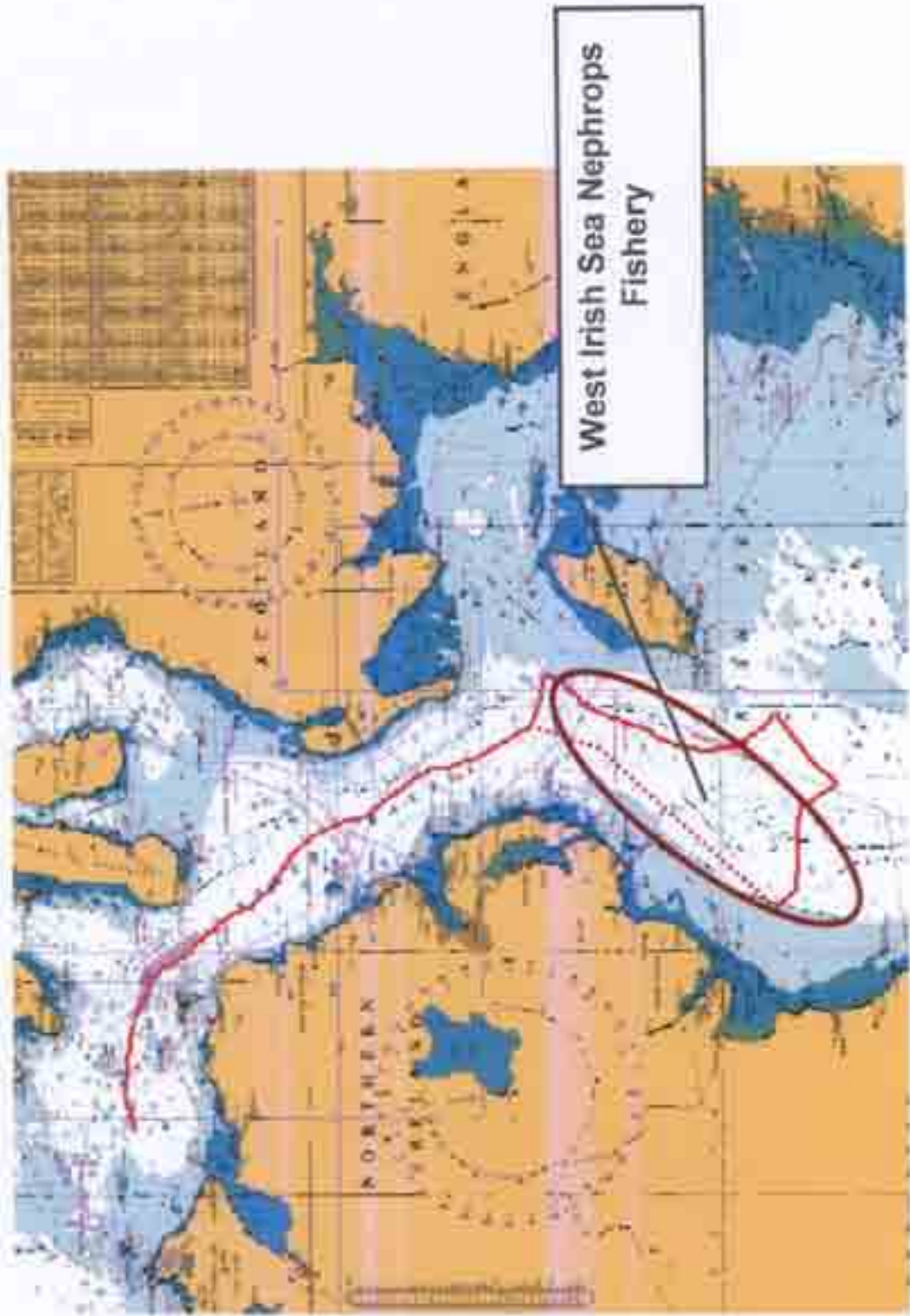
There does not appear to be any indication on the face of the Bill of what happens to the explanation received. There may be merit in the interests of transparency for requiring this information to be published.

Yours sincerely

Joe Cassells
Departmental Assembly Liaison Officer

Fishery Maps from DARD

Illustrative Chart Showing Location of West Irish Sea Nephrops Fishery



Illustrative Chart Showing “NI zone” and Marine Responsibilities in the NI “Inshore” and “Offshore” Regions



NI Inshore Region
Territorial Sea adjacent to NI (up to 12nm)
•DARD devolved fisheries responsibility
•DOE devolved marine planning responsibility
•DOE delegated marine conservation responsibility

NI Offshore Region
•DARD devolved fisheries responsibility
•DOE delegated marine planning responsibility
•SoS marine conservation responsibility

Response of the Department of Agriculture and Rural Development on Regional Project Recommendations for Offshore Marine Conservation Zones

1 General Comments

The comments that follow relate to the recommendations of the Irish Sea Conservation Zones Project.

We recognise the hard work and effort that was carried out to arrive at the current recommendations and the active involvement and commitment of the stakeholder representatives who participated in this process. We also accept the need for a network of MCZs in order to meet our international obligations to achieve good environmental status for the marine environment.

However, the Irish Sea is complicated by the number of Administrations that have responsibility for marine activities in the area and we are concerned that the recommendations made to DEFRA by the Irish Sea Conservation Zones Project are being made in isolation of developments elsewhere in the Irish Sea. In particular they may be implemented in advance of inshore marine planning and nature conservation powers being taken in NI and also independently of NI marine renewable energy developments, and indeed any similar plans in the South of Ireland. This carries the risk of failing to integrate these plans and ensuring that they are complimentary. This could result in environmental objectives being compromised and unnecessary disruption of marine activities that may have to adapt to the zones.

Two rMCZs lie within the Northern Ireland zone, and DARD has devolved responsibility for the management and development of commercial sea fisheries in this area and for fish processing that is dependent on Irish Sea fishing opportunities. We also own and manage the fishery harbours at Kilkeel, Portavogie and Ardglass on the East Down coast. The fish catching and processing sectors and ancillary businesses are significant employers in the East Down coastal area.

The two rMCZs that lie within the NI zone are South Rigg (rMCZ 6) and Slieve na Griddle (rMCZ 7). Both these rMCZs are actively fished by the NI fishing fleet operating out of fishing ports on the east coast of County Down. Since both zones include large areas of mud habitat and it is likely that management will include exclusion of bottom trawling, the major impact will be on vessels fishing for *Nephrops norvegicus* (prawns). Prawns accounted for 50.7% of the total value of fish landed into NI in 2010.

Apart from these zones the next most important zone for the NI fleet operating in the Irish Sea is the Mud Hole (rMCZ1). Again this includes large areas of mud habitat that is actively fished by the NI prawn fleet.

The remaining comments relate to the South Rigg and Slieve na Griddle zones.

2 Location

Within the South Rigg and Slieve na Griddle zones are sea mount habitats that we agree could be important for conservation. They also include significant areas of mud habitat that host *Nephrops*. Whilst we understand the arguments for providing protection for mud we would question whether this is the optimum location for protecting mud habitat with regard to achieving environmental objectives and minimising impacts on marine activities, especially commercial fishing interests.

The size and shape of the zones were significantly affected by Territorial Sea boundaries and it is conceivable that had these constraints been absent different locations or sizes might have been proposed.

For example the sea mount features extend beyond the arbitrary boundary and a different size and location might take in more sea mount and have less impact on commercial fisheries.

In conclusion, for MCZs 6 and 7 it may be more appropriate for NI Departments and stakeholders to agree MCZs for the western Irish Sea that would compliment both the DEFRA network and whatever MCZs NI wishes to designate within its Territorial Sea following adoption of the NI Marine Bill. This would also allow for the integration of offshore renewable energy sites in the NI Territorial Sea and possibly reduce any unnecessary impacts on marine activities.

Any proposals need to be supported with robust scientific justification.

3 Displacement

Displacement of the NI fleet could have a number of consequences. If the fleet fishes at its current level outside the zones there is risk that stock levels could be damaged. Currently the Irish Sea Nephrops grounds (ICES Area VII Functional Units 14 and 15) are fished sustainably at the Maximum Sustainable Yield (MSY) level.

If the MCZs resulted in exclusion of bottom fishing we could expect ICES to address the above issue by reassessing the stock available for fishing and conclude that Total Allowable Catch should be reduced in order to maintain fishing mortality at MSY.

Fishing in other areas such as the Celtic Sea, West of Scotland or the North Sea is unlikely to be an attractive or viable proposition for most vessels due to high fuel costs and/or the cost of acquiring fish quota for these areas.

4 Economic Impact

The draft economic impact assessment produced by the Irish Sea project team estimates an annual loss of bottom trawl landings from South Rigg and Slieve na Griddle of approximately £1.6m. Bottom trawling in this area can be assumed to be for Nephrops. Total landings of Nephrops into NI in 2010 amounted to £10.7m. Therefore the loss to the NI fishing industry is approximately 15% for these two areas alone excluding any landings into NI that may be lost as a result of restrictions placed on the Mud Hole zone in the East Irish Sea (estimated £1m/yr loss in bottom trawl landings), which would make the impact even greater.

It might be argued that vessels could make up this income outside the zones but for the reasons outlined under “displacement” this would not be sustainable in the long term.

DARD is currently seeking to address overcapacity in its nephrops fleet through a £4m vessel decommissioning scheme and due to the level of public funding involved the business case is being closely scrutinised by Department of Finance and Personnel NI. Should the scheme be approved it would remove a number of vessels with objective of releasing fishing opportunities to enable the remaining fleet to become more profitable and resilient. There is a risk that the MCZ proposals may necessitate consideration of further capacity reduction above what is currently envisaged.

Apart from the direct impact on the catching sector there will be impacts for shore based industry. The IS CZ Impact Assessment partly addresses this but does not appear to take account of “critical mass” effects. Among the questions that need to be answered are:

- Will a loss in landing on this scale result in closure of fish processing businesses?
- Will a loss in landings on this scale force DARD to restructure the NI Fishery Harbour Authority and possibly close one of the Fishery Harbours?
- What effect will the loss have on ancillary businesses such as net making, boat repair etc.?

Faced with a sizeable drop in fishing income we would expect the fleet to exert pressure for further rounds of fishing vessel decommissioning. By the time that decisions will be taken the

new European Maritime and Fisheries Fund will be in place. This Fund, as currently proposed, does not provide for public funding of fleet capacity reduction. We would therefore expect that such funding would have to come from national funds alone and that this would be subject to State Aid approval the outcome of which cannot be guaranteed. Finding funding for any additional scheme would put further strain on the NI Administration and there would clearly be a case for Westminster to fund this and possibly other costs for the NI Administration arising from the proposals.

5 Conclusion

In conclusion DARD's view is that decisions on locating zones that would affect NI devolved fishing opportunities, especially those in the Northern Ireland zone of the western Irish Sea, should not be taken in isolation from marine planning in the NI Territorial Sea, or without the full involvement and agreement of the NI Departments and NI stakeholders.

Department of Agriculture and Rural Development
Fisheries and Environment Division
March 2012

DRD Marine Bill Submission



Alex McGarel
Clerk to the Committee for the Environment
Committee Office
Room 245
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

CENTRAL MANAGEMENT BRANCH
Room 413c
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB.

Telephone: (028 905) 41140
Facsimile: (028 905) 40064
Email: alan.doherty@drdni.gov.uk

Your reference: ENV162
Our reference: 8b/3/2012

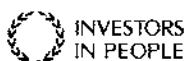
23 May 2011

Dear Alex

MARINE (NORTHERN IRELAND) BILL

Thank you for your letter of 12 March 2012 inviting the Department to submit evidence on the draft Marine Bill. I apologise for the length of time taken to provide this reply but the Department wished to consult with a number of third parties before making its response. Your letter sets out the particular clauses which we were invited to comment on and these are provided in the attached Annex.

Our Departmental interest is focused on the potential implications for our ports and harbour authorities and also on the Bill's relevance to the regulatory environment within which Northern Ireland Water (NIW) delivers water and sewerage services. Conceptually, the primary purpose of the Marine Bill, to set out a new framework for marine planning of Northern Ireland's seas, is welcomed by the Department. In this regard, however, it will be important that this framework seeks to balance and co-ordinate the planning of Northern Ireland's waters in a way that is fully cognisant of economic and social, as well as environmental considerations. Such a properly balanced approach will assure the



Department that our marine interests in relation to ports, navigation and coastal water treatment are addressed adequately.

Marine Planning

It is recognised that the proposed Bill establishes DOE as the lead Department in the preparation of a marine plan for all or part of the Northern Ireland inshore region. The inshore region overlaps with the area covered by terrestrial planning which extends to the low water mark. The strategic policy framework for development of Northern Ireland is set out within the Regional Development Strategy (RDS). The RDS is relevant to the development of a marine plan and it is therefore important that its provisions are taken into account as marine plans are prepared by DOE. This will ensure compatibility between a marine plan and any related terrestrial development plan. The Department therefore welcomes that the provisions to ensure that this happens are set out in the draft Bill.

Throughout the development of the draft Bill, DRD has consistently expressed the view that a proper balance must be struck between social, economic and environmental considerations to ensure that established marine interests to DRD in relation to ports or coastal waste water treatment are addressed adequately. In general, we are content that this would be the case. However, we do have some concerns over certain clauses contained in the draft Bill which we would seek some clarification on. These are set out in the attached Annex under Marine Planning.

Marine Conservation Zones

The Bill includes powers for DOE to establish Marine Conservation Zones (MCZs) to help protect nationally and locally important species and habitats. The Bill also provides DOE with powers to make byelaws to control activity within these Zones. Designation of these zones could have implications for the port authorities as a result of impact on shipping activities and for coastal waste water treatment by Northern Ireland Water.

The draft Bill is not explicit on how economic impacts will be properly taken into account during designation. However, we note the intention of DOE to develop guidance and expect to be fully involved in its development.

Sections 24 and 25 of the draft Bill provide for DOE to make byelaws for the purposes of furthering the conservation objectives within these zones. Amongst other things, these byelaws can provide for restricting movement, speed, or anchoring of vessels. We expect DOE to work closely with this Department on the development of guidance on the making of byelaws that will secure full consultation with our economic stakeholders.

The Department's commentary on the specific clauses of the Bill identified in your letter, are set out in the attached Annex.

I am copying this letter to the Clerk of the Committee for Regional Development.

This letter is likely to be fully disclosable under Freedom of Information.

Yours sincerely,



ALAN DOHERTY
Assembly Liaison Officer

Marine (Northern Ireland) Bill – Comments on Clauses**Part 2: Marine Planning**

Clause 2: Subsection (3) (b): The Department welcomes that the draft Bill includes provisions to ensure compatibility between a marine plan and any related terrestrial development plan. Under the Strategic Planning Order, development plans must be in general conformity with the Regional Development Strategy (RDS). The RDS is therefore relevant to the development of a marine plan and it is important that its provisions are taken into account as marine plans are prepared by DOE.

Clause 2 Subsection (8): states that 'if to any extent a policy stated in a marine plan conflicts with any other statement or information in the plan, that conflict must be resolved in favour of the policy'. We would be concerned that existing statute is, in some way, invalidated by this provision. It would be useful, therefore, for DOE to explain how this provision is expected to work in practice and how they are going to take cognisance of other established policies provided under statute in the marine environment.

Clause 4: Content / No comment.

Clause 6: Content / No comment.

Part 3: Marine Conservation Zones (MCZs)

Clause 12 Subsection (7): states '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.' DRD would have preferred that *Clause 12 (7)* be amended so the Department '**must**' have regard to economic consequences when designating MCZs. (Also see further comments below.)

Clauses 20 and 21: Content with the legislative requirements set out under these Clauses.

However, the Department is concerned that in establishing such Zones consideration of any economic consequences should be clearly taken into account to ensure the Bill is based on sustainable development principles. DOE is to develop detailed non-binding guidance which is to outline the process for engaging other Departments and public bodies to ensure that socio/economic impacts are fully considered. DRD expects to be engaged fully during the development of this guidance. We would expect that the guidance would draw out how separate and potentially conflicting functions, for example for the port authorities and Northern Ireland Water, are to be recognised in relation to conservation objectives which are being set for MCZs. The location and requirements of these MCZs could have significant impacts in respect to a body's long-term capital investment programmes.

Clause 22: Content / No comment.

Clause 23: Content / No comment.

Schedule 1 – Marine Plans: preparation and adoption

Paragraph 4: The requirement to consult with other relevant Northern Ireland Departments is welcomed.

Department of Enterprise, Trade and Investment Submission

Alex McGarel
Clerk to the Committee for the Environment
Environment Committee Office
Room 245
Parliament Buildings
Ballymiscaw
Belfast BT4 3XX.

22 May 2012

Dear Alex

Invitation to Submit Written Evidence on the Marine Bill

Thank you for your letter of 12 March and for the opportunity to submit evidence to the Environment Committee on the Marine Bill.

Cross departmental working

As you note DETI is responsible for a number of policy areas which relate to the marine environment, in particular offshore renewable energy, and we have been working closely with DOE over the last few years as respective work in this area has been developing.

DETI is represented on the DOE Inter departmental Marine Co-ordination Group (IMCG) which has been contributing to the major programme of work flowing from the UK Marine and Coastal Access Act 2009 to ensure the sustainable development of the marine environment. The UK wide Marine Policy Statement includes the shared vision across the UK administrations of having “clean, healthy, safe, productive and biologically diverse oceans and seas.” From a DETI perspective, our focus is primarily on the High Level Marine Objective within the Marine Policy Statement of achieving a sustainable marine economy.

In turn, DOE and the NIEA are members of our Offshore Renewable Energy Forum which advised DETI on the development of the Offshore Renewable Energy Strategic Action Plan 2012-2020 and will continue to advise on its implementation over the coming years. This cross fertilisation has been very effective and has ensured that the knowledge and experience of staff has been shared and the wide range of inter connected issues are brought forward for discussion and action as required.

As a member of the IMCG, DETI recently contributed to the DOE draft NI Marine Position Paper. DETI’s roles in relation to energy production and infrastructure development, undersea telecommunications cabling, tourism and recreation are set out in Chapter 3 of the Paper

www.doeni.gov.uk/consultation_on_draft_marine_position_paper

While this cannot address in detail all future potential DETI related projects coming forward within the marine environment, it does set out the overall range and nature of such developments and their importance to Northern Ireland’s sustainable economic development.

Offshore renewable energy development

The Committee has specifically asked about DETI as a “relevant NI department and /or public authority” and as the department responsible for consents under Article 39 of the Electricity (NI) Order 1992 in relation to offshore generating stations.

As noted above, DETI has been leading work over the last few years to develop Northern Ireland’s offshore renewable energy resources. Offshore renewables will not only contribute

to the Executive's target of 40% renewable electricity consumption by 2020 but will increase security of supply and offers significant opportunities for job creation through the associated business supply chain activity. The draft Offshore Renewable Energy Strategic Action Plan has been the subject of a Strategic Environmental Assessment and a Habitats Regulations Appraisal which identified the opportunity to develop up to 900MW of offshore wind and 300MW of tidal energy without significant adverse impact on the environment or other marine user. The Plan has recently been endorsed by the Executive and was published on 27th March

www.detini.gov.uk/ni_offshore_renewable_energy_strategic_action_plan_2012-2020__march_2012_.pdf

This work provided the framework for The Crown Estate, as owners of the seabed, to launch the first Offshore Renewable Energy Leasing Round in NI waters in December 2011. The Crown Estate is currently seeking bids from companies for the development a single offshore wind farm of 600MW off the South Down coast and multiple tidal energy projects up to 200MW around Rathlin Island and Torr Head.

DETI is not involved in this competitive tendering process which is managed by The Crown Estate who would hope to be in a position to award development rights in the autumn 2012. After which point, those successful companies would need to undertake detailed Environmental Impact Assessments of their projects to secure their marine licence from NIEA and electricity consents from DETI and the Utility Regulator. DETI and NIEA intend to meet those developers and discuss the requirements for stakeholder engagement as part of the licencing and consenting process. The Crown Estate has no consenting powers and will only grant a full lease to companies if they have gained the necessary licences and consents. It is considered that initiation stages of actual projects could commence from 2016/ 2017.

Marine licences and electricity consents

As this offshore renewable work has been developing, DETI and DOE/NIEA identified an administrative opportunity to streamline the processes associated with marine licences and electricity consents. Within respective legislative frameworks, DETI, NIEA and DOE Planning Service (in respect of any land based development arising from the offshore project) require three separate Environmental Impact Assessment Regulations to be met. It was agreed that a simplification of the administrative process would be desirable e.g. the submission of one Environmental Impact Assessment to meet the necessary requirements rather than three separate documents. In addition, specific guidance would provide clarity for all parties – developers, stakeholders and regulators and the ORESAP contains an action to develop streamlined administrative guidance for developers and officials during 2012-2013. Work is currently underway on a Memorandum of Understanding between DETI and DOE/NIEA to facilitate this issue.

The Special Procedures set out in Part 4 Clause 40 were discussed and agreed with DETI at the earlier drafting stage and are fully in keeping with the aim of streamlining the processes.

Marine Bill – Marine Plans and Marine Conservation Zones

The Committee has also drawn attention to the sections of the Marine Bill relating to the development of Marine Plans and the establishment of Marine Conservation Zones. DETI participated in the discussions at the IMCG on these issues both at the UK Marine and Coastal Access Bill stage and more recently as part of the development of the Marine Bill. We are content with the provisions that DOE is required to consult NI Departments at key stages in the development of marine plans and we understand the responsibilities of public authorities within the legislation.

DETI staff and stakeholders from the DETI related sectors, as noted above, participated in the recent DOE seminar on the development of the NI Marine Plan. The seminar focussed on the Statement of Public Participation to ensure full engagement in the process and was a

very useful start to the process of developing the NI Marine Plan. The Strategic Environmental Assessment which we undertook of our draft ORESAP researched and co-ordinated a significant volume of spatial data on the NI marine environment and the activities of other marine users. The subsequent publication of the Regional Locational Guidance in September 2011 has added to this knowledge. It was noted at the seminar that this work will be helpful to DOE as it takes forward the development of the NI Marine Plan.

The Committee referred to the duties falling to public authorities in Part 3 of the Bill in relation to Marine Conservation Zones (MCZs). Before any such designations, however, DOE is required to consult (Part 3, 14) and it will be essential for DOE to engage with Departments through the IMCG as they start the process of identifying possible MCZs. We note that in considering whether it is desirable to designate an area as an MCZ, DOE may have regard to any economic or social consequences of doing so (Part 3 12(7)). Such designations could have potential impacts on our offshore renewable energy plans and it is therefore critical that the statutory consultation takes account of all factors, including economic or social issues. We understand that impact assessments which will consider the costs and benefits to the public and private sectors, including marine industries, will also form part of the process when developing management and boundaries of MCZs to minimise impacts on marine interests. In addition, and in relation to the requirement on DOE to contribute to the creation of a network of MCZs across the UK (Part 3, 18), it will be important for DOE and other designating bodies in the UK to consider carefully the cumulative impacts of MCZ designations on sustainable economic development activity within the Irish Sea area to avoid the position where more areas are designated than required to the potential detriment of the offshore renewable energy and fishing sectors.

We will continue to engage with DOE and to encourage our stakeholders to ensure they contribute throughout the consultation and development processes for both the NI Marine Plan and Marine Conservation Zones.

I hope this is helpful and please let me know if the Committee has any questions.

David McCune
DETI Assembly Liaison Officer

Green Party Submission

Marine Bill: Committee stage

Submission of evidence to the Environment Committee on behalf of the Green Party

Prepared by Steve Agnew MLA, Mark Simpson and Gareth Ross Brown

If further information is required, please contact steven.agnew@mla.niassembly.gov.uk

Introduction

The Green Party welcomes the introduction of a Marine Bill. The bill's major goals of joined-up management of the marine environment and of enhanced marine nature conservation are to be commended. However, there is considerable scope to improve the bill as introduced. The main focus of this submission will be on ways in which the bill might be amended to better achieve its goals.

We first highlight a number of issues not addressed by the bill, whose inclusion would result in a more comprehensive piece of legislation for the marine environment or assist with the achievement of the objectives of joined-up marine management. We then examine the clauses of the bill as tabled and suggest a number of amendments.

Omissions

General duties

The overriding goal of marine management in Northern Ireland should be the sustainable development of our seas. However, the reference to sustainable development in Part 2 of the bill appears almost as an afterthought in clause 5(3)(b). In contrast, the Marine (Scotland) Act states at its outset that public authorities have a duty to further the sustainable development of the marine environment and climate change mitigation and adaptation. Similarly, the Marine and Coastal Access Act requires the Marine Management Organisation to carry out its functions in such a way as to contribute to sustainable development. Duties in respect of both sustainable development and climate change should be included in the Northern Ireland legislation, the latter due to the fact that the effects of climate change are widely predicted to be first felt in the marine and coastal environment (Fletcher, 2008; MC3, 2011). The wording of the sustainable development duty to include the protection and enhancement of the health of the marine area would also help ensure Northern Ireland complies with the duty in Article 1 of the Marine Strategy Framework Directive, to achieve good environmental status of all marine waters by 2020.

The Green Party requests that the Committee consider the following amendments to the Marine Bill:

After clause 1, insert new Part 2:

Part 2 – general duties

2. Sustainable development and protection and enhancement of the health of the Northern Ireland marine area. In exercising any function that affects the Northern Ireland marine 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 marine area —

(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.

In Schedule 1 paragraph 9, insert new paragraphs:

(c) The duty imposed by section 2 to in the way best calculated to further the achievement of sustainable development of the marine plan area.

(d) The duty imposed by section 3 to act in the way best calculated to mitigate, and adapt to, climate change.

Marine management authority

A central goal of the Marine Bill must be to balance all the sometimes competing uses of Northern Ireland's marine waters to achieve the maximum social, economic and environmental benefits. This will be most easily achieved if management of the marine environment is vested in a single authority. The Green Party concurs with NIMTF (2008) that this should take the form of a non-departmental marine management organisation (MMO). Such an approach would be most likely to deliver an holistic, consistent approach, reduced bureaucracy and relative political independence, while retaining accountability to the Assembly. Similar proposals for England and Wales in the Marine and Coastal Access Bill were regarded as uncontroversial and "a familiar regulatory pattern" (Lowther and Payne, 2009), with Appleby (2009) greeting the new MMO as an organisation with potential to "refocus marine management away from the previous isolated sectoral management."

Many of the arguments in favour of a non-departmental public body for environmental protection by the Review of Environmental Governance (2007) may be equally applicable to an independent marine regulator. Retention of regulatory functions within DOE would lead to concerns that past failures on the part of the Department to fulfil its regulatory remit in respect of the terrestrial environment (see Turner, 2006; Macrory, 2004) would be repeated in the marine environment. An MMO could also fulfil the function of providing independent advice on the management of marine conservation zones, a role assigned to Scottish Natural Heritage for Scotland (Marine (Scotland) Act s80), Natural England for England and the Countryside Council for Wales (Marine and Coastal Access Act s127) but absent from the Northern Ireland bill.

If the Executive maintains its opposition to an independent MMO, the creation of a single management authority within government, similar to Marine Scotland (a directorate of the Scottish Government), would at least have the advantage of consolidating the broad range of functions relevant to the management of the marine environment in a single body, although lacking the independence of an NDPB. Although the creation of Marine Scotland was achieved in the absence of specific provision in the Marine (Scotland) Act, this may have been facilitated by the non-departmental structure of the Scottish Government. In Northern Ireland, where the authority would potentially take on functions currently held by various departments, it may be necessary to legislate.

The Green Party requests that the Committee advise the Department to consider drafting the necessary amendments to the Marine Bill to facilitate the creation of a unified marine management authority, including the functions to be transferred.

Fisheries management

Parts 6 and 7 of the Marine and Coastal Access Act and part 8 of the Marine (Scotland) Act concern management of fisheries; at present, the Marine Bill makes no such provision. Failure to bring management of coastal fisheries within the scope of the Marine Bill would mean legislation with the goal of establishing a system for joined-up management of the seas would omit a key use. The green paper on reform of the common fisheries policy calls for greater integration of fisheries policy and wider marine policy. The UK-MSP Working Group includes ecosystem-based management among the objectives of marine spatial planning in the UK (Tyldesley, 2004); ecosystem-based management also forms a central pillar of the EU's marine strategy (de Santo, 2011). CoastNet (Conference 2003, reported by Tyldesley, 2004) states that ecosystem-based management requires sustainable management of all activities within a defined area.

The Green Party requests that the Committee advise the Department to discuss with the Department of Agriculture and Rural Development the necessary amendments to the Marine Bill to facilitate the inclusion of fisheries management in the Northern Ireland coastal zone.

Commentary on bill as tabled

Part 1

The Green Party has no objection to Part 1 as tabled.

Part 2

Clause 2(1) and (2) state that the department “may” prepare a marine plan for the Northern Ireland inshore region or any part thereof and “must seek to ensure” that any area covered by a marine policy statement is also covered by a marine plan. At the Environment Committee meeting of 19 April 2012, a departmental official stated that the bill would compel the Department to create a marine plan for the whole of the area covered by a Marine Policy Statement, ie the whole of the Northern Ireland inshore region. However, the wording at present does not represent an absolute compulsion. If it is the intention that the bill should require the creation of a marine plan for the whole of the area covered by the MPS, which the Green Party argues should be the case, the wording should be amended so as to remove any ambiguity.

Clause 2(5) states that the marine plan must be in conformity with the MPS “unless relevant considerations indicate otherwise.” However, there is no indication of what a relevant consideration might be. So as to limit the frequency and duration of future litigation, guidance on what constitutes a “relevant consideration” should be provided in the bill or in explanatory materials issued by the Department.

Clause 5: The relatively low priority afforded to sustainable development in the matters to be kept under review is discussed above and would be addressed by the inclusion of a new Part 2 as suggested.

Clause 6(2) states that a public authority that takes an enforcement or authorisation decision other than in accordance with the marine plan need only state its reasons for doing so. This is rather weak – the Green Party argues that the authority or the person being authorised to carry out (or avoiding enforcement action in respect of) an action not in conformity with the marine plan should be required to put in place measures to mitigate or compensate for any negative impact on another user group or the marine environment resulting from the action.

Clause 6(3) makes no requirement of a public authority that takes a decision other than an enforcement or authorisation decision that is not in conformity of the marine plan. At the very least, an explanation should be required.

Clause 7: The Green Party welcomes the requirement to report regularly on matters kept under review and on future plans in relation to marine planning, but questions why the requirement in clause 7(6) should cease to apply in 2030.

Clause 8(4) states that locus standi for judicial review of a marine plan or amendment thereof extends to “person[s] aggrieved” by the document. At the Environment Committee meeting of 19 April 2012, a departmental official stated that “only somebody who has been substantially prejudiced can take an action on procedural grounds,” but that “anybody” can challenge the plan in terms of its vires. The wording of the clause makes no such distinction. Even if the Department’s interpretation is accepted, this subsection would constitute a breach of the Aarhus Convention, Article 9(2) of which requires that environmental NGOs are allowed standing “to challenge the substantive and procedural legality of any decision, act or omission” in respect of the environment. The subsection should be amended accordingly.

Clause 8(4) further limits the grounds for judicial review of a marine plan to ultra vires or failure to comply with a procedural requirement. In the public law of the United Kingdom, there are four grounds for judicial review:

- illegality (usually because the authority acted ultra vires)
- impropriety (usually failure to comply with a procedural requirement)
- irrationality / Wednesbury unreasonableness (the decision was so unreasonable that it could have been reached by no reasonable decision maker in the circumstances)
- incompatibility with the European Convention on Human Rights

Clause 8(5) stipulates that leave for judicial review of a marine plan must be sought within six weeks of the publication of the document. This is less than half the normal period allowed at common law, which is three months.

Article 9(5) of the Aarhus Convention requires parties to “consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice” in environmental matters. In their current form, clause 8(4) and (5) erect additional barriers to access to justice and are therefore in manifest breach of the UK’s Aarhus Convention commitments.

The Green Party requests that the Committee consider the following amendments to the Marine Bill:

In clause 2(2), after “the Department must,” delete the words “seek to.” (This may also require amendment of clause 4 to require that, in the event of the withdrawal of a marine plan, a new plan is brought forward within a specified period of time).

Amend clause 6(2) to require mitigating or compensatory measures in respect of any damage caused to another user group or the marine environment as a result of authorisation of or lack of enforcement in respect of an action contrary to the marine plan.

After clause 6(3), insert:

(4) If a public authority takes a decision other than an authorisation or enforcement decision otherwise than in accordance with any appropriate marine plan, the authority must state its reasons.

Delete clause 7(8)

Amend clause 8(4) as follows:

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

(a) that the document is not within the appropriate powers;

(b) that a procedural requirement has not been complied with;

(c) that the document, or part of the document, is irrational

(d) that the document, or part of the document, is incompatible with a Convention right.

After clause 8(4), insert:

(5) The reference in subsection (4) to a person aggrieved by a relevant document includes –

(a) natural or legal persons affected or likely to be affected by, or having an interest in, the relevant document;

(b) non-governmental organisations promoting environmental protection.

Amend clause 8(5) as follows:

(5) Any such application must be made not later than 3 months after the publication of the relevant document.

Schedule 1

The Green Party broadly welcomes the provisions in Schedule 1, particularly those relating to public participation and the requirement in paragraph 10 for a sustainability appraisal. The only proposed amendment is that to paragraph 9 indicated above.

Part 3

Clause 12(1) lists reasons for designation of Marine Conservation Zones. The grounds for designation are more limited to those for Marine Protected Areas under the Marine (Scotland) Act. There may be a case for considering whether it should be possible to designate an MCZ on the basis of its historic or research interest, although it may not be necessary to specify distinct types of MCZ to do so. Appleby (2009) compares the Scottish provisions favourably to those for England and Wales in the Marine and Coastal Access Act, which the Northern Ireland bill more closely mirrors.

Clause 12(7) requires the Department to consider the economic and social consequences of designation of an MCZ when taking a decision on whether to do so. A decision to designate should be based solely on ecological criteria (or, if the proposed amendment to clause 12 (1) is accepted, historic, archaeological, cultural or scientific interest). This would not lead to environmental considerations being privileged above social and economic considerations as clauses 20 and 21 allow account to be taken of social and economic factors when a decision is taken on whether to carry out or authorise an action damaging to the protected features of the MCZ. Such an approach would be in keeping with that to the management of special areas of conservation designated under the habitats directive. The removal of subsection (7) would necessitate the removal of subsection (8), but this would be compensated for by the adoption of the suggested amendment to subsection (1)

The Green Party is content with the proposed designation procedure in clauses 14 to 17.

Clause 18: While it is desirable that a UK-wide network of protected sites should be created, there is a risk that the current wording of subsection (3) may lead to certain features not being protected in Northern Ireland waters because they are present elsewhere in the UK. The clause should ideally be amended to prevent this.

Clauses 20 and 21 repeatedly refer to “hindering the achievement of the conservation objectives stated for the MCZ.” While in line with the language in the Marine and Coastal Access Act and the Marine (Scotland) Act, this is relatively new legal language that will have to be clarified by the courts. The Department should provide strong guidance on its interpretation of the phrase so as to limit the extent of litigation as far as possible. Guidance

should also make clear that an action capable of significantly hindering the achievement of the conservation objectives of an MCZ need not take place in or immediately adjacent to the MCZ, but that the clauses refer to actions anywhere in the marine or terrestrial environment as long as it is reasonably foreseeable that they could hinder the achievement of the conservation objectives.

Clause 20 places a less stringent burden upon a public authority whose actions significantly hinder the conservation objectives of an MCZ than does clause 21 upon a private individual. It would appear to be more equitable as well as providing stronger protection to the MCZ if similar criteria to those listed in clause 21 (5), (6) and (7) were also applied to public authorities acting under clause 20. Although this would increase the cost to the public purse of carrying out such operations, the alternative – being allowed to carry out actions damaging to the MCZ without mitigating or compensatory measures – might be more costly if it resulted in failure to meet the duty in Article 1 of the Marine Strategy Framework Directive, namely that member states' seas should be of good environmental status by 2020. If this amendment is accepted, it is suggested that clause 23 should also be amended to make provision for retrospective mitigating or compensatory measures.

The Green Party welcomes the provisions for the making of byelaws in clauses 24 to 29, in particular those concerning the making of emergency and interim byelaws, and the level of maximum fine for the breach of byelaws in clause 30.

Clause 31: The Green Party welcomes the offences set out and the level of fines available, in particular the provision in subsection (5) requiring the court to have regard to any financial benefit resulting from the offence. In addition to any criminal penalty imposed, it is suggested that civil measures should be employed to ensure that any environmental damage is remedied to the maximum extent possible (enforceable undertakings) and that no financial gain results (variable monetary administrative penalty) (see Macrory, 2006). It may be the case that no amendment to the bill is necessary to achieve this, as Part 4 of the Proceeds of Crime Act and Part 3 of the Environmental Liability Regulations may already provide the necessary powers. However, the Department should ensure it is satisfied that this is the case – in particular, “surface water” for the purposes of the Environmental Liability Regulations is defined by reference to Annex 2 of the Water Framework Directive and it is by no means clear that this covers all marine waters.

Clause 32(4) provides a near-blanket defence against prosecution for Article 31 offences if damage to the MCZ was caused by sea fishing. There appears to be no objective reason to afford one user group a higher level of protection from prosecution than any other. It is arguably in the interests of the fishing community for MCZs to benefit from the intended level of protection, as this may provide opportunities for the improvement of scientific knowledge of fish populations and contribute to the recovery of depleted stocks in the area around the MCZ (see Bradshaw et al, 2001). If DARD (or a future marine authority with responsibility for fisheries management) considered that the benefit to the public of fishing in a manner likely to hinder the achievement of the conservation objectives of an MCZ would outweigh the harm likely to be caused, it could issue permits for such fishing in accordance with clause 21. Appleby (2009) sees “no accountable reason” for the equivalent defence in the Marine and Coastal Access Act.

The Green Party welcomes the assignment of enforcement powers to the Department by clause 36 and calls for the provision of sufficient resources for this purpose to the Environmental Crime Unit.

The Green Party is content with the repeals contained in clause 38.

The Green Party requests that the Committee consider the following amendments to the Marine Bill:

After clause 12(1)(c) insert:

- (d) features of historic or archaeological interest*
- (e) features of regional or national cultural significance*
- (f) features of special scientific interest*

After clause 18(3)(b) insert:

(c) that the features which are protected by the sites in the Northern Ireland inshore region represent the range of features present in that region

After clause 20(8) insert:

(9) Where the authority has given notice under subsection (5), it should only proceed with the act if it is satisfied that –

(a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,

(b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and

(c) where possible, the authority will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

(10) The reference in subsection (9)(a) to other means of proceeding with an act includes a reference to proceeding with it

(a) in another manner, or

(b) at another location.

After clause 23(2) insert:

(3) Where this section applies –

(a) the Department may recommend of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ, and

(b) the authority must provide an explanation in writing if it does not undertake, or make arrangements for the undertaking of, such measures.

Delete clause 32(4) and (5)

Part 4

The Green Party is content with clause 40.

Part 5

Clause 47(1) stipulates that Part 3 of the bill shall take effect on a date appointed by order. It would be desirable to enact this part of the bill at royal assent or as soon as possible afterwards. Any marine plan made in advance of the designation of MCZs may have to be revised once MCZs have been designated – it therefore makes practical sense to start this process as soon as possible. At the latest, Part 3 should be enacted by the end of 2015, due to the MCZs' potential contribution to the achievement of good environmental status for marine waters and the requirement in Article 5 of the Marine Strategy Framework Directive that a programme of measures for doing so should be in place by the end of that year and operational by the end of 2016.

The Green Party requests that the Committee consider the following amendment to the Marine Bill:

Amend clause 47(1) as follows:

(1) Part 3 comes into operation on such day or days as the Department may by order appoint, being no later than 31 December 2015.

Concluding remarks

The Green Party thanks the Committee for its consideration of this submission. The overall objective of the Marine Bill is to be welcomed, as are many of its provisions. We believe that adoption of the amendments proposed will result in a better piece of legislation that will ensure Northern Ireland's seas continue to provide economic, environmental and social goods for generations to come.

If clarification is sought on any point, please do not hesitate to contact steven.agnew@mla.niassembly.gov.uk.

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Gun Trade Guild NI Submission

David Robinson
Chairman
Gun Trade Guild N.I.
2 – 4 Kennel Lane
Newtownards
BT23 7HR
fireflyards1@o2.co.uk
Tel: 02891 - 812896

26 April 2012

FAO Alex McGarel
Room 245
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sirs

RE: Draft Northern Ireland Marine Bill

I write as Chair of the Gun Trade Guild NI (GTG NI) and in relation to NI Environment Committee's call for evidence on the draft NI Marine Bill.

The GTG NI is grateful for the opportunity to submit evidence to the Environment Committee in relation to the draft Bill and we are keen to work with the department on what we feel is a very important piece of legislation. However, the GTG NI believe that in it's current form, the Marine Bill has the potential to prohibit or severely restrict not only aspects of legitimate shooting sports but also the associated conservation work that goes hand in hand with sustainable shooting.

While the GTG NI welcomes any attempt to increase the level of protection given to rare or threatened Marine flora and fauna, we do not support the draft Marine Bill in its current format, given that shooting interests are not recognised. An independent study carried out in 2006 found that shooting sports contributed £45m annually to the NI economy and the sport provided the equivalent of 2100 full time jobs.

Given the Department's failure to recognise and accommodate legitimate activities such as wildfowling and the valuable conservation work carried out by people involved in such activity, the GTG NI feels that the Bill, in its current form, has the potential to significantly and negatively impact on a sport which has been a feature of coastal communities for generations. That being the case, then the Bill undoubtedly has significant potential to impact on the business interests of the GTG NI, in what is already a very difficult economic climate.

The GTG NI fully supports the position taken by the British Association for Shooting and Conservation (BASC) in that we have major concerns in relation to certain Clauses contained within the draft Marine Bill, which in the opinion of the GTG NI, are ambiguous and therefore open to misinterpretation and potential abuse.

The GTG NI is concerned that the legitimate rights and the cultural, social and economic worth of the NI wildfowling community has not been considered in the drafting of the Marine Bill. On a related issue we are also concerned that the province's shooting community, which numbers in the region of 61,500 firearm certificate holders, are not represented on the

current NI Marine Task Force, an organisation which has been campaigning for this Bill for some considerable time.

In relation to the draft Marine Bill, the GTG NI is concerned about a number of Clauses contained within the draft Bill, specifically:

Clause 2 – Marine Plans for NI Inshore Region

2(9) - A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

The GTG NI recommends that a marine plan should come into effect **21 days** after it has been published by the Department in accordance with Schedule 1.

A marine plan should come into effect only after an agreed period of time has elapsed and not on publication, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed. It is easier and much less disruptive to amend a marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan could be postponed.

Clause 8 – Validity of Marine Plans subsections 4 and 5

8(4-5) - A person aggrieved by a relevant document may make an application to the High Court.....

The GTG NI recommends that an alternative means of challenging a marine plan is provided, e.g. a path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to either the NI Environment Minister or the Secretary of State for NI.

The GTG NI feels that it is not acceptable for anyone challenging a plan to be forced to prove the plan's faults to the High Court in the first instance. An individual wishing to challenge a plan could be prevented from doing so due to the potential cost implications incurred from High Court action.

Clause 11 & 12 – Designation of MCZ's

With the agreement of the Secretary of State Clause 11(1) allows the Department to designate any area of sea, or any island in the sea, falling within the NI inshore region as an MCZ if it *“thinks that it is desirable to do so.”*

The GTG NI recommends that clause 11(1) be reworded – inserting the words “after consultation with key stakeholders, registered with the department”. If abused these Clauses could prohibit or seriously restrict wildfowling and access to wildfowling on or around the coast of NI.

Clause 12 – Grounds for Designating MCZ's

*12(5) – conserving marine flora, fauna or habitat **whether or not** any or all of them are rare or threatened.*

12(7) – in considering whether to designate an area as an MCZ, the Department may have regard to any economic or social consequences of doing so.

The GTG NI recommends that the Department **must** have regard to **cultural, social and economic** consequences and that ‘conservation of flora, fauna or habitat whether or not any or all of them are rare or threatened’ disregards the principles of sustainable use of such features.

The GTG NI seeks written assurance that any decision to designate an MCZ will be proportionate and based on good science and supported by evidence. Furthermore, the GTG NI contends that where the protection of flora and fauna is already served by legislation such

as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure. For example where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.

Clause 14 – Consultation before Designation

14(4) – *The Department must consult (a) the Secretary of State; and (b) any other persons who the Department **thinks are likely** to be interested in, or affected by, the making of the order.*

14(6) - *In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)*

The GTG NI recommends that the Department creates a register of interested stakeholders who must be consulted prior to any designation, even in urgent cases. The GTG NI recommends that those with shooting interests are included in any consultation process.

Clause 15 – Publication of Orders

15(3) - *‘.....be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.’*

The GTG NI recommends that the Department should be required to publicise their intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department..

Clause 24 – Byelaws for Protection of MCZ’s

24(2) - *Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region **or in any other part of Northern Ireland.***

The GTG NI requests a written explanation on why the words ‘any other part of Northern Ireland’ have been included under 24(2) as the introduction to the draft Bill and Part 1 of same categorically specifies and defines the area that this legislation is designed to protect, i.e. – the NI inshore region. The GTG NI asks what relevance a piece of legislation dealing with the NI inshore region has to any other part of Northern Ireland?

24(4) - *The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.*

The GTG NI believes that this provision has the potential to restrictively impact on the cultural, social and economic activities of many people particularly when the definition of ‘seashore’ contained within clause 39 is applied: “seashore” means (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity. Clause 24(4) could potentially extend the MCZ into land that has no direct influence on the marine features that the MCZ has been designated to protect.

24(5) - *Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.*

The GTG NI requests a written explanation on how the Department envisage administering such a scheme and what the financial implications would be both for the department and the applicant.

24(8) - *Byelaws under this section may make different provision for different cases, including (in particular): (a) different parts of the MCZ; (b) different times of the year; (c) different means or methods of carrying out any activity.*

The GTG NI is concerned that this wording allows the creation of higher protected areas without there being any requirement to justify the designation of such areas. The GTG NI requests a written explanation on why higher protected areas are needed, and where and how they will be created.

The GTG NI recommends that Clause 24 should be reworded in its entirety to reflect the legitimate interests of the wildfowling community.

Clause 25 & 26 – Emergency Byelaws

Whilst Clause 25 sets out the consultation process prior to making byelaws, it also makes provision for consultation to be waived in cases of ‘urgent need’. The procedure for enacting emergency byelaws is contained within Clause 26.

Whilst the GTG NI recognises that there could be necessity for emergency byelaws e.g. pollution incidents, the GTG NI recommends that there must be a form of emergency consultation prior to implementation and that a fast track system similar to the procedures for severe weather Special Protection Orders be established.

Clause 27 – Interim Byelaws

27(1) - *The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks: (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and (b) that there is an urgent need to protect the feature.*

The GTG NI is concerned that the wording ‘an area in Northern Ireland’ could be misconstrued to include areas that do not fall within the NI inshore region and the GTG NI recommends that this should be reworded to avoid confusion.

The GTG NI seeks written assurance that proposals for interim byelaws will be proportionate and based on good science and evidence and subject to consultation with registered stakeholders. Furthermore, the GTG NI recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ byelaws.

Clause 31 – Offences

31(2)(a-d) refers to ‘protected features’ – given that specific flora and fauna are already afforded protection under the Wildlife (NI) Order 1985, the draft Bill seeks to introduce another layer of protection that will be confusing and difficult to administer and could lead to fewer successful prosecutions than would otherwise be the case.

The GTG NI recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985, this should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict legitimate activities.

Clause 32 – Exceptions

32(1)(c) – *A person is not guilty of an offence under section 30 or 31 if the act which is alleged to constitute the offence was done in accordance with a permit issued by the Department (whether under section 24(5) or otherwise)*

The GTG NI seeks a written explanation of how the Department envisages administering such a scheme and what the financial implications might be.

Clause 39 – Interpretation

'Seashore' - (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity.

The GTG NI proposes that this part of the definition of seashore should be removed as this wording could allow inclusion of large expanses of land that have little or no impact on the marine features that this draft Bill seeks to protect.

The GTG NI is particularly concerned with the application of this definition to Clause 24(4) and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of this interpretation implies that an MCZ could in effect be extended through restriction/prohibition into any land adjoining the seashore; this raises the question - where would the MCZ stop?

The proposed interpretation of seashore could lead to severe negative impacts on landowners, user groups and other local businesses.

Clause 45 – Crown Application

This Clause ensures that there will be no exemptions for holders of Crown Estate leases. Many of our customers hold Crown Estate shooting leases and the GTG NI asks the Department to confirm that it has consulted with Crown Estate on this matter.

Schedule 1

Statement of Public Participation

Sch1 5(8)(a) - Definition of 'interested persons' – 'any person **appearing** to the Department to be **likely** to be interested in.....

The GTG NI proposes that the Department retain a register of interested persons who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons being excluded or overlooked.

In conclusion, the foregoing concerns have been raised by the GTG NI in a genuine bid to ensure that any future marine legislation is fit for purpose and inclusive of the cultural, social and economic aspirations of the community, especially wildfowlers, who depend upon and engage in sustainable management of the rich marine resources of Northern Ireland.

The GTG NI is content to let BASC NI represent the views of the GTG NI during any committee presentation.

Yours faithfully

David Robinson
Chairman
Gun Trade Guild NI (GTG NI)

Honourable Irish Society Submission

Dear Sir or Madam,

Draft Marine Bill: objections on behalf of The Honourable The Irish Society

The Honourable The Irish Society is the owner of shooting and fishing rights in the Lower Bann estuary and on the foreshore of parts of Lough Foyle. The Society leases such rights to sporting clubs, angling clubs and individual fishermen, and the income from this contributes to its river management costs and charitable grants. In principle, the Society wishes to see the marine environment more adequately protected from damaging or illegal activities, like any other responsible body, but it has strong reservations about certain parts of this Bill.

We would like to register the Society's strong objection to the wording of Clause 24 (Byelaws for protection of MCZs), in particular the proposals 3 (d), (e) and (f) which are particularly unacceptable.

We are informed that the organisations comprising the NI Marine Task Force that is lobbying for this Bill to be passed do not include any organisation that is representative or supportive of wildfowling and fishing, such as the BASC or Countryside Alliance Ireland. This omission is wholly unsatisfactory, and as a result the Society can not offer its support to this proposed legislation.

Sustainably managed wildfowling and fishing on estuarial and coastal waters in NI is a long established and entirely legitimate activity enjoyed by hundreds of ordinary people from all parts of the community. We believe the government should not be considering legislation influenced by a one-sided lobbying group to diminish or take these rights away.

I would be grateful if you will include this email in your consultation responses, and I confirm to me that this has been done.

Yours Faithfully,

Edward Montgomery

Representative (Ireland)
The Honourable The Irish Society
&
Director
Fish Mourne Ltd

54 Castleroe Road
Coleraine
Co. Londonderry BT51 3RL

Tel: 028 7034 4796
Mobile: 07876 477472

Institute for Archaeologists Submission

Institute for Archaeologists Evidence to the Northern Ireland Assembly's Committee for the Environment

1. Summary

- 1.1 The Institute for Archaeologists (IfA) fully supports the introduction of a comprehensive system of marine spatial planning for the waters around Northern Ireland and welcomes the Marine Bill as a chance fully to integrate cultural heritage into marine management. However, IfA is concerned that, in some respects (most notably in the failure to allow Marine Conservation Zones to be designated upon archaeological or historic grounds), this opportunity has not been fully grasped.

2. Introduction

- 2.1 The Institute for Archaeologists (IfA) is the professional body for archaeologists and related professions concerned with the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.
- 2.2 The IfA has over 3,000 members and more than 70 registered practices across the United Kingdom and abroad. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.
- 2.3 This submission has been compiled with the assistance of the IfA's Maritime Affairs Group, to which most professional maritime archaeologists belong. The Group exists to
- advance the practice of maritime archaeology by promoting professional standards for the management, conservation, understanding and enjoyment of the maritime archaeological resource
 - provide advice and commentary to the IfA on matters relating to maritime archaeology
 - aid in the development of professional guidelines and standards for the execution of maritime archaeological work
 - promote the training of archaeologists and others in maritime archaeological practice
 - facilitate the exchange of information and ideas about maritime archaeological and to communicate these to the wider profession.
- 2.4 In the last 5 years IfA (in its own right or as a member of the Built Environment Forum Scotland (BEFS)) has submitted evidence with regard to Marine Bills in the United Kingdom to Scottish Parliament's Rural Affairs and Environment Committee, Westminster's Joint Committee on the draft Marine Bill and the National Assembly for Wales' Sustainability Committee.

3. General

- 3.1 The coastal and marine areas of Northern Ireland's coast harbour a vast wealth of cultural heritage with a rich and diverse archaeological record spanning the last 9,000 years. These include materials ranging from prehistoric flint tools and log-boats to historic harbour installations, Second World War shipwrecks and coastal defences. Its social, economic and environmental value is recognised in the UK Marine Policy Statement adopted jointly by the Northern Ireland Executive and other UK administrations in 2011.

- 3.2 IfA strongly supports the introduction of marine spatial planning in Northern Ireland's waters in accordance with the high level marine objectives agreed by the Northern Ireland executive including, under the title 'promoting good governance', the objective that

'The use of the marine environment is spatially planned where appropriate and based on an ecosystems approach which takes account of climate change and recognises the protection and management needs of marine cultural heritage according to its significance.'

- 3.3 As such, consideration of the marine historic environment should be at the heart of plan-making and regulatory activity, but the failure to provide archaeological or historic grounds for designating a marine conservation Zone (MCZ) potentially undermines that objective. The inclusion of Historic Marine Protected Areas (HMPAs) in the Marine (Scotland) Act 2010 has demonstrated that such an approach is not only desirable but is also feasible.

4. Specific Comments

Part 2: Marine Planning

- 4.1 IfA welcomes the provisions relating to Marine Plans, and, in particular, the presumption in clause 6(1) as crucial components of an effective marine spatial planning system. The Institute further welcomes the express reference to characteristics 'of a historic or archaeological nature' in clause 5(4).

Part 3: Marine Protection

- 4.2 Although the reference to 'sites ... of historic or archaeological interest' is welcome in clause 12(8), this does not allow MCZs to be designated on historic or archaeological grounds. This is a significant omission which should be rectified. A further ground for designating an MCZ should be added after clause 12(1) as follows:

'12(1)B The Department may make an order under section 11 designating an area as an MCZ if it thinks that it is desirable to do so for the purpose of preserving a marine historic asset which is, or which it is satisfied may be, located in the area'

- 4.3 Marine historic asset should be defined as follows:

'For the purposes of this Part, a marine historic asset is any of the following—

(a) a vessel, vehicle or aircraft (or a part of a vessel, vehicle or aircraft),

(b) the remains of a vessel, vehicle or aircraft (or a part of such remains),

(c) an object contained in, or formerly contained in, a vessel, vehicle or aircraft,

(d) a building or other structure (or a part of a building or structure),

(e) a cave or excavation,

(f) a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity'

and a requirement inserted to identify preservation objectives for the asset and the area.

- 4.4 Furthermore, references to MCZs throughout the Bill should be replaced by references to Marine Protected Areas (MPAs) (as is the case in the Marine (Scotland) Act 2010) in order to make clear that such areas are not intended solely for the management and protection of the natural environment.

- 4.5 Consequential revision will also be required, for instance, to refer to 'conservation or preservation objectives' in clauses 20-22 and to deal with offences relating to marine historic assets.

5. Recommendations

- 5.1 IfA recommends that the Committee offers its support to the intentions of the draft Marine Bill to introduce a new system of planning and management in the Northern Ireland's marine zone.
- 5.2 IfA urges the Committee strongly to recommend that the Bill be amended to refer to MCZs as Marine Protected Areas and to include provisions allowing such areas to be designated on historic or archaeological grounds.

Irish Federation of Sea Anglers Submission

The Northern Ireland Marine Bill

Dear Committee,

The Irish Federation of Sea Anglers welcome the opportunity to make a contribution to the Committee on the proposals for our Marine Bill.

The IFSA are the officially recognised body throughout Ireland for Recreational Sea Angling and was founded in 1953. The IFSA organise and run International/Home international and national events as well as other competitions throughout Ireland.

Section 3, Bye Laws ,24 in the Marine Bill proposal is of great concern to the IFSA as access to our coast and estuaries is of paramount importance to RSA, including the collection of bait for the purpose of RSA, this could devastate RSA in many ways and we recommend this be looked at again in relation to RSA access and use. This also could hamper RSA tourism and associated jobs to NI which also has failed to be developed over decades by NITB.

The IFSA have for many years had conservation to the fore and have been operating sea angling competitions on a strict catch and release basis for both boat and shore and therefore have very little impact upon the Marine Environment.

We are concerned that the NI Marine Bill will encounter real difficulties in its current form and support the NIMTF in their drive to achieve an MMO for Northern Ireland which is the only way the complex needs for our Marine Environment can be achieved. A general UK interpretation of the requirements will miss the opportunity for Northern Ireland to protect fully our Marine Environment.

The various departments have demonstrated difficulties in working in an effectively collective way.

The IFSA took a full part in the Inshore Fisheries Review hosted by DARD and DCAL in 2006, the final result of nearly a years consultation and working groups resulted in the Inshore Fisheries Review recommendations. (see link below)

Not one RSA recommendation has been implemented!

http://www.dardni.gov.uk/index/publications/pubs-dard-fisheries-farming-and-food/review_of_inshore_fisheries_report.htm

DCAL tasked Price Waterhouse Cooper to carry out a survey into the socio-economic impact of recreational angling in Northern Ireland.(see link below)

Not one recreational recommendation has been implemented.

www.dcalni.gov.uk/economic_impact_of_angling_final_report_july

More recently DARD have commissioned AFBI to carry out yet another survey on RSA no doubt this too will join the above to gather dust on a shelf!

The point I am making is that neither DARD nor DCAL have the resources or will to act upon the recommendations from the consultations regarding recreational angling in general, how could they and other departments possibly deal with the new demands of the NI Marine Bill.

The best option is to have an MMO to tailor the specific needs of our Marine resource.

The PWC identified over 5,000 RSA's in NI, this figure is low as many RSA are affiliated to any organisation.

In 2005 PWC stated that the net domestic economic impact in NI was £20.7 Million per year supporting 778 full time jobs.

PWC also identified the best case projections for 2015 were £64.8 Million per year supporting 2,464 full time jobs.

There is enormous unfulfilled RSA tourism possible for NI but access to the RSA needs to be maintained and protected.

In 2005 PWC figures showed tourism angling generated £1.8 Million per year with projections for 2015 at £6.6 Million.

In total recreational angling could be generating for NI, £71.4 Million per year every year at least! This figure could well be exceeded if we were to start to do what is needed to promote all forms of recreational angling in NI.

Garry Gregg
IFSA

Email: garry.gregg@ntlworld.com
Mob; 07505101166

Larne Lough Wildfowling and Conservation Submission

From: John McDermott [mailto:JohnMcDermott@pipelineni.com]

Sent: 25 April 2012 10:09

To: Lo, Anna

Cc: MICHAEL@finlaym.fsnet.co.uk; j.morrow80@ntlworld.com; Colin McCune

Subject: draft marine Bill

Hello Mrs Lo

I am contacting you considering your position of chairperson of the environment committee and I trust that you will ensure that all members of the committee are made aware of my and I am certain if they are made aware of this issue the wider shooting and wildfowling fraternity concerns.

I wish to express my concern at the content of the Draft proposal and in particular Clause 24. This together with the fact that the task force assigned to deal with this issue has made no consideration or provision for wildfowling activities at the various sites throughout NI. I have grave concern in that as a responsible wildfowler for some 30 years I will find the legitimate rights of myself and wildfowlers alike will be unjustifiably curtailed on the decision of a working group who have as far as I can ascertain made no consideration to consult or include the shooting and in particular the wildfowling fraternity.

I note in the task force website the support of the RSPB, Wildlife trust, National trust, WWF, WWT and the friends of the earth amongst others who are worthy associations in their own right but are such that they have no consideration for opinions other than their own and have shown time and again that they do not consider my and many others legitimate activity of shooting and in particular Wildfowling as being worth consideration.

In conclusion I would again stress my concerns as detailed above and ask that my legitimate concerns are made known to all members of the committee and acted on accordingly. It should be noted that a draft bill that is put in place without the input and consideration of all concerned is morally wrong and in all likelihood less than legal.

Thankyou

John McDermott

54 Knockagh Rd
Newtownabbey
Co Antrim
Bt36 5BP

02890851556
07966333980

Larne Lough Wildfowling & Conservation association

Marine Conservation NI Submission

The Environment Committee/Northern Ireland Marine Bill

Dear Sir/Madam 20th April 2012

We are grateful for the opportunity to comment on the Northern Ireland Marine Bill.

Marine Conservation Northern Ireland has been founded to strive to ensure we have a thriving sustainable marine environment capable of supporting a wealth of diversity in our seas.

We support the NIMTF in their submission to the Marine Bill, the only exception to this being the stipulations in clause 24 section 3, this is too open and could allow complete exclusion to anglers who have enjoyed the open access to our marine and who have so little impact on the marine environment to be considered negligible.

Anglers are the eyes and ears of the marine and have a very strong conservation view, catch and release is the norm.

We are currently in discussions with a local aquarium and NIEA with a view to using their overspill of new born stocks of thornback rays to be re-introduced back into the marine environment where they were once plentiful. These rays currently must be destroyed as an amendment is required to the aquariums zoological license.

Both the aquarium and NIEA are enthusiastic about this as there are many species which could do with such help under the ICUN directive for re-introductions to the wild.

It is our intention to include local schools in this project when releasing the baby rays back to the wild.

We believe it is essential to monitor fully how these rays are doing and have full support from Inland Fisheries Ireland who have stated they will be happy to provide the suitable micro tags.

In addition to this many sea anglers routinely tag and record then release rays, sharks etc and provide that data to either the Scottish tagging group or IFI.

We will be setting up a full programme for tagging and data collection of all elasmobranchs in our waters and will partner the IFI in this.

The N.I Marine Bill identifies MCZ's which will have the authority to prevent any activity or access to certain areas.

We require access to various areas to collect this data by capturing these fish to record them, this is only achievable by anchoring often in deep water.

We would ask the Committee to allow access to the MCZ's to Marine Conservation NI to enable us to carry out this much needed scientific research work.

Kind Regards

Nigel Hamilton
www.marineconservationnorthernireland.co.uk
Email; mcnl@hotmail.co.uk

National Federation of Fishermen's Organisations & Anglo-Northern Ireland Fish Producers' Organisation Submission



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

Northern Ireland Marine Bill

Evidence Submission to the Northern Ireland Assembly Environment Committee

27th April 2012

Introduction

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

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

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

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

Part 2: Marine Planning

- 1. Clause 2: Marine plans for Northern Ireland inshore region [page 3]**
- 2. Clause 6: Decisions affected by a marine plan [page 3]**
- 3. Clause 8: Validity of a marine plan [page 4]**

Part 3: Marine Protection

- 4. Clause 12: Grounds for designation of MCZs: Conservation Objectives within Conservation Orders: (2)(b) [page 5]**
- 5. Clause 12: Grounds for the designation of MCZs: Clause 12, subsection (7) and associated Explanatory and Financial Memorandum: Trade-offs between humanistic and ecological considerations [page 6]**
- 6. New clause: Duty to assess, manage and mitigate impacts upon existing activities resulting from the designation of Marine Conservation Zones (MCZs) [page 8]**
- 7. Clause 14: Consultation before designation [page 9]**
- 8. Clause 17: Review of Orders [page 9]**
- 9. Clause 24: Byelaws for the protection of MCZ's [page 9]**

Part 2 Marine Planning

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

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

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

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

.....

(c) with existing activities.

2. Clause 6: Decisions affected by a marine plan

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

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

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

3. Clause 8: Validity of a marine plan

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

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

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

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

Part 3 Marine Protection

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

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

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

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

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

(2) The order must state-

....

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

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

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

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

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

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

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

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

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

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

This issue is also critical to:

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

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

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

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

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

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

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

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

Furthermore, important rights to fish will also be surrendered.

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

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

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

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

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

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

(a) economic interests,

(b) social interests,

(c) the environment within the protected area,

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

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

7. Clause 14: Consultation before designation

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

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

(4) (a) The Department must consult-

....

(b) the relevant Northern Ireland Departments.

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

8. Clause 17: Review of Orders

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

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

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

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

[change present clause 17 to 17 (3)]

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

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

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

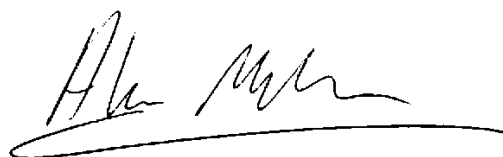
(5) In furthering the conservation objectives stated in an MCZ, byelaws under this section shall have regard to any social, economic or ecological consequences of the displacement of marine activities from the area where the byelaw has effect.

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

NFFO and ANIFPO
27th April 2012



Dale Rodmell
Assistant Chief Executive
NFFO



Alan McCulla
Chief Executive
ANIFPO

National Trust Submission

NI Marine Bill Call for Evidence – National Trust response April 2012

Introduction and background to the National Trust

The National Trust welcomes the opportunity to submit comments to the Environment Committee on the proposed Northern Ireland Marine Bill.

The National Trust is Northern Ireland's largest conservation and environmental charity, and we are committed to the protection of Northern Ireland's natural, built and cultural heritage, through ownership and the provision of public access. The Trust has the support of 4 million members across England, Wales and Northern Ireland, including 56,000 members here in Northern Ireland.

The Trust has a particularly strong interest in coastal and marine areas of Northern Ireland, where our ownership and management includes sites such as Portstewart, Giant's Causeway, Carrick-a-Rede, White Park Bay, Murlough Bay and Cushendun on the North coast; Portmuck and Skernaghan on Island Magee; Ballymacormick, Orlock and Ballyquintin on the Ards Peninsula; many islands and large areas of foreshore and coast in Strangford Lough; and Murlough NNR and Mourne Coastal path in Co Down.

The Trust's perspective on the issues raised in the Northern Ireland Marine Bill is based on:

- Our statutory purpose of conserving and promoting access to the nation's natural and cultural heritage in perpetuity – we are a steward of special and fragile places for ever, with decisions taken for long term public benefit. We are actively involved in the management of the only Marine Nature Reserves in the NI - Strangford Lough: our significant experience of coastal management and use – we have decades of expertise in understanding and managing risks and undertaking our conservation work through the 'management of change', working with natural processes wherever possible i.e. the publication of our "Shifting Shores" booklet.
- Our significant business interests and contribution to tourism in NI including our protection of important natural and cultural coastal landscapes.
- Our public communications and engagement at local, regional and national levels, indirectly through the media and directly through interpretation and events at our sites – we have the potential to reach millions of people and promote greater understanding of the importance of a high quality marine and coastal environment.
- Our partnerships, with local communities, neighbouring coast/land owners other organisations and agencies – we actively want to learn from others and share our own experience and to manage our sites within their wider coast and marine context.
- Our extremely successful Neptune campaign which has not only helped us acquire and manage stunning stretches of coastal land but has helped raise the profile and importance of our coastal and marine environments to millions of people.

The National Trust is a member of the Northern Ireland Marine Task Force and we strongly endorse and support the comments submitted by NIMTF and we would ask you to take those into consideration alongside this response – NIMTF comments are in the main not repeated here.

General Comments

The National Trust would like to see more specific references and mechanisms around issues concerning the Land and Sea Interface.

Seascapes

The special qualities of coastal landscapes are derived in no small way from the intimate relationship with the marine environment. The connections are numerous and diverse, with social and economic as well as environmental dimensions. These include:

- ecological connections for example nesting and feeding birds use both land and sea; seals use feeding grounds and resting banks;
- natural processes in the marine environment (erosion, deposition and sediment transport) impact on the form of the coast;
- there are strong connections economically and socially, with local communities deriving their livelihood from fishing, tourism and recreational use of the waters adjacent to these areas, often with access from the shore;
- people's enjoyment of the coastal scene from land are further elements of the connection between land and sea; and
- there are strong cultural heritage and historic connections between land and sea.

Some of our AONBs already include seascapes and this should be reflected in the Marine Bill. The National Trust contributed to the recent consultation on enabling legislation for National Parks and we would like to ensure that the Marine Bill includes mechanisms to incorporate seascapes in any proposed National Park developments.

Coastal Change

The issue of coastal change and its management is becoming increasingly important and will require a more strategic approach going forward. We are concerned that this issue is not adequately addressed at present. The NI Marine Bill needs to ensure that the mechanisms are there to manage coastal change effectively in social, economic and environmental terms. Northern Ireland does not have any Shoreline Management Plans and we strongly believe that they would be an extremely important mechanism with which to manage coastal change. In addition to delivering better coastal management Shoreline Management Plans would also deliver better consistency of approach to marine planning between Northern Ireland and the UK. There also needs to be more detailed mechanisms to ensure that the terrestrial and marine plans are effectively integrated in terms of implementation and enforcement on the coast.

Inter-tidal Harvesting

The unregulated harvesting of inter-tidal shellfish has long been a concern in many of our coastal areas and particularly in Strangford Lough with reports clearly demonstrating that this inter-tidal shellfish harvesting is on a scale well beyond individual use. Harvesting causes disturbance to ecology and can impact on ASSI, SAC and SPA features of the inter-tidal zone. The proposed NI Marine Bill should include mechanisms to regulate and control this activity.

Coastal Access

While the UK Marine and Coastal Access Act 2009 has enabled interlocking marine legislation for marine activities and establishment of DOE as the authority responsible for development of marine plans there is no reference to the issue of providing greater coastal access in Northern Ireland. While we understand that the legislation for access is different in NI it does not mean that coastal access should be ignored. For example under the MCA Act Wales has just opened 870 miles of coastal path.

Reference should be made in the bill to the Biodiversity duty on all government departments in the exercising of government functions in the marine environment.

Governance

The National Trust is concerned how the practical inter-departmental responsibilities will be managed to effectively deliver the functions of the Bill. We would strongly support the NIMTF position that the structure most capable of effectively dealing with the practical implementation of a NI Marine Bill would be a NI Marine Management Organisation.

The National Trust 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 effective as possible. We strongly support and fully endorse the comments, amendments and recommendations submitted by the Northern Ireland Marine Taskforce.

Phil Davidson
Wildlife & Countryside Adviser
National Trust
Rowallane House
Saintfield
Ballynahinch,
Co. Down BT24 7LH
Tel: 028 97512352: Mob: 07818077227

27 April 2012

Neil Galway QUB Submission

From: Neil <ngalway02@qub.ac.uk>
Sender: Neil Galway <ngalway02@qub.ac.uk>
Date: Fri, 27 Apr 2012 13:18:59
To: <anna.lo@allianceparty.org>
Reply-To: <ngalway02@qub.ac.uk>
Subject: What the sea means to me

Dear Alasdair McDonnell MLA, Michael McGimpsey MLA, Anna Lo MLA, Jimmy Spratt MLA

The NI Marine Bill, which was finally introduced to the NI Assembly in February is the most important marine legislation in Northern Ireland's history and it is vital to get it right. The bill needs to fully protect our precious marine environment and to ensure that there are sufficient powers to ensure that the marine resources of our local waters are managed and developed sustainably for generations to come.

I support the work of the Northern Ireland Marine Taskforce. I agree with the points that they have made around a number of crucial issues concerning the bill.

A successful Act will put nature first by introducing effective measures to protect our marine heritage; such as highly protected areas. We must take the steps that will secure a future for our marine environment in a way that benefits nature and humanity.

Nature is struggling to survive – it needs our help. Will future generations look back and ask why we did so little to protect and nurture our seas when we had the chance?

I am asking you to support the bill and I would particularly support affirmative action on the following. We need ensure that we have:

- A local, ecologically coherent, network of Marine Conservation Zones, including highly protected areas, that will protect our seas from harmful human activity
- An overhaul of our failed local marine governance model with a single authority such as a NI Marine Management Organisation
- The timing of the Marine Spatial Plan - the blueprint for how we use our seas— and the selection of Marine Conservation Zones need to be synchronised and integrated

I support these measures do you?

I would ask that you respond to this letter by writing to me and letting me know your views on these issues.

I look forward to your response

Yours
Neil Galway
QUB

Northern Ireland Council for Voluntary Action Submission

Committee for the Environment
Committee Clerk
Room 245
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX



Dear Alex McGarel

26 April 2012

FAO the Committee for the Environment in relation to the Marine Bill call for evidence

NICVA (Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides over 1,000 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole.

NICVA works to achieve progressive social change, based on equality and equity, working through a community development approach, to empower local communities to pursue their own needs and agendas.

NICVA welcomes the creation of a Northern Ireland Marine Bill and the opportunity to contribute to that. It should be clear from the outset that NICVA has been a long term advocate for a Marine Act and this has formed a key part of NICVA manifestos, including most recently in the 2011 manifesto which calls for Government to:

"Introduce a Northern Ireland Marine Act and establish an independent marine management organisation. Put in place legislation which integrates all sectors of marine activity so that there is minimum disruption and damage to marine wildlife?"

NICVA member organisations are involved with the Northern Ireland Marine Taskforce (NIMTF) who has expert knowledge and expertise in this area. However there are a number of specific issues which NICVA would like to highlight in relation to the proposed Bill which we feel the committee should give careful consideration to:

- The Bill should ensure that the **Marine Spatial Planning Process** and **Marine Conservation Zones** are integrated and synchronised. Failure to synchronise these could lead to environmental damage, it is logical that planning for the future of our seas should be informed by which areas need to be conserved. We therefore urge that these currently separate processes be tied together.
- The Bill in its current form provides for **Marine Protected Areas** in the UK as a whole; however it does not guarantee protection for the Northern Ireland inshore region. The NI Marine Bill should create a network of MPAs for the local Northern Ireland Inshore region.



Northern Ireland Council
for Voluntary Action
31 Duncannon Gardens
Belfast BT15 2GB

Tel: 028 9087 7777
Fax: 028 9087 7799
Minicom 028 9087 7776

Email info@nicva.org
Web www.nicva.org
www.communikn.org

mark@nicva.org

- Reading of the Bill raises the issue of how the practical inter-departmental responsibilities will be managed. During the development of their Marine Bills, UK administrations have reviewed their respective marine management arrangements, NICVA notes that no such review is proposed in Northern Ireland. As outlined in the 2011 Manifesto, NICVA believe that an **independent marine management organisation** would be the best way of ensuring the necessary cohesive and consistent approach to the implementation, management and delivery of any Marine Act.
- The NI Marine Bill is the most important piece of marine legislation in our history and has long lasting implications. The environment is one of Northern Ireland's most important assets. Making the correct decisions about its future and how it is managed can bring about positive change to the health and wellbeing of our citizens as well as our economy. With that in mind NICVA feel that the Bill should take the opportunity to outline an **overarching purpose and vision** for what the Bill can and will achieve. This will assist in providing direction for government and in communicating to the general public how important this issue is.

NICVA is grateful for the opportunity to respond to the Committee's Marine Bill Call for Evidence and hopes our comments are helpful. We look forward to seeing the results of the process.

Yours sincerely



Lisa McElherron
Head of Public Affairs

Northern Ireland Environment Link Submission



The proposed Northern Ireland Marine Bill

Comments by

**Northern Ireland Environment Link to the Northern Ireland
Assembly Committee for the Environment**

27 April 2012

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 55 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be happy to do so.

Prof Sue Christie, Director
Northern Ireland Environment Link
89 Loopland Drive
Belfast, BT6 9DW
P: 028 9045 5770
E: Sue@nienvironmentlink.org
W: www.nienvironmentlink.org

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Welcome and Background

Northern Ireland Environment Link (NIEL) welcomes the opportunity to submit comments to the Environment Committee on the proposed Northern Ireland Marine Bill. As a member of the Northern Ireland Marine Taskforce (NIMTF) NIEL states its support for the views expressed by the NIMTF in their submission to the Environment Committee on the proposed Bill.

General Comments - Omissions from the Bill

There are a number of important omissions from the Bill that cause us concern:

- Unlike the Scottish Marine Act, the proposed NI Marine Bill does not have an overarching aim or general duty against which the provisions and actions taken under the Bill can be assessed. Within the Scottish Act it is a requirement that Ministers and Public authorities: *...must act in the way best calculated to further the achievement of sustainable development...* and *...must act in the way best calculated to mitigate and adapt to climate change...* We believe a similar requirement should be at the core of a NI Marine Bill.
- The bill as currently proposed provides the legal framework for creating a network of marine protected areas (MPAs) designed to improve the UK Marine Area. We believe the Bill must create a network which improves the Northern Ireland inshore waters as well as contributing to the improvement of the wider UK Marine Area. The NI Marine Bill should, like the other UK administrations, include a specific clause that enables the creation of highly protected Marine Conservation Zones (MCZs).
- We believe that it is important that there is integration and synchronisation of the MCZ and MSP processes. Failure to do so could lead to environmental damage as planning for the future use of our seas should be informed by which areas need to be conserved.
- When considering their respective Marine Bills, each of the other UK administrations took the opportunity to review their marine management structures. We note that the proposed NI Marine Bill does not make provision for such a review. NIEL would strongly support the NIMTF position that the structure most capable of effectively dealing with the practical implementation of a NI Marine Bill would be a NI Marine Management Organisation.

Comments on specific clauses of the Bill

NIEL fully endorses the specific comments and suggested amendments submitted by the Northern Ireland Marine Taskforce.

The Northern Ireland Firearms Dealers Association

Mr Derek Beattie
The Northern Ireland Firearms 39, Main St,
Ballycarry, Carrickfergus,
County Antrim
BT38 9HH

26 April 2012

FAO Alex McGarel
Room 245
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sirs

RE: Draft Northern Ireland Marine Bill

I write as Chair of the Northern Ireland Firearms Dealers Association (NIFDA) and in relation to the Environment Committee's call for evidence on the draft NI Marine Bill. The NIFDA is the largest gun trade association in Northern Ireland and we have members in all six counties.

The NIFDA welcomes the opportunity to submit evidence to the Environment Committee in relation to the draft Bill which we feel is a very important piece of legislation, as it has significant potential to impact on the business interests of the NIFDA, in what is already a very difficult economic climate.

While the NIFDA welcome and support any attempt to increase the level of protection for marine life and biodiversity, we do not support the Marine Bill in its current format, as we feel that the Department has failed to recognise shooting interests and the contribution that the sport makes to the NI economy in the drafting of the Bill.

The NIFDA fully supports the position taken by the British Association for Shooting and Conservation (BASC) in that we have major concerns in relation to certain Clauses contained within the draft Marine Bill, which in our opinion are ambiguous and therefore open to misinterpretation and potential abuse.

The NIFDA feel that the legitimate rights and the cultural, social and economic worth of the NI wildfowling community has not been considered in the drafting of the Marine Bill. On a related issue we are also concerned that the province's shooting community, which numbers in the region of 61,500 firearm certificate holders, who contribute in the region of £45m annually to the NI economy, are not represented on the current NI Marine Task Force, an organisation which has been campaigning for this Bill for some considerable time.

In relation to the draft Marine Bill, the NIFDA is very concerned about a number Clauses contained within the draft Bill, which we feel have significant potential to impact negatively on the shooting community. We feel that this situation is totally unacceptable, as any legislation that has a negative impact on shooting sports would ultimately have a detrimental impact on the business interests of our members:

Clause 2 – Marine Plans for NI Inshore Region

2(9) - *A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.*

The NIFDA recommends that a marine plan should come into effect **21 days** after it has been published by the Department in accordance with Schedule 1.

A marine plan should come into effect only after an agreed period of time has elapsed and not on publication, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed. It is easier and much less disruptive to amend a marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan could be postponed.

Clause 8 – Validity of Marine Plans subsections 4 and 5

8(4-5) - *A person aggrieved by a relevant document may make an application to the High Court.....*

The NIFDA recommends that an alternative means of challenging a marine plan is provided, e.g. a path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to either the NI Environment Minister or the Secretary of State for NI.

The NIFDA feel it is not acceptable for anyone challenging a plan to be forced to prove the plan's faults to the High Court in the first instance. An individual wishing to challenge a plan could be prevented from doing so due to the potential cost implications incurred from High Court action.

Clause 11 & 12 – Designation of MCZ's

With the agreement of the Secretary of State Clause 11(1) allows the Department to designate any area of sea, or any island in the sea, falling within the NI inshore region as an MCZ if it *“thinks that it is desirable to do so.”*

The NIFDA recommends that clause 11(1) be reworded – inserting the words “after consultation with key stakeholders, registered with the department”. If abused these Clauses could prohibit or seriously restrict wildfowling and access to wildfowling on or around the coast of NI.

Clause 12 – Grounds for Designating MCZ's

12(5) – *conserving marine flora, fauna or habitat **whether or** not any or all of them are rare or threatened.*

12(7) – *in considering whether to designate an area as an MCZ, the Department **may** have regard to any economic or social consequences of doing so.*

The NIFDA recommends that the Department **must** have regard to **cultural, social and economic** consequences and that ‘conservation of flora, fauna or habitat whether or not any or all of them are rare or threatened’ disregards the principles of sustainable use of such features.

The NIFDA seeks written assurance that any decision to designate an MCZ will be proportionate and based on good science and supported by evidence. Furthermore, the NIFDA contends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure. For example where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.

Clause 14 – Consultation before Designation

14(4) – *The Department must consult (a) the Secretary of State; and (b) any other persons who the Department thinks are likely to be interested in, or affected by, the making of the order.*

14(6) - *In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)*

The NIFDA recommends that the Department creates a register of interested stakeholders who must be consulted prior to any designation, even in urgent cases. The NIFDA recommends that those with shooting interests are included in any consultation process.

Clause 15 – Publication of Orders

15(3) - *‘.....be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.’*

The NIFDA recommends that the Department should be required to publicise their intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department.

Clause 24 – Byelaws for Protection of MCZ’s

24(2) - *Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region **or in any other part of Northern Ireland.***

The NIFDA requests a written explanation on why the words ‘any other part of Northern Ireland’ have been included under 24(2) as the introduction to the draft Bill and Part 1 of same categorically specifies and defines the area that this legislation is designed to protect, i.e. – the NI inshore region. The NIFDA asks what relevance a piece of legislation dealing with the NI inshore region has to any other part of Northern Ireland?

24(4) - *The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.*

The NIFDA believes that this provision has the potential to restrictively impact on the cultural, social and economic activities of many people particularly when the definition of ‘seashore’ contained within clause 39 is applied: “seashore” means (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity. Clause 24(4) could potentially extend the MCZ into land that has no direct influence on the marine features that the MCZ has been designated to protect.

24(5) - *Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.*

The NIFDA requests a written explanation on how the Department envisage administering such a scheme and what the financial implications would be both for the department and the applicant.

24(8) - *Byelaws under this section may make different provision for different cases, including (in particular): (a) different parts of the MCZ; (b) different times of the year; (c) different means or methods of carrying out any activity.*

The NIFDA is concerned that this wording allows the creation of higher protected areas without there being any requirement to justify the designation of such areas. The NIFDA

requests a written explanation on why higher protected areas are needed, and where and how they will be created.

The NIFDA recommends that Clause 24 should be reworded in its entirety to reflect the legitimate interests of the wildfowling community.

Clause 25 & 26 – Emergency Byelaws

Whilst Clause 25 sets out the consultation process prior to making byelaws, it also makes provision for consultation to be waived in cases of ‘urgent need’. The procedure for enacting emergency byelaws is contained within Clause 26.

Whilst the NIFDA recognises that there could be necessity for emergency byelaws e.g. pollution incidents, the NIFDA recommends that there must be a form of emergency consultation prior to implementation and that a fast track system similar to the procedures for severe weather Special Protection Orders be established.

Clause 27 – Interim Byelaws

27(1) - The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks: (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and (b) that there is an urgent need to protect the feature.

The NIFDA is concerned that the wording ‘an area in Northern Ireland’ could be misconstrued to include areas that do not fall within the NI inshore region and the NIFDA recommends that this should be reworded to avoid confusion.

The NIFDA seeks written assurance that proposals for interim byelaws will be proportionate and based on good science and evidence and subject to consultation with registered stakeholders. Furthermore, the NIFDA recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ byelaws.

Clause 31 – Offences

31(2)(a-d) refers to ‘protected features’ – given that specific flora and fauna are already afforded protection under the Wildlife (NI) Order 1985, the draft Bill seeks to introduce another layer of protection that will be confusing and difficult to administer and could lead to fewer successful prosecutions than would otherwise be the case.

The NIFDA recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985, this should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict legitimate activities.

Clause 32 – Exceptions

32(1)(c) – A person is not guilty of an offence under section 30 or 31 if the act which is alleged to constitute the offence was done in accordance with a permit issued by the Department (whether under section 24(5) or otherwise)

The NIFDA seeks a written explanation of how the Department envisages administering such a scheme and what the financial implications might be.

Clause 39 – Interpretation

‘Seashore’ - (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity.

The NIFDA proposes that this part of the definition of seashore should be removed as this wording could allow inclusion of large expanses of land that have little or no impact on the marine features that this draft Bill seeks to protect.

The NIFDA is particularly concerned with the application of this definition to Clause 24(4) and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of this interpretation implies that an MCZ could in effect be extended through restriction/prohibition into any land adjoining the seashore; this raises the question - where would the MCZ stop?

The proposed interpretation of seashore could lead to severe negative impacts on landowners, user groups and other local businesses.

Clause 45 – Crown Application

This Clause ensures that there will be no exemptions for holders of Crown Estate leases. Many of our customers hold Crown Estate shooting leases and the NIFDA asks the Department to confirm that it has consulted with Crown Estate on this matter.

Schedule 1

Statement of Public Participation

Sch1 5(8)(a) - Definition of 'interested persons' – 'any person **appearing** to the Department to be **likely** to be interested in.....'

The NIFDA proposes that the Department retain a register of interested persons who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons being excluded or overlooked.

In conclusion, the foregoing concerns have been raised by the NIFDA in a genuine bid to ensure that any future marine legislation is fit for purpose and inclusive of the cultural, social and economic aspirations of the community, especially wildfowlers, who depend upon and engage in sustainable management of the rich marine resources of Northern Ireland.

As BASC trade members, the NIFDA is content to let BASC NI represent the views of the NIFDA during any committee presentation.

Yours faithfully

Derek Beattie
Chairman
Northern Ireland Firearms Dealers Association (NIFDA)

Northern Ireland Local Government Association Submission



Sean McCann
Assistant Clerk
Environment Committee
Room 247
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

26th April 2012

Dear Sean,

RE: MARINE BILL

Thank-you for your letter dated 12th March 2012 seeking NILGA's views on the proposed Marine Bill. NILGA is pleased to be able to have an opportunity to comment on this consultation and we trust that our comments will be taken into account when developing the final legislative proposals.

Please be aware that this response is offered in draft form, as final endorsement by NILGA members will not take place until considered by the NILGA Executive on Friday 11th May 2012.

General Overview

NILGA welcomes the introduction of the Bill and the strategic approach to marine activity particularly given competing demands between industry and the environment in our seas. NILGA fully supports the need for practicable environmental protection and encourages the sustainable development (in terms of environmental, economic and social) approach that has been proposed. A joined up approach across a broad cross section of Government Departments and Agencies can only be of benefit to the long-term management of our marine waters.

It is noted that the fishing industry has some reservations regarding the Bill and would recommend that a balanced approach is taken to marine development. It is recommended that the views of the fishing industry relating to fishing activity patterns, flexibility in the fleet structure and long-term importance of food security are all key areas that the industry has raised and it is important that these views are taken onboard as part of the consultation process.

Furthermore, an over-arching purpose should be included, against which decisions and actions may be addressed and monitored. The Marine (Scotland) Act 2010, for example, requires sustainable development of the marine area and also to mitigate against climate change.

The draft Bill currently refers to creating a network of marine protected areas to improve the UK Marine Area. However, there should be a requirement on the Department to declare Marine Conservation Zones for the Northern inshore region. In addition, the NI Bill should include the provision for highly protected MCZs.

Northern Ireland Local Government Association (NILGA)
Unit 5B Castlereagh Business Park, 478 Castlereagh Road, Belfast, BT5 6BQ.
Tel: (028) 90798972 Fax: (028) 9079 1248 Email: office@nilga.org Website: www.nilga.org

Connectivity

NILGA would encourage full connectivity between Marine Plans and Local Areas plans within to maximise the effectiveness of strategic planning within local communities.

Resourcing

NILGA is keen to ensure that marine legislation is effectively enforced in Northern Ireland, by the relevant regulators working together to ensure that any 'gaps' are addressed and that government resources are used in the most efficient way possible. There is a critical need to ensure the adequate resourcing of regulation, and full support for enforcement, that no change to structures will address. It is the experience of NILGA that enforcement of environmental legislation in general is woefully underfunded, to the extent that regulation of certain issues does not occur to a satisfactory level.

Impact on Councils

District Council have a number of queries around implementation of the Bill. There is ambiguity around compliance for public authorities and enforcement for MCZs. For example, section 6 (1) states, "*A public authority must take any authorisation or enforcement decision in accordance with any appropriate marine plan, unless relevant considerations indicate otherwise*". Guidance on what is meant by 'relevant considerations' is sought in this regard.

Furthermore, section 6 outlines that, "*A public authority must have regard to any appropriate marine plan in taking any decision – which may affect part of the Northern Ireland inshore region, but is not an authorisation or enforcement decision*". There is a need for clarity on 'must have regard' and the implications of this.

Additionally, it is not clear what the impact for post-reform councils will be as a result of the Marine Bill and changing council functions. NILGA would welcome clarity from either the Department or the Committee on this matter. It will be vital to initiate early discussions with local government regarding any potential functions transferring post 2015. NILGA would reiterate the point that any transfer of functions to councils must be properly managed, adequately resourced, and strategically planned, in full consultation with local government.

Timeframes

There are concerns around the timeframes for the designation of MCZs and the Marine Spatial Planning process. The Bill should contain specific timeframes to ensure these are aligned and also contain provisions to ensure the integration between MCZs and Marine Spatial Planning.

Marine Management Organisation

NILGA is aware of the ongoing debate regarding the need for a Marine Management Organisation to oversee all marine policy. NILGA does not have a position on this issue, but will be raised as an item of business at the NILGA Executive on 11th May 2012. Should NILGA have any further comments to make on this matter, they will be forwarded to the Committee immediately thereafter.

Local authorities, particularly those with coastal boundaries are keen to ensure that their views can help in shaping a Marine Position Paper and look forward to receiving further information on this issue as it progresses.

If the Committee wishes to engage further with Councils on specific issues within the Marine Bill, NILGA is content to participate and assist the Committee in this call for evidence.

Should you wish to discuss any of the issues highlighted above further, please contact my colleague, Claire Bradley (c.bradley@nilga.org) in the NILGA offices.

Yours sincerely,



Derek McCallan
Chief Executive

Disclaimer: The Northern Ireland Local Government Association (NILGA) endeavours to ensure that the information contained within our website, policies and other communications is up to date and correct. We do not however, make any representation that the information will be accurate, current, complete, uninterrupted or error free or that any information or other material accessible from or related to NILGA is free of viruses or other harmful components. NILGA accepts no responsibility for any erroneous information placed by or on behalf of any user or any loss by any person or user resulting from such information.

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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- Key areas of concern for the NI Marine Bill
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 - Marine Governance Brief
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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 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

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>

2 DEFRA A climate change risk assessment for Northern Ireland. (2012). http://www.climateinthernireland.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

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

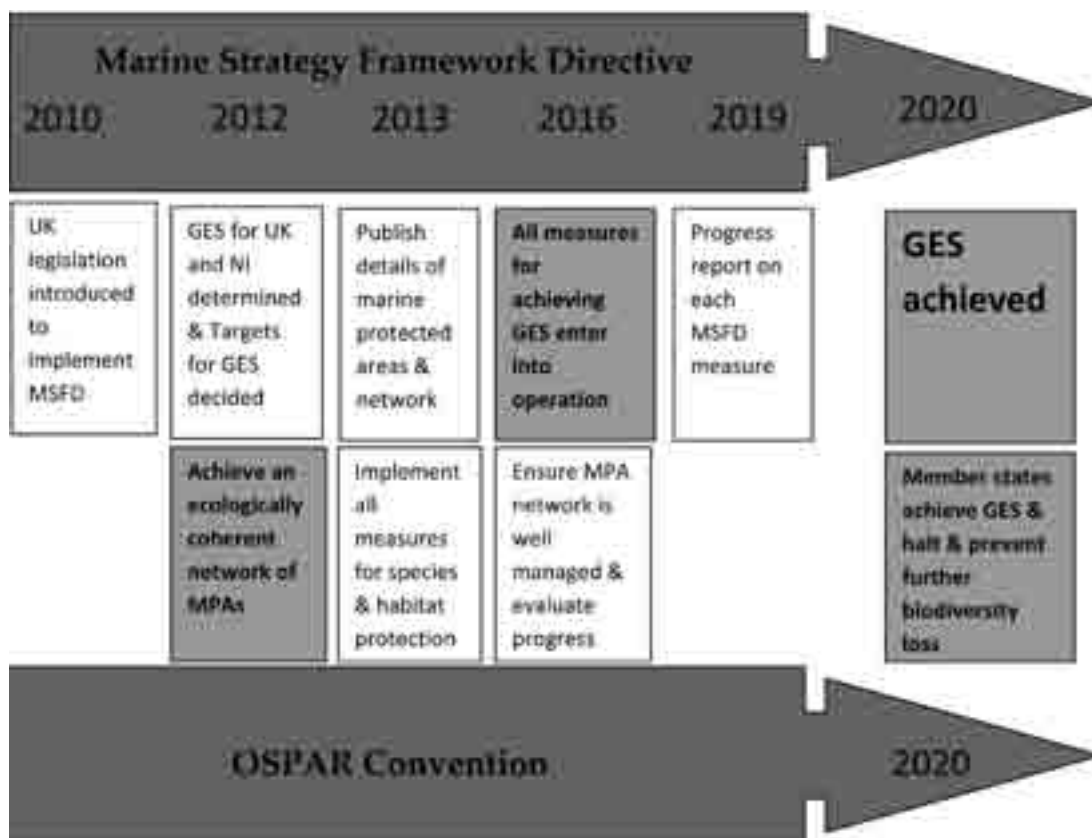
International and EU drivers of the Marine Bill

The Northern Ireland Marine Bill is being driven by a combination of International, European and UK commitments to achieve two key targets. The OSPAR⁶ 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.

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

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



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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.

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

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

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.climateinthernireland.org.uk/resources/climate_change_risk_assessment_ni_2012.pdf

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 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.

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

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 FOCl 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 Department) led.		Yes (see here) ¹⁴	Yes,	Consultation on marine protected areas currently 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

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).

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 policies. 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

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

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**.

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	<p>The draft Marine Bill (the “Bill”) fails to identify an overarching 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):</p> <p><i>(2) Sustainable development and protection and enhancement of the health of the Northern Ireland inshore region area</i></p> <p><i>In exercising any function that affects the Northern Ireland inshore region area under this Act—</i></p> <p><i>(a) the Department, and</i></p> <p><i>(b) public authorities</i></p> <p><i>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.</i></p> <p><i>(3) Mitigation of and adaptation to climate change</i></p> <p><i>In exercising any function that affects the Northern Ireland inshore region area under this Act, the Climate Change Act 2008 or any other enactment—</i></p> <p><i>(a) the Department, and</i></p> <p><i>(b) public authorities,</i></p> <p><i>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.</i></p>
Extent of NI Inshore Area	s1(5)	<p>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</p>

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

Subject Matter	Provision Number	Comments & Suggested Amendments
Part 2 – Marine Plans		
Requirement to produce Marine Plans	s2(1)	<p>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.</p> <p>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;</p> <p><i>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.</i></p> <p>This provides a greater level of certainty that marine plans covering all of the NI inshore waters will be brought into effect.</p>
Marine Plan to be in conformity with MPS	s2(5)	<p>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”</p> <p>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:</p> <p><i>(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)</i></p>
Withdrawal of Marine Plan	s4	<p>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.</p> <p>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 only allow for withdrawal where a replacement has been published (i.e. the new marine plan effectively revokes the former).</p> <p><i>(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.</i></p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Review of Marine Plans	s5	<p>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):</p> <p><i>“Subject always to the general duties set out at Part 1 (6) and (7)....”</i></p> <p>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.</p>
Relevance of Marine Plans to decision-making	s6(1)	<p>Requires a public authority to take any authorisation or enforcement decision in accordance with any appropriate marine plan “unless relevant considerations indicate otherwise”.</p> <p>See comments on s2(5) above in relation to clarification on the scope and meaning of “relevant considerations”</p>
Requirement to have regard to Marine Plans	s6(3)	<p>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.</p> <p>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);</p> <p><i>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</i></p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Challenges to validity of Marine Plans	s8 s9	<p>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.</p> <p>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.</p> <p>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 <i>Wednesbury</i> unreasonableness, or for that matter, failure to take into account material considerations, both of which are important elements of judicial review challenges.</p> <p>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.</p> <p>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.</p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Challenges to validity of Marine Plans	s8 s9	<p>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.</p> <p>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.</p>
Part 3 – Marine Conservation Zones		
Designation of MCZs	s11(1)	<p>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:</p> <p><i>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.</i></p>
MCZs	s12(1)	<p>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;</p> <p><i>(d) features of historic or archaeological importance</i></p> <p>We would also recommend that the Scottish example of ‘Research and Demonstration Marine Protected Areas’ be followed.</p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Grounds for designation of MCZs	s12(1)	<p>For the reasons set out above, this should be amended to read;</p> <p><i>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...</i></p>
Grounds for designation of MCZs	s12(7)	<p>Replace the current s12 (7) as s12(9) and insert a new s12(7) as follows:</p> <p><i>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)).</i></p> <p>This would reflect the wording of the Scottish Act, and allow for MCZ designation to fulfil international targets for an ecologically coherent network.</p>
Grounds for designation of MCZs	s12(8)	<p>Rename the existing clause in the bill s12(10) and replace this with</p> <p><i>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</i></p> <p>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</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Grounds for designation of MCZs	s12(9)	<p><i>[s12(7) in current version of Bill] amend as follows:</i></p> <p><i>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.</i></p> <p>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.</p> <p>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;</p> <p>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</p>
Grounds for designation of MCZs	s12(11)	<p>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:</p> <p><i>12 (11) The Department must—</i></p> <p><i>(a) prepare and publish guidance setting out scientific criteria to inform consideration of whether an area should be designated a MCZ, and</i></p> <p><i>(b) have regard to such guidance in exercising their functions under section 11.</i></p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Consultation on MCZs	s14(3)	<p>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:</p> <p><i>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</i></p> <p>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.</p>
Publication of orders	s15(3)	<p>Section 15 (3) (a) should also be amended as above in section 14(3)</p>
Designation of MCZs	s18	<p>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 <i>“the Northern Ireland inshore region in combination with the other areas forming the UK Marine Area</i></p> <p>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:</p> <p><i>(d) that the network includes highly protected sites</i></p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Duties of public authorities regarding MCZs	s20	<p>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.</p> <p>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.</p> <p>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).</p> <p>Accordingly, we would suggest the following amendments:</p> <p><i>(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 –</i></p> <p><i>(a) the protected features of an MCZ;</i></p> <p><i>(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent</i></p> <p><i>(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.</i></p> <p>...</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Duties of public authorities regarding MCZs	s20	<p><i>(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.</i></p> <p><i>(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.</i></p> <p>[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:</p> <p><i>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.]</i></p>
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)	<p>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.</p> <p>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.</p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Decisions relating to MCZs	s21(7)	<p>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.</p> <p>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;</p> <p><i>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</i></p> <p>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?</p> <p>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;</p> <p><i>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.</i></p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Failure to comply with duty	s23	<p>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.</p> <p>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”.</p> <p>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:</p> <p><i>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></p> <p><i>(i) compensate the person aggrieved by the failure;</i></p> <p><i>(ii) discharge the duty where that is still possible;</i></p> <p><i>(iii) undertake measures to remediate the damage caused where such remediation is possible; or</i></p> <p><i>(iv) where remediation is not possible to undertake such measures of direct environmental benefit to MCZs as the Department shall direct</i></p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Offences - byelaws	s30	<p>We welcome the imposition of offences for breaches of byelaws, but would question whether a maximum fine of £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:</p> <p><i>(2) A person who is guilty of an offence under this section is liable;</i></p> <p><i>(a) on summary conviction to a fine not exceeding level 5 on the standard scale</i></p> <p><i>(b) on conviction on indictment to a fine</i></p> <p><i>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.</i></p> <p>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).</p>
Offences	s31	<p>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.</p> <p><i>As noted above we consider that the offence of “disturbance” must also be included within subsection (2) (a);</i></p> <p><i>(2)(a) intentionally or recklessly kills, injures or disturbs any animal in an MCZ which is a protected feature of that MCZ”</i></p> <p>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.</p> <p>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.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Exceptions and defences	s32(4)	<p>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.</p> <p>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.</p> <p>We suggest amending this Section 32(4) as follows:</p> <p><i>(4) It is a defence for a person who is charged with an offence under section 31 to show that—</i></p> <p><i>(a) the act which is alleged to constitute the offence was—</i></p> <p><i>(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</i></p>
Fixed penalties	s33	<p>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.</p>
Enforcement officers	s36	<p>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”.</p>
Implementation	s47	<p>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.</p> <p>Section 47 should be amended as follows:</p> <p><i>47. The provisions of this Act come into operation on the day after the day on which this Act receives Royal Assent.</i></p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Schedule 1 – Marine Plans: Preparation and Adoption		
Statement of Public Participation	s5 s6	<p>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.</p> <p>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).</p> <p>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.</p> <p><i>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”.</i></p> <p>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.</p> <p>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.</p>
Advice and assistance	s8(1)	<p>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:</p> <p>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.</p>
	s8(2)	<p>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.</p> <p>We consider that a more formalised structure to this consultation procedure should be implemented from the outset.</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Independent investigation	s13	<p>We have significant concerns over the framework for an independent “investigation” to be carried out into any marine plan.</p> <p>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.</p> <p>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.</p> <p><i>The Bill must contain provisions for;</i></p> <p><i>(i) a specified body to undertake an examination in public – the Planning Appeals Commission is the preferred independent body</i></p> <p><i>(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</i></p>
Matters to which the Department must have regard	s14	<p>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”.</p> <p>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)</p>

Subject Matter	Provision Number	Comments & Suggested Amendments
Adoption and publication	s15(1)	<p>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.</p>
Departure from the draft plan	s15(4)	<p>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.</p> <p>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).</p>

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)

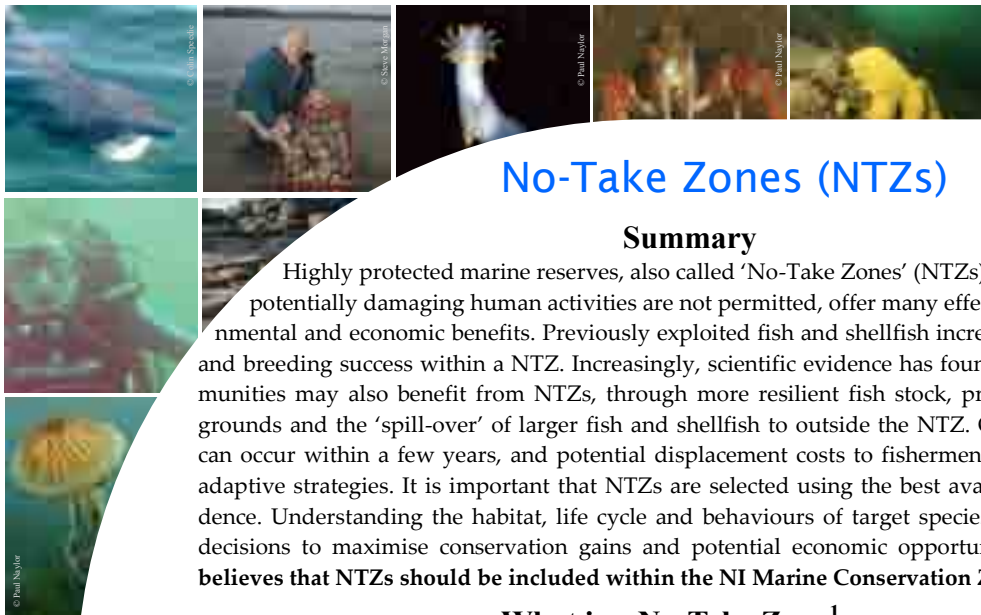
NI MMO	Northern Ireland Marine Management Organisation, an independent non-government body to take up marine functions and responsibility
OSPAR convention	The Oslo-Paris Convention for the protection of the environment of the North-East Atlantic
Precautionary Principle	Where there are threats of serious 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:	<i>"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."</i> (Brundtland report, 1987) 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)

For further details please contact the NIMTF

Email: info@nimtf.org

Richard Devlin- Marine Campaign Co-ordinator: 0772 557 3692

Marguerite Tarzia- Marine Technical Officer: 0773 069 1391



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 Zone¹

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



Australian Marine Conservation Society

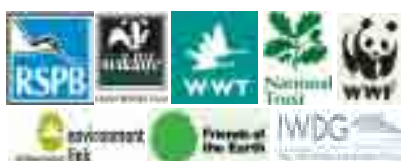
For further information contact the NIMTF:

Email: info@nimtf.org ; Website: www.nimtf.org

Richard Devlin: Campaign Co-ordinator M: 0772 557 3692

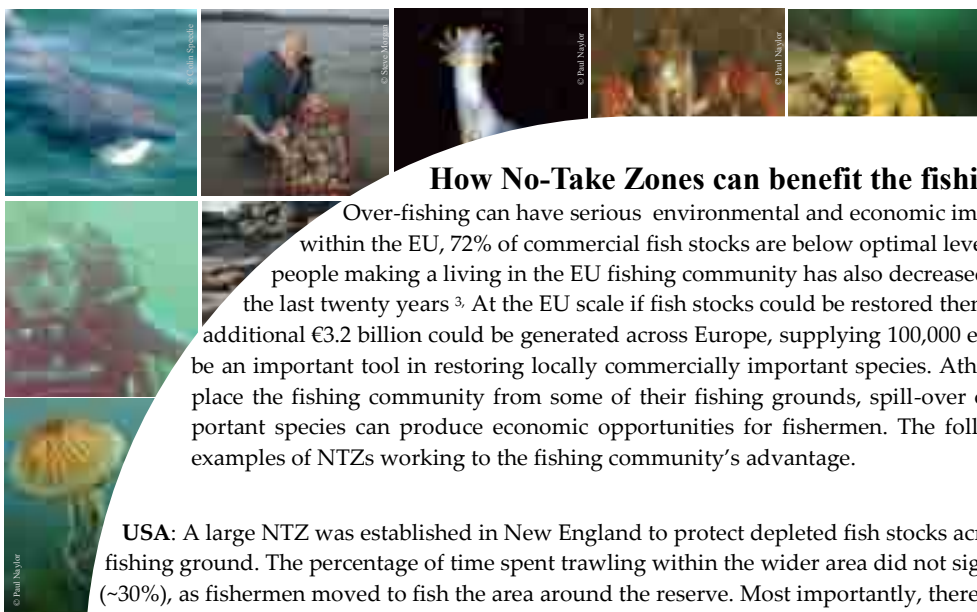
Marguerite Tarzia. Technical Support Officer

M. 0773 069 1391



Funded by.





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 years³. 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. Although 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

¹UK MPA centre, <http://www.ukmpas.org/about.html>

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

³Crilly, R. & Esteban, A. *Jobs Lost At Sea- Overfishing and the jobs that never were.* (New Economics Foundation- London, UK, 2012).

⁴Murawski, S. A., *et al.* 'Effort distribution and catch patterns adjacent to temperate MPAs' *ICES J. Mar. Sci.* **62**, 1150–1167 (2005).

⁵R. Goñi *et al.* 2008, 'Spillover from six western Mediterranean marine protected areas: evidence from artisanal fisheries', *Mar. Ecol Prog Ser*, Vol.366: 159–174.

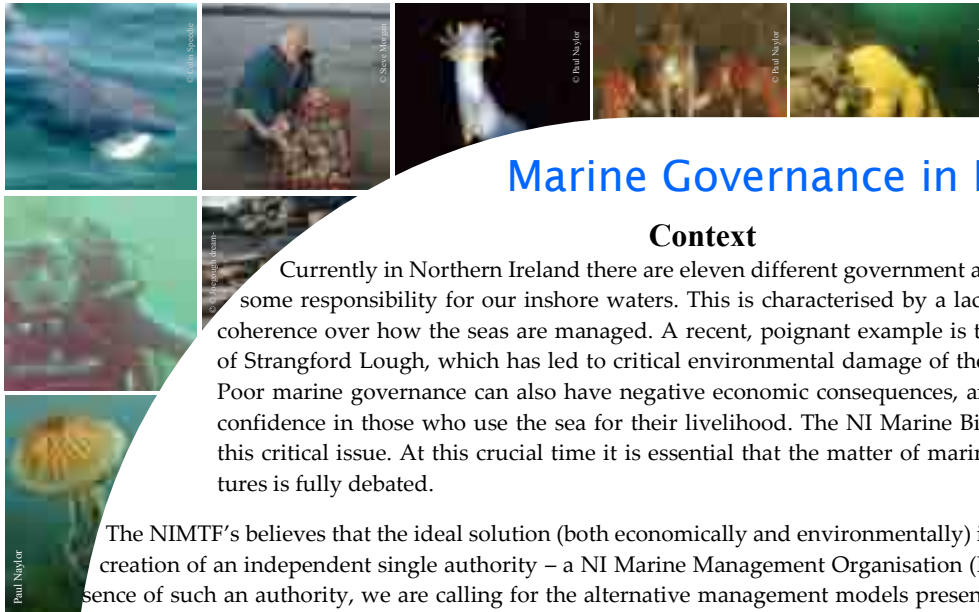
⁶Beukers-Stewart, B.D., *et al.* 2005, 'Benefits of closed area protection for a population of scallops', *Mar Ecol Prog Ser*, 298: 189–204.

⁷Tindall, C (2012) Fisheries in Transition: 50 Interviews with the Fishing Sector. Available at:

http://pcfis.org/wp-content/uploads/pdfs/TPC1224-Princes-Charities-case-study-%20report_WEB-09-02.pdf

⁸M.G. Hoskin, *et al.*, 2011, 'Variable population responses by large decapod crustaceans to the establishment of a temperate marine no-take zone', *Can. Journal of Fish. & Aquatic Science*





Marine Governance in NI

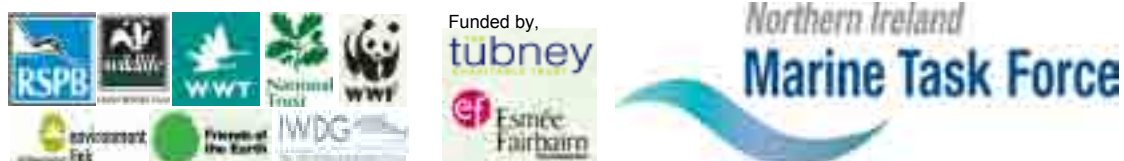
Context

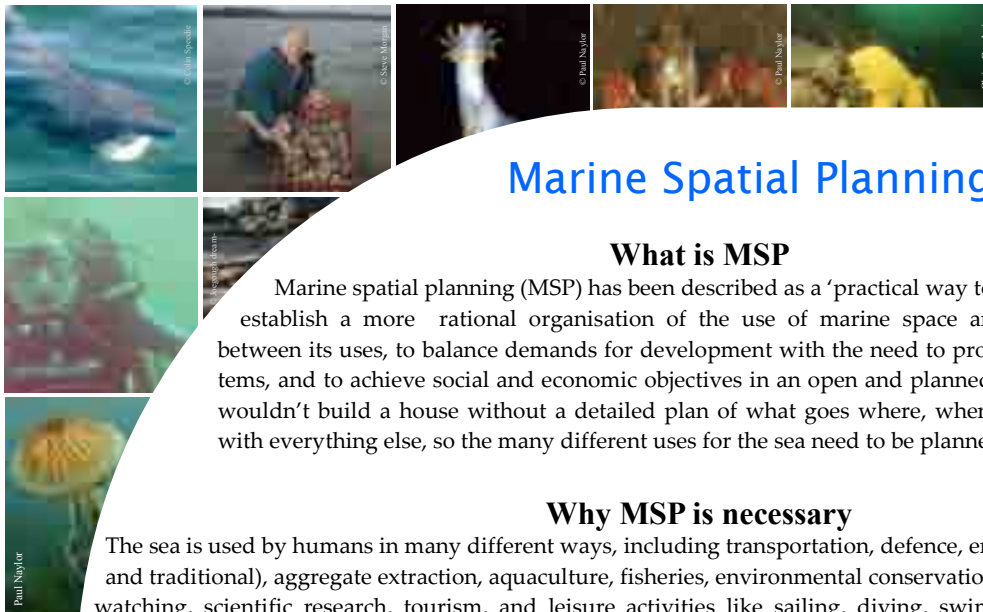
Currently in Northern Ireland there are eleven different government agencies which hold some responsibility for our inshore waters. This is characterised by a lack of integration and coherence over how the seas are managed. A recent, poignant example is the mis-management of Strangford Lough, which has 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 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.





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.**

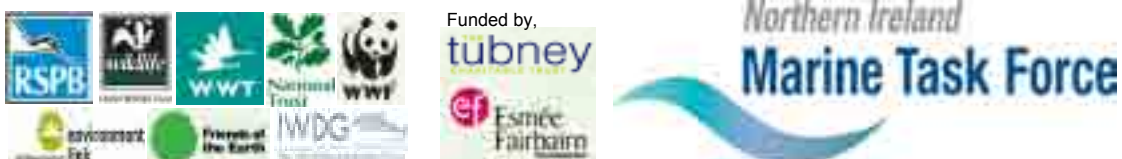
When done properly MSP can avoid or reduce conflict between sectors and stakeholders as it aims to balance all different uses and concerns for the management of our seas. MSP can facilitate informed decision making on the trade-offs and compromises necessary to achieve sustainable development and ecological 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

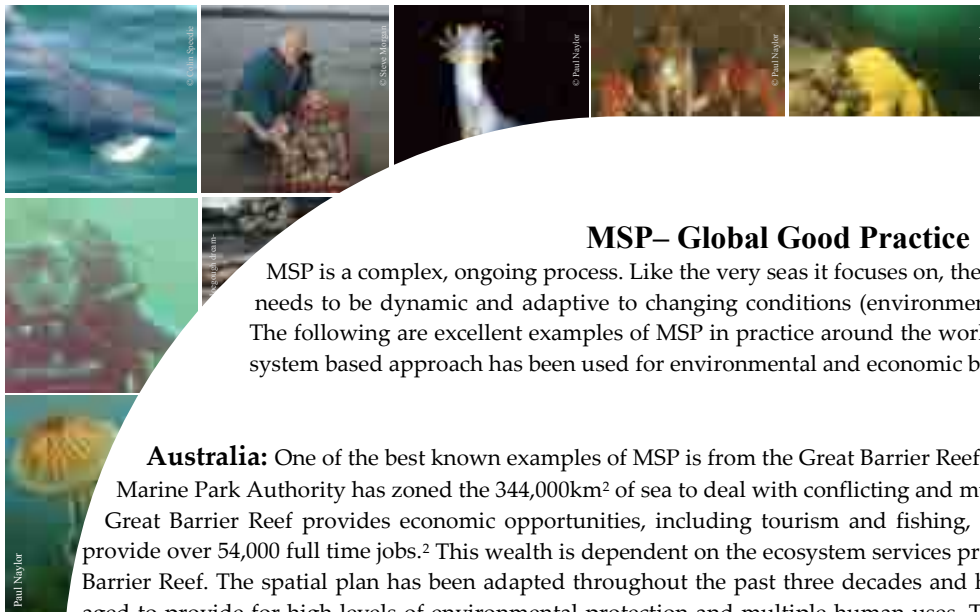
For further information contact the NIMTF:

Email: info@nimtf.org ; Website: www.nimtf.org

Richard Devlin: Campaign Co-ordinator, M: 0772 557 3692

Marguerite Tarzia: Technical Support Officer, M. 0773 069 1391





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 344,000km² 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 5500km² 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

¹ Ehler, C. & Douvère, F. 2009, *Marine Spatial Planning- A step by step approach toward Ecosystem based management*. UNESCO: Paris, 2009, at <http://www.unesco-ioc-marinesp.be/msp_guide

² Great Barrier Reef Marine Park Authority website, <http://www.gbrmpa.gov.au>

³ Trouillet et al. 2011. ‘Planning the sea: The French experience. Contribution to marine spatial planning perspectives’, *Marine Policy*, 35, 3.

⁴ White et al. 2012. ‘Ecosystem service tradeoff analysis reveals the value of MSP for multiple ocean uses,’ *PNAS*



Northern Ireland Renewables Industry Group



The Voice of IWEA & RenewableUK in Northern Ireland

Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

NIRIG response to the Northern Ireland Marine Bill

The Northern Ireland Renewables Industry Group (NIRIG) is a collaboration between the Irish Wind Energy Association and RenewableUK. NIRIG represents the views of the large and small scale Renewable Energy Industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy.

NIRIG acknowledges the need for a Marine Bill in Northern Ireland and welcomes the opportunity to comment on the proposed Bill.

Before commenting on the Bill itself, NIRIG would like to note that the potential of on-going debate around the possibility of a Marine Management Organisation (MMO) for Northern Ireland could create uncertainty for renewable energy projects needing to move forward later this year. NIRIG would support the creation of an NI MMO to manage balanced decision-making in planning and consenting processes. In Scotland, value has been demonstrated in having a specific agency (Marine Scotland) whose ability to look dispassionately at the separate needs of conservation and economy and to prioritise both is recognised and respected both by industry and by conservation agencies. Given spatially limited marine interests, we recognise the argument that there is more limited bureaucratic justification for creating such an agency in Northern Ireland. However, the lack of clarity on an MMO needs to be addressed and the appropriate vehicle for the licensing consenting process must be defined as early as possible.

Our general comments on the Marine Bill are as follows:





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Tel 028 9051 1220

Marine Planning

- The Bill makes no mention of a need to consider economic activities or climate change mitigation. Other similar legislation in the UK makes explicit reference to climate change mitigation, including the Scottish Marine Act where under 'General Duties' (Part 2) it states that in exercising functions under the Act, Ministers and public authorities must act in the way best calculated to mitigate, and adapt to, climate change. NIRIG would suggest that a similar reference is included in the NI Bill.
- To facilitate renewable electricity generation, reference to the NI Strategic Energy Framework and Offshore Renewable Energy Strategic Action Plan could be included in Schedule 1, Section 9.
- Marine planning should build in concepts of Sustainable Development and combine economic, social and environment considerations: specifically, marine planning should enable renewable energy development. Elsewhere in the UK the bodies responsible for national level marine planning take renewable energy into account and we would suggest that the same should be the case in NI.
- The plan will need to coordinate with other plans in the wider Irish Sea and it is unclear on what timescale this will play out. It is important that the NI marine Bill takes cognisance of the other plans it is set to interface with.

Marine Conservations Zones (MCZs)

- Clause 12(7) refers to economic and social consequences of designation but only as a possibility. NIRIG would strongly recommend that this Clause be amended to read 'in considering whether it is





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desirable to designate an area as an MCZ, the Department *must* have regard to any economic or social consequences of doing so”.

Experience from the process in England shows that it is very difficult to reach consensus on designation from stakeholders without considering socio-economic factors.

- There is a duty to consult on MCZs and an ability to go to hearings or give written evidence. This duty should be extended to the MCZ management measures, as it is difficult to respond on designation in principle, if the impact on a project or cable route is not known. MCZs would gather more support if the management measures were approved by industry and were not of a prohibitive nature.
- As MCZs are national designations, any MCZ should not be subject to Habitat Regulations Assessment.
- In order to expedite decision-making, NIRIG would suggest that MCZs should not be declared in an area which is strategically important for development and which is locationally inflexible. Specifically, this should also include the areas currently part of The Crown Estate offshore leasing round for NI.
- Potential impacts on certain sectors of MCZ designations should be made clear at the outset. The uncertainty over potential impacts of designation on the renewables sector in England meant that a precautionary approach was taken which had subsequent impacts on the degree of support for co-location. Impacts should be clearly stated and agreed as early as possible in order to facilitate stakeholder support for co-location.
- The objectives of an MCZ are set out at designation, but the management methods are detailed two months after designation. Earlier detailing of management measures would enable wider





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acceptance and will enable the industry to plan for and support the implementation of MCZs.

- There is a duty on authorities to advise against activities that may interfere with the conservation objectives of an MCZ. We appreciate that it is important to build in flexibility on these points but the current wording seems like repetition of Natura 2000 powers and could prevent the 'deploy and monitor' approach that has been successfully implemented in other parts of the UK.
- Further detail on the process for designating MCZs, with clear responsibilities and reporting lines is required, and in light of the continuing uncertainty on an MMO for NI NIRIG would suggest that one department or body be given clear responsibility for designation.
- The departmental Reports will report those activities which are 'prohibitively or significantly restricted'. NIRIG would recommend that in order to fully inform the Department of the impacts of MCZ designation, reporting should also take place on activities which are significantly 'affected'. For example, the Department will presumably be keen to know if an MCZ has significantly increased the cost or delayed the development of a renewable energy project.

Consenting

- The NI Marine Bill indicates that dual applications (for both marine licences and consent under Article 39) will follow the procedures of the Electricity Order (Clause 7 of Part 4). This seems a departure from the original intention (as noted in the SEA/RLG) to place the emphasis on the marine licence application process (whence the target date for determination by NIEA of four months arose). As a result of the proposals in the NI Marine Bill, however, it seems that the applications



will follow the Article 39 application process. Whilst this is welcome the following issues arise:

1. **Decision-making on consent applications** - The NI Marine Bill wording appears to make continuing discussion of a NI MMO irrelevant for an Article 39 consent application as the application will proceed via the Electricity Order route irrespective of the conclusions of discussions on a NI MMO. In either case, licensing/consenting should be adequately resourced to manage caseload with appropriate marine expertise to support robust decision making. There is value in streamlining the consents process so that a lead agency can provide a one-stop-shop for all consents and licenses required for a project. This includes DoE (the FEPA and CPA marine license), DETI (Article 39) and the Planning Service (onshore elements). With any existing department as a lead agency, there is a real challenge in ensuring balance due to the core perspectives and objectives of that department. With DETI as a lead, it would need to be very transparent that conservation considerations were being given proper consideration. Equally with DoE/NIEA as leads, it would need to be transparent that economic development was being given adequate weight. Joint-working between departments is a political ideal, but it must be recognised that this is not always easy. Therefore effective management processes must be put in place to deliver balanced outcomes irrespective of the selected front-door department.
2. **Timetables** - Whilst the Electricity Order itself provides no clear set of procedures for the Article 39 consent application, the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 does set down some procedures for Article 39 applications that require EIAs. This defines deadlines for



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consultation responses (excluding transboundary consultations) where consultees have 4 weeks to respond either to the application or any further information. There is no time limit, however, after the expiry of the consultation period within which the Department must make its decision and there is always the scope for the Department to conclude that a public inquiry is necessary under Article 66 of the Electricity Order before it can reach a decision, for which, again, there is no timetable. We believe that for strategically significant projects there should be timetables for a decision. In fact, the Directive underpinning the regulations (EIA Directive for Offshore Electricity Developments) as amended requires the Department to “fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period”.

3. **Pre-application discussions** - The Offshore EIA Regulations do not contain any guidance on pre-application discussions that will need to be undertaken to ensure a streamlined application to cover all matters that might subsequently lead to delays in addition to the standard matters relating to environmental scoping and project definition. This would include overlap with onshore planning; the equivalent of Article 40 agreements of the Planning Order; scope, timing and workings of potential inquiry; milestone meetings and decision timetable; consultee lists; Rochdale envelope; conditioning discussions; decision making body or bodies; process for varying consent; compulsory purchase powers amongst others.

4. **Stream-lining** - Projects will require consent for all on-shore aspects under Planning (Northern Ireland) Order 1991. It would be useful if streamlining addresses how the Article 39 and the marine licence





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applications would dove-tail with the Planning Order consents. Under the same principles, it would be sensible if only one EIA were to be required for the entire project (offshore generating station and on-shore connection assets). There is a risk that streamlining of one part of the process is rendered irrelevant if it does not capture all aspects of the process including on-shore grid connection. In the absence of a full one-stop shop, it is critical that consistent principles are adopted for both on-shore and off-shore regulatory bodies such that all aspects of a major offshore infrastructure project can progress in parallel through the consenting systems. This can best be achieved by efficient pre-application co-ordination between DETI, DOE and NIEA as the three consenting/licensing bodies with the intention of being to produce a definitive decision within a fixed timescale (subject to a window for any legal challenge). Given the need for coordination it would be beneficial to develop a “one stop shop” as we have seen in other regions.

Along with these general comments, NIRIG believes the Bill would be improved with the following specific changes:

Clause 12 (7) – Change “may” to “must”. This would significantly strengthen the call to consider economic and social consequences

Clause 12 should feature an extra clause 12.9 urging consideration of energy potential

Clause 13 - MCZs should be designated with reference to the MPS. A failure to consider the MPS would add severe complications to the process and reduce the streamlining effects of the bill

Clause 14 (4) - on consultation before designation should have a further sub clause (c) including DETI in the statutory consultees





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Clause 18 (3) – should include a new sub clause (d) stating the need to minimise impediments to development of renewable energy in those areas.

Clause 19 (2) (c) – Change ‘restricted’ to ‘affected’. This would inform the Department of delays and cost implications of MCZ designation on renewable energy developments

Schedule 1, Clause 9 should include a reference to economics with regards to the plan.

Schedule 1, Clause 3 (4) DETI should be explicitly listed as a department to consult with.

Areas that we feel are particularly strong and should be implemented as currently read include:

Clause 2(10) (d) This clause requiring DETI to be involved as part of the marine plan is vital.

Clause 5(2) (a) Economic characteristics are key and should retain a high profile in the bill.

Clause 5(2) (c) Energy should be kept as an important area to review

The adoption of the NI Marine Bill is a key tool for steering policy formation and we believe that the alterations suggested above would both improve the Bill and facilitate Northern Ireland’s ambition to become a leader in the renewables industry. We welcome comments and further engagement on this important piece of legislation.

For further information, please contact:

Meabh Cormacain





The Voice of IWEA & RenewableUK in Northern Ireland

Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

NIRIG Policy and Communications Co-ordinator

Forsyth House

Cromac Square

Belfast

BT2 8LA

Email: ni-rig@ni-rig.org

Phone: 028 90 511 220



Northern Ireland Schools' Marine Bill Advocacy Group Submission

Submission to the Environment Committee on the Northern Ireland Marine Bill April 2012

"An effective Marine Bill for Northern Ireland will guarantee the protection of our marine inheritance providing for our needs now and for future generations: the perspective of a group of young people"

We welcome the opportunity to respond to the Environment Committee. Furthermore, we would like to formally present and discuss this paper with the Committee during the May 2012 consultation period.

We feel very honoured and excited to be part of this Marine Bill consultation. As a group of young people with a passion and keen interest in our marine environment, we are delighted to take part in the democratic process of shaping this most important piece of marine legislation in Northern Ireland's history.

Northern Ireland Schools' Marine Bill Advocacy Group"

We are sixth formers from 7 schools across Northern Ireland (NI) supported by one zoology student from QUB, RSPB and NIMTF. We have formed a "NI Schools' Marine Bill Advocacy Group" to take an active role as stakeholders and future voters in the introduction and implementation of an effective Marine Bill for Northern Ireland.

We are passionate about the marine environment. Studying a range of relevant subjects including Biology, Geography and Political Science, we feel we have the knowledge, skills and expertise, which enables us to participate as active citizens in this consultation process. We have put considerable effort into gathering and reflecting on the opinions of local people in our coastal communities. We aim to represent their opinions in this paper.

We see the Environment Committee as stewards with the duty and responsibility to ensure the effective management today of our marine inheritance. We support the NIMTF suggested amendments to the Marine Bill in particular the inclusion of HPAs within MCZs and addressing of the need for one body to manage its effective implementation.

"In conclusion, the writing is on the wall for the Northern Ireland marine environment, to continue as present would devastate our seas, crippling an invaluable resource and denying future generations the sea to work, play and live on. The bill needs to deliver a clear objective to protect the everyday species and features alongside the rare and unique species to ensure they do not disappear from our waters, stopping me from seeing spectacular species that my dad knew as common to these waters. The future of our seas, today, tomorrow and forever, lies in your hands." **(Matthew Ferguson, Down High School)**

RSPB staff (Education Development Officer, Senior Conservation Officer and Rathlin Island Reserve Warden), with support from the NIMTF Marine Campaign Coordinator have facilitated our learning through the NIEA supported RSPB "Marine Education Programme".

They have introduced us to current research and a wide range of local marine stakeholders, which has helped us to form our own opinions. Following the workshop run by NIMTF at Castle Espie, we have come together to write a submission to the Environment Committee outlining our views as young people concerned for the marine environment, our inheritance.

Summary and Main Questions to the Environment Committee:

As a group of young people studying a range of relevant subjects alongside reading sound scientific research and interviewing a wide range of marine stakeholders, we feel we have sufficient knowledge to:

- Demonstrate the benefits of well managed "Highly Protected Areas" (HPAs); areas where any exploitation or damage by marine industry will be totally banned allowing already overexploited marine ecosystems to recover. We are aware that this is recognized by management bodies in the rest of the UK who have decided to implement their bill to include HPAs.

We wish to discuss with the Environment Committee whether they agree with us that Clause 18 in our Northern Ireland Marine Bill should now be amended to include Highly Protected Areas within Marine Conservation Zones to ensure the effective protection of our marine inheritance.

- Demonstrate that these well-managed Highly Protected Areas benefit biodiversity, people and the economy. We feel that, without an independent Marine Management Organisation (MMO), it will be impossible to create and effectively manage a coherent network of marine protected areas of local importance to Northern Ireland (Clause 11.1).

We wish to discuss with the Environment Committee whether they agree with us that it is vital to resource an independent MMO with sufficient powers of enforcement:

Can the Environment Committee reassure us that the amendment to Clause 18 to include HPAs within MCZs will be made and that an independent MMO will be set up to effectively manage our marine inheritance now for our future?

There exists a confusing array of 6 primary government bodies at present responsible for the marine environment in Northern Ireland, which concerns us greatly for the effective implementation of the Marine Bill. England has an independent MMO and Scotland has one government department, Marine Scotland. Surely we will be disadvantaged in not having one body to coordinate all responsibilities?

Our first preference is an independent body similar to England but we would accept the establishment of one governmental body solely in charge of marine activities similar to Scotland as long as these bodies have the proper enforcement powers and resources. From our discussions with a wide variety of local marine stakeholders including NIMTF, commercial fishermen and recreational marine users, we feel it would be vital to have them represented on this new body.

Focusing on the aspect of MCZs, we feel we need one management body responsible for:

- Coordinating the many authorities and stakeholders to ensure the implementation and successful management of the Marine Bill
- Deciding and implementing the best process to be used to select MCZs and HPAs using the best available scientific evidence to ensure the establishment of a locally representative network of ecologically coherent and well managed MCZs including some HPAs.
- Carrying out detailed Environmental Impact Assessments (EIAs) for existing and proposed activities within all Marine Protected Areas
- Collating and analysing existing data to inform the Environment Minister, his committee and relevant colleagues in other government departments and support the setting up of an appropriate system for the designation of the new MCZ network particularly taking

account of the highly mobile nature of many of our marine species, existing and new human pressures and climate change

- Ensure effective management and enforcement of protected sites to deliver for biodiversity and people and so we do not incur potentially expensive infringements from Europe

Supplementary Questions for discussion arising from our research

We would welcome the opportunity to discuss with the Environment Committee whether they agree with us that:

- There is huge untapped potential to grow marine-based leisure and tourist activities in NI whilst at the same time protecting our marine inheritance through a well managed network of protected marine areas. Could the committee outline how it plans to ensure this area of our economy grows?
- Delays in addressing damage to the marine environment demonstrate to us that the existing government departments do not have at present the time or resources to enable them to manage the marine environment effectively which is putting our marine inheritance at risk. Could the committee outline how they plan to address this issue?
- Within the existing departments, there is not the capacity to collate and analyse data from existing and new research to inform designation of MCZs and HPAs. Could the committee outline how they plan to address this issue?
- Whilst it may be easy to monitor and enforce an MCZ near an inhabited island like Rathlin Island, it would be considerably more difficult to achieve this for an uninhabited one like the Copeland Islands or around rocks like the Maidens? Could the committee outline how they plan to address this issue?

Introduction:

The Marine and Coastal Access Act 2009 provides a legal framework for marine spatial planning, the Marine Management Organisation (MMO) and Inshore fisheries and Conservation authorities and places a duty on ministers to designate Marine Conservation Zones (MCZs). MCZs will contribute to ecologically coherent and well managed Marine Protected Areas.

The Marine Protected Areas network will comprise existing and proposed SPAs (Special Protection Areas for birds) and SACs (Special Areas of Conservation for habitats and other species) forming a network across Europe, Ramsar sites (a network of Internationally Protected Wetlands), ASSIs (nationally important Areas of Special Scientific Interest) in estuarine and coastal waters, and MCZs (Marine Conservation Zones) – one network, five designations.

MCZs allow a range of managed activities that are not damaging to the local marine environment. MCZs will have different levels of protection determined by their individual conservation objectives. “There will be sites where the conservation objectives will require high levels of protection and exclusion of all damaging activities (ie Highly Protected Areas (HPAs), marine reserves or No-Take Zones). These sites may be selected as reference areas, contain rare, threatened and vulnerable habitats and species that are geographically restricted, or contribute to the recovery of biodiversity or ecological processes. Scientific evidence from case studies around the world shows that well managed marine reserves or HPAs usually boost the abundance, diversity and size of marine species living within their borders; and they may increase resilience against human pressures and climate change.”

(“Developing Programmes for MPAs” James Marsden, Director Marine, Natural England.)

Our group has been focusing on “Marine Conservation Zones” and our main concern is that the draft bill does not mention the need for “Highly Protected Areas” (HPAs) within Marine Conservation Areas. (Clause 18)

MCZs are areas which allow a range of permitted activities consistent with the conservation objectives... HPAs or No-take zones are areas where any exploitation or damage by industry will be totally banned to allow already over exploited marine ecosystems to recover. They may allow some non damaging activities for instance research and leisure activities like sailing, scuba diving and snorkeling.

Following the NIMTF (Northern Ireland Marine Taskforce) Marine Bill workshop for stakeholders at Castle Espie we have become concerned by:

- The vague woolly language of the bill which the legal analyst felt could cause problems down the line in implementing the bill,
- The lack of cast iron requirement for NI to create its own network of MCZs and the opt out clauses if damage occurs to a MCZ,
- **But, our greatest concern is that without an MMO we feel it will be impossible to deliver a coherent network of local MCZs (Clause 11.1) including some HPAs for NI. (Clause 18)**

What we found most concerning about the draft Marine Bill was the absence of critical elements. The first of these, one which held much attention and discussion amongst stakeholders was the lack of an independent Marine Management Organisation (MMO).

We were not aware of the extent to which responsibility over activities on our marine environment was spread across 6 primary governmental departments (DOE, NIEA, DARD, DCAL DETI and Lough’s Agency). This figure is far too high. However, passing all this responsibility to one department, which already has a lot of differing concerns, without creating a different sector within, or independent organisation will result in a strain of resources and this department will fail. To us, the simplest solution is to create a new organisation, which will start to manage all activities on the water and will act as the “one-stop-shop” for all issues concerning them.

The other strategy that was missing was Highly Protected Areas within Marine Conservation Zones. (Clause 18) Indeed there seemed to be very little penalty for causing damage to the Marine Conservation Zones at all, as in the bill it says only that if an offense is carried out within the zone then an explanation for the damage must be delivered in writing. There is no mention of any consequences and that is critical to protect against greedy and reckless behaviour. If a few appropriately positioned HPAs were put in place within the MCZs with hefty fines to deter damage, our marine life will recover much faster and much better.

We understand that our government is still striving to cut spending, but believe, with a management organisation in place and the resulting recovery of fish stocks alongside an increase in leisure and tourism, this would in the long-term, considering our futures, be money definitely worth spending. Also without effectively managed marine legislation, we risk further infringements from Europe like the horse mussels in Strangford Lough.

We aim as a group to demonstrate:

1. From our research talking to local marine stakeholders around NI, a consensus of opinion emerged that unsustainable activities and lack of HPAs within MCZs in the marine environment are having an adverse impact not only on biodiversity but also people and the local economy in Northern Ireland
2. That scientific evidence from case studies around the world shows that well managed marine reserves or HPAs usually boost the abundance, diversity and size of marine species living within their borders; and they may increase resilience against human pressures and climate. They also can boost leisure and tourism. We have looked at

“Lundy Island; Devon as a case-study demonstrating the benefits of a well managed HPA and the implications for Northern Ireland.” (Clause 18)

3. Without an MMO, how we feel it will be impossible to implement the marine bill legislation and create an ecologically coherent and well managed network of local MCZs including some HPAs (Clause 11.1)

1. There is a consensus of opinion among stakeholders around NI that unsustainable activities and lack of HPAs within MCZs are having an adverse impact not only on biodiversity but also people and the local economy in Northern Ireland

Local examples of the impact of unsustainable activities:

Many boat users have noticed the decline in the number and average size of fish stock from unsustainable fishing practice. There are many instances where one marine activity is impacting negatively on another for example the surplus trawling activities about Rathlin Island leave little for the islanders themselves who are trying to fish sustainably.

One of the Rathlin Island boatmen provides rod and line fishing and wildlife watching trips for tourists. Trawlers that may come from as far as Scotland, have a negative impact on his fishing activities as areas are “out-fished” and hence he has less people wanting to go out to fish. He feels strongly that there should be “No-take zones” at specific areas near to Rathlin Island and that there should be restrictions placed on the trawling activities.

A Rathlin Island fisherman catches his own fish for the restaurant in the Manor House providing a service on Rathlin for residents and tourists and employment for the islanders themselves. He uses sustainable fishing methods to ensure that he maintains fish stocks. Inshore dredging has a severe impact on the seabed and in turn the shellfish stock and other fish species. He recognises that there is a need for an inshore dredging exclusion zone, whilst still allowing sustainable methods of line and rod fishing to sustain the island economy.

A mussel grower in Belfast Lough harvests by dredging. He mentions the benefits of his industry with mussels providing food for eider duck in winter and filtering impurities from the water improving water quality in Belfast Lough. He recognises that his activities could perhaps damage the habitat where he collects seed mussels around the Copeland islands.

He has invested in more selective dredging equipment but with subsidies he could update his equipment further to cause less damage. Scallop or cockle shell fisheries using suction methods remove everything and would blow sediment over his beds damaging the mussels.

A diver working for the Ulster Museum has seen first-hand the damage caused by mussel dredging in Belfast Lough and would like to see a reduction in this activity. She would also like more MCZs and HPAs in place to further protect our marine wildlife and its habitat.

A charter boat owner offering angling trips in Belfast Lough has observed fewer large commercial fish (cod or pollack) in Belfast Lough over the last 4-5 years forcing them to go further out of the Lough and now to fish off wrecks potentially natural “No-take Fishing Zones”. This has an economic effect for him with higher fuel bills and damage to fishing gear snagged on rocks. They usually now catch non-commercial fish like ling. He is aware of conflict between local Donaghadee fishermen and commercial fishing boats for the mussels found in the sound between Big Copeland and the mainland. He mentioned mussels colonising the ropes of the lobster pots and wondered if it would be possible to establish the more sustainable growing mussels on ropes in Belfast Lough.

There are many examples of conflict between marine activities which we feel demonstrates the need for a separate marine management organisation to co-ordinate the planning of existing and new activities in our marine areas.

Local examples of adverse impact due to a lack of HPAs on biodiversity, people and the economy with a consensus of opinion that HPAs or no take zones form part of the solution.

From our research talking to local marine stakeholders, there emerged a consensus of opinion on the way forward for the marine environment in Northern Ireland. They recognise the impact of having poor marine protection and are asking for the establishment of "No-take Zones" or HPAs and the restricting of existing damaging and unsustainable fishing activity.

A Rathlin Island rod and line fisherman was seriously concerned by the heavy trawling from mainland and Scottish boats, resulting in dramatically declining fish stocks around Rathlin. He showed one of our group a sea chart of Rathlin Island and pointed out the best sites for the various species that are now under threat and claimed these areas should be "No-take Zones". We found this poignant coming from a fisherman showing how desperate he is to see a recovery of the fish stocks.

A marine biologist and diver has seen first-hand the devastating damage caused by dredging activities around Rathlin Island and in Belfast Lough and would like to see a reduction in these activities. She would also like marine conservation zones MCZs in place, which allow sustainable forms of fishing in certain areas and a marine bill brought about to further protect our marine wildlife and its habitat. She is concerned that a delay, even of a few years, could mean that we lose some of our unique marine ecology. As a result of dredging, we have already lost 70 year old sponges along with their boulder habitat preventing recolonisation.

A local Rathlin Island fisherman, also RSPB warden, cautions that while MCZs and HPAs are good in theory, the practicalities are that the areas outside the zones may still be in trouble and need consideration. Whilst some fishermen will be negatively affected other fishermen and seabirds will be positively affected by the introduction of MCZs and HPAs. If egg bearing lobsters were being returned to the sea within these protected zones their numbers could increase and shellfish within these zones could also benefit.

A sea angler who runs a fishing shop in Bangor suggests there is a need for "No-take Fish Zones" near the Copeland islands perhaps around boat wrecks, which act like artificial reefs.

A Strangford Lough diver feels that managed effectively, people should be able to pursue their leisure activities, without causing damage or harm to the protected areas and the knock on effect of better preservation and increased biodiversity should be an increase in economic dividends from the leisure and tourist community. This would need to be balanced against any potential loss from fishermen, shipping and other sea dependent work.

A senior sailing instructor at Ballyholme Yacht Club who used to live in New Zealand believes the Irish Sea could benefit from stronger controls on quotas of fish. She also feels that there should be more HPAs or marine reserves to allow fish stocks to recover and protection of our wildlife with policing of vessels in protected areas and harsh fines for those illegally entering no take zones. New Zealand boats are fitted with satellite transceivers and if they are found in a protected area, they lose their licence or are heavily fined up to £20,000.

2 "Lundy Island; a case-study demonstrating the benefits of a well managed HPA and implications for Northern Ireland."

Introduction:

Lundy Island, a three-mile long island off the coast of Devon, is home to a range of species such as grey seals, lobsters and pink sea fan corals with varied habitats of reefs, sea caves and sand banks. Lundy Island became England's first marine conservation site and a no-take zone from 2003 and there have already been noticeable positive effects for lobsters.

How Lundy Island benefits biodiversity and fisheries:

When monitoring began in 2004 (18 months post designation) the mean abundance of landable-sized lobsters in the No-take Zone (NTZ) was already 205% greater than the average

for control and reference locations and by 2007, landable-sized lobsters were 427% more abundant in the NTZ compared to control and reference locations.

The lobster *Homarus gammarus*, appears to have derived an unambiguous benefit from the Lundy NTZ. This was evidenced by the increased abundance and size of landable-sized lobsters inside the NTZ and the increased abundance of undersized lobsters within and adjacent to the NTZ. The latter finding is potential evidence that the Lundy NTZ has produced a spillover benefit to the surrounding lobster fishery.”

(Lundy Marine Nature Zoning Scheme report for first Five Years)

“Lundy is a showcase of what a well-protected marine environment can become. Today’s designation ushers in a new era of marine protection and it is important that the momentum to develop more marine conservation zones is now sustained.” (Dr Helen Phillips, the chief executive of the government’s conservation agency, Natural England.

(www.lundyisland.co.uk /Ecological effects of the Lundy No-take Zone: the first 5 years 2003-2007 by MG Hoskin, RA Coleman and L von Carshausen Mar 2009 Final Report)

How Lundy island benefits people and the economy:

(Assessing the Value of Marine Protected Areas in the UK: A Contingent Valuation Study of Lundy Marine Nature Reserve, Marianne Pett, A report submitted in partial fulfilment of the requirements for the MSc and / or DIC September 2006)

We looked at this report which considers the issue from the perspective of recreational benefits from MPAs. Using a contingent valuation survey,

The results of this survey indicate that recreational visitors value the MCZ highly, with a mean additional WTP (willingness to pay) of £5.09 to fund conservation activities on the island. This sum is over and above costs per visitor of between £77 and £117, depending upon whether purely direct expenditure is considered or total costs to include travel and opportunity costs.

The calculated consumer surplus was £88,000 annually, whilst Total Economic Value (TEV) was between £1.4m and £2.1m, depending upon which costs are considered relevant. “Calculated aggregate expenditure by visitors was £1.3 million compared to Lundy’s reported annual turnover for 2005 of £1.7 million.” Lundy also generates revenue from selling Lundy lamb over the internet.

For day visitors, the main attractions were walking and relaxation, with photography or bird-watching a common second or third option. 58% of day visitors stated walking as their main activity. Visitors staying on the island were more likely to have a specialist interest, such as diving (25%) or rock-climbing (21%). Walking and relaxation continue to be a major attraction, however, with 17% and 19%, respectively, stating these as their main activities. 8.3% respondents stated they had been on either a Warden-led ‘Snorkelling Safari’, or a boat trip around the island, or both during their stay.

Lundy Island, an example of good management including enforcement:

Lundy is managed in partnership and bi-annual meetings take place with the Statutory organisations and the stakeholders and users of the MCZ. The Marine Conservation Zone Advisory has representatives from the Landmark Trust, Devon and Severn Inshore Fisheries and Conservation Authority, Natural England, the island Warden and local stakeholders including divers, fishermen, charter boat companies and other users. The group meet to discuss the developments, projects proposals and the management of the MCZ. It is also an opportunity for any issues or concerns to be raised and addressed.

The outcome of these meetings is then brought to the Management Forum meetings which take place with representatives from each of the management partner organisation. (www.lundyisland.com/conservation)

The on-the-ground management of the island is by the wardens.

“Management from the perspective of the wardens hasn’t changed since the transition from MNR (Marine Nature Reserve). We patrol the MCZ, carry out monitoring, education and raising awareness of the management (including the zoning scheme) amongst visitors to Lundy. We report infringements to Devon and Severn IFCA (Inshore Fisheries and Conservation Authority). ” Sophie Wheatley, Warden Lundy Island 2012

Implications for Northern Ireland: The potential of HPAs to increase revenue through leisure and tourism

We feel Lundy Island MCZ demonstrates the social and economic viability (money well spent) of a well managed Highly Protected Area for biodiversity, people and that this has implications for MCZs in Northern Ireland for example around Rathlin Island, Copeland Islands, Lough Foyle, Carlingford Lough and Strangford Lough. We have been able to begin to explore through talking to a wide range of marine stakeholders across NI that there is a huge untapped potential for MCZs to increase revenue in Northern Ireland through leisure and tourism activities.

Sailing

Former Commodore, Ballyholme Yacht Club feels that sailing benefits the environment and economy, as they are promoting Belfast Lough as the “best sailing waters” for recreational sport and tourism brings money to the economy.

Dinghy sailors in Lough Foyle mentioned how we can take advantage of the shelter all our Loughs afford leisure and tourist sailors protecting them from the strength of the prevailing westerly winds and increasing the number of days available for sailing for pleasure and competitions. This makes NI very desirable as the host for international sailing competitions and tourist sea anglers. Cruising yachtsmen visiting Rathlin Island as tourists felt their activities bring vital revenue by purchasing food and paying for berthing etc.

A local marine sportsman, Belfast Lough added that the benefits of windsurfing, kite surfing and sailing as physical exercise has a positive effect on society, keeping people fit and healthy. This keeps down the costs for government of health care.

Scuba Diving

A marine biologist with the Ulster Museum, who dives to carry out research and recreation and , is part of a volunteer diving project feels the purpose of diving is for enjoyment and makes people more aware of their environment which is good for the protection of the marine environment. Buying the diving equipment brings money to the economy. If it was promoted, diving in Belfast Lough and elsewhere in NI could be a good tourist attraction.

A Strangford Lough diver feels “the benefits of the MCZs far outweigh any commercial gains from overfishing and overuse of the environment. Greater marine life increase the health of the ecosystem causing better diving experiences and recreational fishing and would bring more people into the area, from divers to birdwatchers, and if the marine environment improved then greater sightings of harbor porpoises, basking sharks and larger marine life would help to bring people in to see these creatures. This could generate a whole new environmentally driven industry. A properly managed coastline would accommodate all forms of water users without causing conflict. It has been shown throughout the world that environmental eco tourism is more profitable for local communities than traditional fishing.

One of our group, who dives regularly in Strangford Lough, feels that as Northern Ireland dive sites are so accessible to our airports, a tourist diver could arrive at Belfast City Airport on a Friday night and have already had a dive in Strangford Lough before the sun sets.

Sea angling

An Irish Study 1988 on types of recreational angling showed 49% of expenditure came from game angling 28% from coarse and 23% from sea angling. Aggregate gross expenditure contribution of NI resident anglers was 3.9 million with (18%) from sea angling. Tourist anglers 33.5 million or 8% significantly lower than for Eire.

(Final Report by department of Culture, Arts and Leisure, Lough's Agency, Irish Lights and the NITB "The social and economic impact to NI of recreational Fisheries, Angling and Angling Resources July 2007)

"Sea anglers point out that the value of a rod-caught fish can be greater to the economy than that of a commercially caught one. Rod and line fishermen stay in hotels, hire cars, eat in restaurants and catch relatively few fish." Sea bass are a near perfect sporting quarry on rod and line as they run close to the shore in summer, fight hard and grow to 8 kgs in weight. They are a welcome catch for local fishermen too. They spend £1billion on equipment, travel food and accommodation- about the same amount as the economic activity caused by the commercial catching industry" Charles Clover on the Pair fishing Industry in the English Channel in his book ("The End of the Line" 2005)

This viewpoint is supported by Labour's Charter for Sea Angling 2005 which stated that a recent study of the sea fishing industry in England and Wales showed that recreational sea angling is worth £538 million a year, nearly as much as the commercial fleet at £600 million.

It goes on to recommend that "some species of sea fish would return Best Value for the UK and overall marine environment if designated and managed primarily as a recreational species" which led to a Bass Management Plan. This type of plan exists also in Eire.

We wish to discuss with the committee that, as more sea bass are being reported in our waters, will our government be considering this type of management approach?

As a group we agree with a local BTO (British Trust for Ornithology) representative in NI who suggests that "more robust ecosystems and greater biodiversity will mean more birds, cetaceans and fish which will all support increased leisure and tourist activity."

We feel that as we come out of a period of civil unrest and our tourism grows and with the added increase to biodiversity which could result from MCZs and HPAs there is a huge potential for increase for all of these leisure and tourist activities. Indeed there is no reason why our figures for sea angling in NI could not increase to match those for the rest of Ireland.

We noted with interest in the 2007 report on the impact of recreational angling the added value of health benefits "angling, being a source of outdoor recreation, can provide health benefits in terms of relieving stress and providing relaxation" and provides the added social benefits of interaction between diverse range of ages and socio economic backgrounds, which could help reduce the costs of our department of Health and Social Services. This view was supported by the owner of a local charter boat, Bangor who felt his business is a positive thing for our society as it introduces people to the marine natural world and it attracts tourists and even those already living here who are choosing to holiday at home. It gives people a chance to share and learn about their environment with others while bonding with friends, family and different communities.

Case-study: Rathlin Island benefits biodiversity people and the economy

The RSPB Seabird Centre on Rathlin Island supports tens of thousands of nesting birds An increasingly popular tourist attraction, it now receives more than 14,5000 visitors per year.... critical to the health of the local economy. Data from visitor evaluations show that around 60% of visitors to the Reserve come to Rathlin specifically because of the RSPB's presence. Subsequently Rathlin Island benefits from visitor expenditure of £230,000 due to the RSPB's

existence which equates to just over 5 FTE jobs, 2.8 Direct employment by RSPB and 1.4 by farming activities equals 9.2 FTE jobs.”

(“Delivering for Nature: An Environmental and Economic Challenge to Government.” RSPB 2012)

One Rathlin Island fisherman operates sustainable rod and line fishing and pots for lobster and crab and ensures all fish caught on line is used either for personal use or in the fish and chip shop, Manor House or new fish shop. He organizes sea angling and wildlife watching trips. He feels his fishing methods are reasonably sustainable and the wildlife watching trips entertain and attract tourists, which brings vitally needed money to the local island economy.

As young people having visited Rathlin Island we suggest that there needs to be improvements to facilities for tourists. We found it difficult to spend money. The fish and chip shop and tapas in the Manor House were great but we suggest more teenage-focused souvenirs like fun T Shirts and more beds in cheaper accommodation and camping facilities.

There needs to be a greater variety of leisure activities which could include guided dives, canoe trips, more regular wildlife watching boat trips and perhaps marine-themed scheduled story-telling on certain evenings and model boat making and racing by the islanders similar to Lundy Island.

“In terms of leisure and tourism, Northern Ireland’s marine and coastal environment is also its top tourist attraction with the majority of tourism infrastructure focused around the coastal area. People travel great distances to visit the puffins on Rathlin and the basking sharks that pass along the north coast, for example, and they bring with them vital income and employment opportunities to coastal communities. Maintaining that is vital for those communities and increasing it could improve prospects and grow tourism, bringing development opportunities to those areas and improving people’s standard of living. New dive sites could develop within protected areas, for example, or more wildlife watching tours. That is of course in addition to all the benefits those people get from spending their leisure time outdoors and the spiritual well being and connection we humans feel when surrounded by nature.”

(Katherine Yates, PhD Second year PhD researcher, Marine and Coastal Centre, University of Ulster, Coleraine)

We wish to discuss with the Environment Committee their views on whether they agree that there is huge untapped potential to grow marine-based leisure and tourist activities in NI and that these will be supported by a well managed network of protected marine areas.

3. Without an MMO, we feel it will be impossible to implement the marine bill legislation and create an ecologically coherent and well managed network of local MCZs including some HPAs (Clause 11.1 and 18)

We need one body:

- Responsible for the effective implementation of the Marine Bill including coordinating the many authorities and stakeholders to ensure the best process and scientific evidence is used to establish a representative network of ecologically coherent and well managed local MCZs including some HPAs.

“We need fisheries management and environmental management brought together if we are ever going to meet our commitments to ecosystem-based management, biodiversity conservation and sustainable fisheries. Without an MMO we will have a continuation of the disjointed application of policy and the mismanagement that has led to the current parse in Strangford.” PhD researcher in Marine and Coastal Centre, University of Ulster, Coleraine looking at strategic conservation planning to inform and motivate better marine management in NI and have positive impact on the selection of sites for future MCZs.

- Responsible for carrying out detailed Environmental Impact Assessments (EIA) of existing and proposed activities on protected sites to ensure they are in Good Environmental Status (maintained or restored to favourable condition)

Presumably a licence was issued to mussel fishermen in Belfast Lough for beds in the Inner Lough on the basis of an EIA which would possibly demonstrate that their activity is sustainable but we wonder did the EIA include their activity in the Outer Lough around the Copeland Islands where they dredge for spat to seed the beds. We suggest a trial of a sustainable and non invasive approach growing young mussels on ropes to seed the beds.

We applaud the examples of good practice of our government departments which required an EIA followed by a cautionary approach of trialling the SeaGen turbine in Strangford Lough and the current consultation on banning of deep dredging for scallops around Rathlin Island.

Our concern is that one of our group became aware of the damage whilst carrying out research on Rathlin, 2010 and, in response to a letter outlining her concerns to Mr Liam McKibben, Director, Fisheries, Climate Change & Renewable Energy, was made aware of the consultation which is only happening now. The trawling has still not been banned.

(Consultation on Proposed Rathlin Island (restriction of Fishing and Fishing methods) regulations 2012, Fisheries and Environment Division, Sea Fisheries Policy Branch.

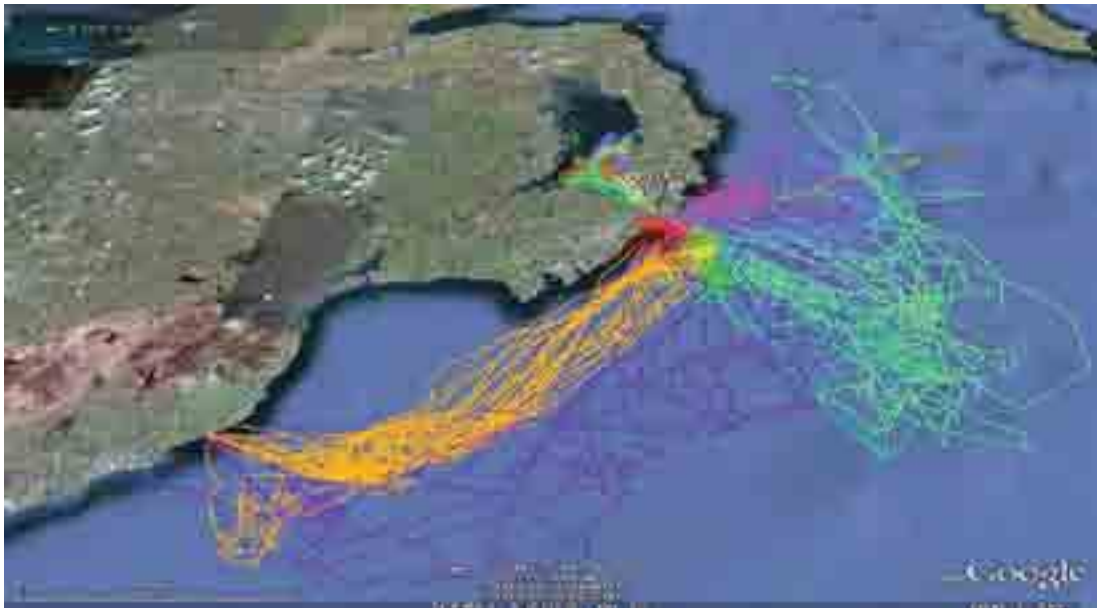
We wish to discuss with the Environment committee whether they agree with us that delays like this demonstrate that the existing government departments do not have at present the time or resources to enable them to manage the marine environment effectively which is putting our marine inheritance at risk.

- Responsible for collating and analysing existing data to inform the Environment Minister, his committee and relevant colleagues in other government departments to support an appropriate system for the designation of the new MCZ network particularly taking account of the highly mobile nature of many of our marine species.

This body needs to have the expertise to collate and analyse existing data and organise new research to understand the behaviour of marine creatures to include the many highly mobile species for example Strangford Lough's common seals, seabirds and fish like sea bass.

Existing data for Seagen collected for the purpose of an EIA for the turbine could also prove useful to study the movements of this internationally important colony of common seals.

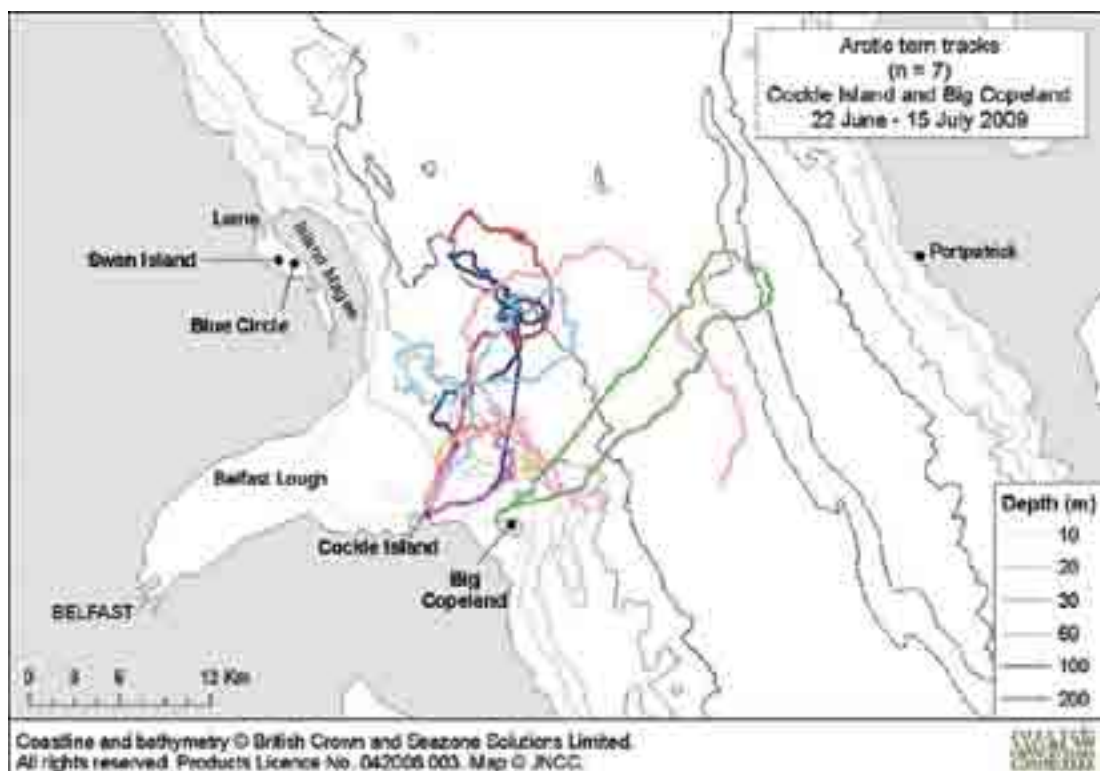
(Sea Gen Environmental Monitoring Programme: Final report by Frank Fortune, Technical director, Edinburgh and Sarah Wright, Senior Consultant, Glasgow Royal Haskoning)



Tracking the feeding movements of the colony of common seals, Strangford Lough

A BTO (British Trust for Ornithology) representative in NI stressed the need for robust data collected through surveying and monitoring to include all areas regularly used by seabirds from NI and other regions

Seabirds are protected on land at their nesting or roosting sites but need protection for the areas where they forage (fish for food). The following map illustrates tracking and transect data for arctic terns collected in 2009, from Big Copeland Island and Cackle Island collected as part of a UK-wide project to identify important marine areas that are used by terns during the breeding season to inform the identification of areas that may be suitable for designation as Special Protection Areas under the EC Birds Directive.



(Data collected by Allen & Mellon Environmental Ltd. Surveys funded by the Northern Ireland Environment Agency and the Joint Nature Conservation Committee.)

- Responsible for carrying out research on species movement due to climate change and changing water temp of which there is no provision in the bill.

We may lose some species whilst gaining others. If Rathlin Island loses its seabird colony including the iconic puffins this could impact on the local economy. Trends are indicating more turtles and seabass in our waters consistent with the predictions of species movements in a Northwesterly direction due to climate change. We feel there should be a mechanism that if scientific evidence supports a significant change then MCZs can be moved to track species in real time. This needs to be decided carefully and tactically with accurate and regular monitoring and good communication between surveyors, conservationists and stakeholders.

We wish to discuss whether the Environment Committee agrees with us that, within the existing departments, there is not the capacity to collate and analyse data from existing and new research?

- Responsible for ensuring the effective management and enforcement of MCZs.

Lundy is managed in partnership and bi-annual meetings take place with the Statutory organisations and the stakeholders and users of the MCZ including divers, fishermen, charter boat companies. The group meet to discuss the developments, projects proposals and the management of the MCZ. It is also an opportunity for any issues or concerns to be raised and addressed. The outcome of these meetings is then brought to the Management Forum meetings with representatives from each of the management partner organisation. (www.lundyisland.com/conservation).

The management of the island is by the Wardens. “Management from our perspective as wardens hasn’t changed since the transition from MNR (Marine Nature Reserve) to MCZ. We patrol the MCZ, carry out monitoring, education and raising awareness of the management including the zoning scheme, amongst visitors to Lundy. We report infringements to Devon and Severn IFCA (Inshore Fisheries and Conservation Authority)” Sophie Wheatley, Warden Lundy Island 2012

A local angler who owns a fishing equipment shop in Bangor feels wrecks around Copeland Island could create artificial No-take Zones but there would be a need for enforcement around these areas against trawlers that come in at night.

A local diver, Strangford Lough is concerned about the lack of proper policing of the act, the example of the destruction of seagrass beds at Castle Espie being a case in question. There are a lot of people who will carry on their activities regardless of any Bill that is in place.

The training manger at Ballyholme Yacht Club lived in New Zealand and claims that there is a lot more wildlife there in comparison to Belfast Lough. She believes Belfast Lough could benefit from stronger quotas of fish take and having more policing. New Zealand boats are fitted with satellite transceivers and if they are found in a protected area, they lose their licence or are heavily fined up to NZ \$50,000 (£20,000).

Whilst it may be easier to monitor an MCZ near an inhabited island like Rathlin Island, we wonder how the Environment Committee plans to achieved this for an uninhabited one like the Copeland Islands or around rocks like the Maidens?

Conclusion: Quotes from the students

“This world was created with everything that humans need and yet we are determined to exploit it for our own greedy measures and destroy natural resources such as coal, oil, gas, the poles and the rainforest. However we are focusing on one of our major resources that we rely on greatly: the ocean.

If we keep destroying this planet, one supposedly “endless resource” at a time, then there will be no natural stores for future generations and I cannot bear to think of a planet that is bleak and devoid of any apparent wild life.” **(Amy Arnott, Methodist College, Belfast)**

“Biodiversity is ESSENTIAL for all aspects of human existence, from the air we breathe to the food we eat. The economy and all aspects of society that depend upon it can be said to be a wholly owned subsidiary of the environment, it simply would not exist without all the things we get from ecosystems. Thus, maintaining biodiversity has to be a top priority.

In terms of leisure and tourism, Northern Ireland’s marine and coastal environment is also its top tourist attraction with the majority of tourism infrastructure is focused around the coastal area. People travel great distances to visit the puffins in Rathlin and the basking sharks that pass along the north coast, for example, and they bring with them vital income and employment opportunities to coastal communities. Maintaining that is vital for those communities and increasing it could improve prospects and grow tourism, bringing development opportunities to those areas and improving people’s standard of living. New dive sites could develop within protected areas, for example, or more wildlife watching tours. That is of course in addition to all the benefits those people get from spending their leisure time outdoors: the spiritual well being and connection we humans feel when surrounded by nature.” **Katherine Yates, PhD researcher in Marine and Coastal Centre, University of Ulster, Coleraine**

I love the cry of the gulls and seeing the diverse species of seabirds diving beneath shifting waters or bobbing up and down contentedly on the crests of waves. To live on the coast is an amazing privilege. We need to protect our heritage as a simple matter of moral principle, since negligence and continued exploitation of our seas can only result in a tragic reduction in their biodiversity. This is why I’m excited and honoured to be a stakeholder regarding the Marine Bill, and feel that Highly Protected Areas should also be created within some Marine Conservation Zones since they would benefit not only biodiversity, but the economy, as well as whole communities. I would just like to thank The Environment Committee for recognising that a marine bill is essential for the survival of the wonderful and diverse marine wildlife that populates our shores, and for all your hard work in covering all the bases to ensure the Bill’s success! I believe it is a cause well worth fighting for - the conservation of the deep blue sea which cradles our emerald isle. **(Hannah Geary, Glenlola Collegiate, Bangor)**

“As a young person studying Zoology at QUB, I am concerned that we are delaying and risk losing our marine heritage, perhaps even seeing the extinction of some species before we have a chance to learn about them.

I am seeking reassurance that there will be sufficient protection put in place now for our marine species to ensure that when I am an adult that I can enjoy going out and experiencing their exciting world in their company.” **(Carol Moorehead, Zoology student, QUB)**

In conclusion, the writing is on the wall for the NI marine environment, to continue as present would devastate our seas, crippling an invaluable resource and denying future generations the sea to work, play and live on. The bill needs to deliver a clear objective to protect the everyday species and features alongside the rare and unique species to ensure they do not disappear from our waters, stopping me from seeing spectacular species that my dad knew as common to these waters. The future of our seas, today, tomorrow and forever, lies in your hands. **(Matthew Ferguson, Down High School, Downpatrick)**

This constitutes our submission to the committee expressing our views and concerns as young people for the protection of our marine inheritance. We would welcome the opportunity to present and to discuss our submission to the Environment Committee over the consultation period.

Queen’s University of Belfast zoology student - Carol Moorehead

Down High School, Downpatrick - Matthew Ferguson

Glenlola Collegiate, Bangor - Gina Black/ Hannah Geary, Marine Conservation Group

Holy Trinity College, Cookstown - River Warrior Group

Lumen Christi College, Derry/ Londonderry - Nicole Simpson, Megan and Niall Doherty

Methodist College, Belfast - Amy Arnott / Oliver Donnelly

Priory Integrated College, Holywood - Lewis O’Neill

St Malachy’s College, Belfast - Emmett Rice

Professor Greg Lloyd Submission

Marine Bill

Introduction

I note that the purpose of the marine Bill is to provide for marine plans in relation to the Northern Ireland inshore area; to provide for marine conservation zones; and to make provision for marine licensing for electricity works. A general observation is that this Bill has to be transformative as the marine environment is highly complex and vulnerable to external impacts. Unlike planning for terrestrial environments the marine is very much more layered and dynamic. It requires very sensitive stewardship arrangements to reflect the value and potential of its resources and services. These will inevitably increase over time and it is imperative that the planning and governance of the marine environment is an appropriate one.

As a general caveat it is important that whilst Northern Ireland brings its established experience and expertise with respect to land based planning (in both strategic and local dimensions) a linear transfer of thinking and practice needs to be resisted. Marine and terrestrial environments are very different and design of a marine planning and governance framework requires careful cognisance of the embedded ownership rights, customs and traditions around access to the marine environment, and the complex under-currents which exist. Whereas the land use planning debate often turns on a fixed concept of 'location, location, location' the marine environment is much more mobile and dynamic. The Marine Bill needs to be alert to that characteristic.

Part 1: The Northern Ireland Inshore Region

This is a clear explanation of the area under consideration.

Part 2: Marine Planning

Marine spatial planning is a relatively new concept.¹ It draws its provenance from terrestrial spatial planning ideas in European practice (the European Spatial Development Perspective) and the perceived need to have appropriate institutional and organisation arrangements in place to provide for the management and stewardship of the land resource. It was also about promoting greater connectivity between different policies (of direct relevance to the marine environment given the spectrum of interests involved) and an emphasis on strategic agendas. Research has revealed the importance of securing an appropriate match between context and method.² This suggested the case for strategic planning in those circumstances where decisions, measures and interventions were experienced across a number of different policy areas. Further, research suggested the importance of the necessary elements of a strategic planning architecture involving multi-objective and inter-related organisational activity.³ It was argued there is a need for a cascade in institutional relationships necessary to secure policy implementation, and included provision for contingency and risk management in planning practice.

The idea of a marine plan should be based on such strategic dimensions – so as to reconcile the various interests involved in the marine environment. Perhaps the idea of a Marine Planning Framework could inform the approach as described in the Bill. Here the experience in Scotland (in a terrestrial context) of a National Planning Framework may be instructive.

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- 1 Peel D & Lloyd MG (2004) 'The Social Re-construction of the Marine Environment: Towards Marine Spatial Planning', *Town Planning Review* 75(3) pp. 359-378.
 - 2 Diamond D (1979) 'The Uses of Strategic Planning: The Example of the National Planning Guidelines in Scotland', *Town Planning Review*, 50(1), pp. 18-25
 - 3 Bruton M & Nicholson D (1985) 'Strategic land use planning and the British Development plan System', *Town Planning Review*, 56(1), pp. 21-41.
-

The National Planning Framework has transformed the approach to conventional land use planning in Scotland – it provides a strategic framework within which public and private sector decisions could be orchestrated.⁴ Importantly, the National Planning Framework identifies key infrastructure investments for Scotland's national public interest and identifies priorities for the improvement of strategic infrastructure to support the Scottish Government's central purpose of securing sustainable economic growth. It articulates the spatial consequences of established policies for transport, energy, climate change, waste management, water and drainage, and flooding. This would be an appropriate approach for Northern Ireland's marine planning context.

It is important to note that the Scottish programme of land use planning modernisation rests very firmly on a case for culture change – and this is of tremendous significance for the Northern Ireland marine plan (and marine spatial planning processes). In Scotland, attention was paid to ensuring positive engagement by key stakeholders in understanding the need and nature of the reforms. This set out a series of joint actions by the Scottish Government, local and national park authorities, agencies and the private sector to work more effectively together to deliver an improved planning system. The commitments included a more streamlined approach to consultation processes with the appropriate government agencies so as to focus on matters of genuine national importance, encourage more proportionate demands made of developers by the public sector, and promote greater cooperation across the public and private sector.⁵ Given the novelty of marine planning in Northern Ireland – and its importance to the management and stewardship of the marine resource – then a culture change needs to be encouraged to promote greater understanding of the marine.

Part 3: Marine Protection

The concept of marine conservation zones is very appropriate – and the details are very clear about the designation, operation and enforcement of the zones. Care needs to be paid to the dynamic nature of the marine environment and the difficulties that may be encountered in determining the boundaries of the zones. In marine spatial planning terms, the deployment of the marine conservation zone approach may be strengthened by the use of supporting evidential material. Reference may be made here to the innovative step taken in Scotland in 1974 with its publication of Coastal Planning Guidelines. This was prompted by the onshore development impacts associated by offshore oil and gas exploration and production in the North Sea.⁶ Two points are important.

First, the Coastal Planning Guidelines (which morphed into National Planning Guidelines – the first statement of strategic land use planning policy which today are widely used as with the Planning Policy Statements in Northern Ireland) – were supported by appropriate evidence. Planning Advice Notes set out the underpinning policy and practice advice for implementation; and Planning Information Notes set out the statistical evidence base for all interested parties. This created a robust evidence base against which all subsequent debates around the policy and planning framework could be contextualised. Second, the Coastal Planning Guidelines contained two categories of zone – preferred conservation zones and preferred development zones. That approach may also be appropriate to the Northern Ireland marine plan – setting out areas where development may be appropriate (subject to conditions as defined). This would reflect the emerging approaches to valuing natural environments – such as the Foresight Project on Land Use Futures, for example, which asserted the need to take the broadest possible perspective in developing future land policies and terrestrial strategies.⁷

4 Peel D & Lloyd MG (2007) Neo-traditional Planning. Towards a New Ethos for Land Use Planning? *Land Use Policy* 24(2), pp. 396 - 403.

5 Peel D & Lloyd MG (2007) 'Civic Formation and a New Vocabulary for National Planning' *International Planning Studies*, 12(4), pp. 391-411a

6 Elliot RG, Lloyd MG & Rowan-Robinson J (1987) National Planning Guidelines and Strategic Planning: Matching Context and Method? *Town Planning Review* 58(4), pp. 369-381.

7 Foresight Land Use Futures Project (2010) Final Project Report. The Government Office for Science, London.

The report explicitly references the ‘multifunctionality’ of land whilst acknowledging the potential conflicts over its use and development. This is applicable to the complex marine environment. Similarly the UK National Ecosystem Assessment provides a comprehensive overview of the state of the natural environment in the UK. It asserts the importance of the natural environment to societal well-being and argues that it is consistently undervalued in conventional decision making and policy making.⁸ It points out that sustainable development will require a judicious mix of regulations, technologies, financial investment and education, together with behavioural changes across society. Specifically, it advocates an integrated approach to ecosystem management. The reasoning of these methodologies and advocacy documents would be appropriate for adoption in the context of the Northern Ireland marine environment.

Parts 4 & 5

No comments.

Professor Greg Lloyd
School of the Built Environment
University of Ulster
mg.lloyd@ulster.ac.uk

April 2012

8 UK National Ecosystem Assessment (2011) The UK National Ecosystem Assessment: Synthesis of the Key Findings. Cambridge : UNEP-WCMC.

RYANI Submission



Alex McGarel
Clerk to the Environment Committee
Room 245
Parliament Buildings
Stormont
Belfast, BT4 3XD

RYA House
Ensign Way, Hamble
Southampton SO31 4YA
United Kingdom

Tel +44 (0) 23 8060 4100
Fax +44 (0) 23 8060 4299
www.rya.org.uk

Direct tel: +44 (0)23 8060 4222
Direct fax: +44 (0)23 8060 4294
Email: caroline.price@rya.org.uk

17th May 2012

Dear Sir/ Madam

NORTHERN IRELAND MARINE BILL: COMMITTEE STAGE

RYA Northern Ireland (RYANI) is established to promote the sport of sailing, windsurfing and power boating in Northern Ireland and acts as the RYA Council for Northern Ireland. RYANI is consulted by the Northern Ireland Executive, the Crown Estate, Local Authorities and other non-governmental bodies on a range of issues affecting recreational boating. There are approximately 40 RYA-affiliated sailing clubs and 60 RYA Recognised Training Centres in Northern Ireland.

The RYA and RYANI welcomes the entering of the Northern Ireland Marine Bill into the Committee stage of the legislative process. We would like to take this opportunity to offer our continuing support for the Bill at this time, and to articulate our concerns about the potential for amendments to this Bill, in particular those recommended by the Northern Ireland Marine Task Force (NIMTF).

The RYA and the RYANI take the view that the Northern Ireland Marine Bill should continue to align closely with the Marine and Coastal Access Act 2009 (MCAA). It is our opinion that the MCAA is a strong and effective piece of legislation that provides a robust framework supporting the sustainable use of the seas over which it applies. Furthermore, considerable debate continued during the passage of the MCA Bill through Parliament ensuring that the resulting 2009 Act was in the main 'fit-for-purpose'. We are therefore supportive of all the elements of the Northern Ireland Marine Bill that mirror the MCAA and would oppose any suggestions for deviation in these areas.

In their submission the NIMTF provide detailed discussion and suggested amendments on a clause by clause basis and for clarity we have laid out our response to their suggestions in a similar manner. All our comments relate to Part 3 of the Bill, Marine Conservation Zones.

Subject Matter	Provision Number	NIMTF Suggestion	RYA/Ryani Response
Designation of MCZs	S11(1)	Amended as follows: <i>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.</i>	It is unnecessary to deviate from the text as laid out in the MCAA 2009. The obligations of the Department of Environment (DOE) are made clear in the existing text within the Bill and it is our view that the DOE should retain the right to employ discretion in these matters. We oppose the amendment as suggested.
Grounds for designation of MCZs	s12(1)	Amended to read; <i>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...</i>	For the reasons set out above the RYA/Ryani objects to this amendment and the deviation from the MCAA 2009.
Grounds for designation of MCZs	s12(7)	12(7) should be omitted or replaced with: <i>(7) 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</i>	The RYA/Ryani have strong objections to this proposed amendment. Not only does it deviate unnecessarily from the MCAA 2009, it is our view that such an amendment does not align with the overarching theme of sustainability. The three pillars of sustainability include society and economy as well as the environment. The proposed amendment suggests that environmental matters should take precedence over social and economic issues. The RYA/Ryani believe that socio-economic activities, particularly recreational boating, can co-exist with the marine environment and would resist any proposals that seek to preclude this approach.
Grounds for designation of MCZs	s12(9)	New provision inserted: <i>12 (9) The Department must— (a) prepare and publish guidance setting out scientific</i>	Whilst the RYA/Ryani agree that guidance should be published in relation to the designation of MCZs

		<i>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.</i>	we do not believe it is necessary to deviate from the wording of the MCAA 2009 on this matter.
Consultation on MCZs	s14(3)	Amended as follows: <i>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</i>	There is no justification for deviating from the MCAA 2009.
Publication of Orders	s15(3)	Section 15 (3) should also be amended as above in Section 14(3)	There is no justification for deviating from the MCAA 2009.
Designation of MCZs	s18	s18(3) should include the following: <i>(d) that the network includes highly protected sites</i>	The RYA/Ryani strongly opposes an amendment that seeks to obligate the designation of highly protected sites. It is essential in our view that the DOE retains the discretion to decide what level of protection is required for each MCZ on a case by case basis and that the exercise of this discretion should not be constrained by the inclusion of a presumption that some sites should be highly protected. The concept of highly protected sites has proved to be particularly controversial in England.
Duties of public authorities regarding MCZs	s20	Amended as follows: <i>(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 –</i> <i>(a) the protected features of an MCZ;</i> <i>(b) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent</i> <i>(5) If the authority believes</i>	The RYA/Ryani do not agree that this amendment is necessary and would recommend that the wording of this section does not deviate from the equivalent provisions in the MCAA 2009.

		<p>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.</p> <p>...</p> <p>(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.</p> <p>(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.</p>	
Decisions relating to MCZs	s21(7)	<p>Amended as follows;</p> <p>(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</p> <p>A further provision should be included;</p> <p>(12) The provisions of this section are made without prejudice to the protection of features of an MCZ afforded under EU or International Law.</p>	<p>The RYA/Ryani do not believe that these amendments are necessary. The passing of a NI Marine Act would not obviate the DOE from its obligations under the Habitats Directive and the application of the precautionary principle where relevant under this legislation. The NI Marine Bill is intended to promote sustainable use of the seas and reference to the precautionary principle within this Bill would in our opinion be inappropriate. Indeed it is our view that NIMTF's proposed amendments to s21(7) would create duplication across a number of pieces of legislation confusing the intention of the NI Marine Bill and interpretation of the subsequent Act.</p>
Offences byelaws	s30	<p>Amended as follows:</p> <p>(2) A person who is guilty of an offence under this section is liable;</p> <p>(a) on summary conviction to a fine not exceeding level 5 on the standard scale</p> <p>(b) on conviction on</p>	<p>The RYA/Ryani strongly oppose the suggested amendments to s30. £5000 is the maximum fine provided for in the MCAA 2009 and there is no justification for deviating from the MCAA 2009 in this regard.</p>

		<p><i>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.</i></p> <p>The offence of disturbance should be included within the general offences for MCZs under s31.</p>	<p>The RYA/Ryani also objects to the inclusion of 'disturbance' within an MCZ being included as a general offence under s31. The interpretation of what constitutes 'disturbance' has historically been legally problematic, further complicated by the need to demonstrate wilful behaviour. Should a clear evidence base indicate that regulation in a particular MCZ is necessary, this should be developed according to the features the site is designated to protect. The inclusion of 'disturbance' as a general offence across all MCZs would be wholly inappropriate.</p>
Offences	s31	<p>The offence of "disturbance" must also be included within subsection (2)(a); <i>(2)(a) intentionally or recklessly kills, injures or disturbs any animal in an MCZ which is a protected feature of that MCZ"</i></p> <p>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.</p> <p>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.</p>	<p>Further to our comments above, the RYA/Ryani object strongly to the inclusion of 'disturbance' as a general offence in MCZs. The Wildlife and Countryside Act 1981 (as amended) already provides the legislative framework for regulation of this nature, indeed the wording proposed here is almost identical. Not only would this duplication be confusing, it is in our view unnecessary.</p> <p>The RYA/Ryani strongly opposes the inclusion of custodial sentencing as part of the available penalties as it is likely that this would be disproportionate in many cases. Furthermore, it does not appear to be the intention of the Bill to introduce routes for custodial sentencing and as such inclusion of this amendment would be inappropriate.</p> <p>We also object to the proposal to include provision for mandatory</p>

			compensation because it is our view that this would be difficult to implement. At this stage it is impossible to provide clear criteria on which to base decisions on the need for restoration as it is unknown what will be protected by MCZs. To introduce a mandatory requirement for restoration at this stage appears to be premature and potentially awkward if restoration is not the best available option.
Enforcement officers	s36	The word "may" should be replaced with "shall".	There is no justification for deviating from the MCAA 2009.

We trust that the points set out in this letter are useful and we look forward to reviewing the NI Marine Bill again on completion of the committee stage.

Please do not hesitate to contact me if you have any questions or queries arising from our response. On behalf of the RYA and RYANI, I would be pleased to be involved in any future consultations or discussions

Yours faithfully,



Caroline Price
RYA Planning and Environmental Advisor

Date: 25 April 2012
 Our Ref: MMcC
 Your Ref:



Mr Sean McCann
 Assistant Clerk
 Committee for the Environment
 Parliament Buildings
 Ballymiscaw
 Stormont, Belfast
 BT4 3XX

Dear Mr McCann

RE: Marine Bill – call for written evidence

Thank you for your letter dated 12th March 2012, requesting a written response on the Marine Bill for the Committee for the Environment.

Please find enclosed a copy of the said written response.

The response highlights a number of areas within the Marine Bill that Sport Northern Ireland feels could be improved and notes that much of the impact on recreation would relate to the implementation of the Bill rather than the Bill itself.

Notably, you will see from the response, Sport Northern Ireland believes that the Bill should include a commitment to the development of Coastal Access in line with the UK Marine and Coastal Access Act. This would mean that Northern Ireland would maintain parity with other parts of the United Kingdom in terms of access to the coast for sport and physical recreation.

Yours sincerely

Eamonn McCartan
 Chief Executive

Sport Northern Ireland is the trading name of the Sports Council for Northern Ireland
 House of Sport, 2a Upper Malone Road, Belfast BT9 5LA. Telephone (028) 9038 1222
 Facsimile (028) 9068 2757 Minicom (028) 9068 2593 Website www.sportni.net

Chair: Mr Dominic Walsh BSc, MBA, CEng
 Vice Chair: Mr Alan L. Money Penny Cert. Law (Q118) Dip. Law (QUB)
 Chief Executive: Professor Eamonn G. McCartan MBA, DMS, B. Ed, UASL, MCOM, MCFPO





SPORT NORTHERN IRELAND

RESPONSE FROM SPORT NORTHERN IRELAND TO
THE REQUEST FOR WRITTEN INFORMATION BY
THE COMMITTEE FOR THE ENVIRONMENT, ON THE
NORTHERN IRELAND MARINE BILL

ISSUE DATE: 25th April 2012

**This document is available in other accessible formats
on request and on-line at www.sportni.net**

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1. INTRODUCTION

- 1.1 This paper provides Sport Northern Ireland's (SNI) response to the request for written responses to the Committee for the Environment.
- 1.2 SNI welcomes the opportunity to comment on this consultation as "Sport Matters" - the Northern Ireland Strategy for Sport and Physical Recreation 2009-19 has outlined the importance of outdoor recreation for increasing participation in sport and physical recreation. Sport Matters has outlined the need for public policy frameworks that increase and improve access to the natural environment for sustainable and responsible recreation and SNI would note that recreational users' value clean and pristine environments for their activities.
- 1.3 The coastline and marine environment in Northern Ireland are extensively used for a range of sport and physical recreation activities. The proposed Marine Bill highlights the importance of the marine environment in Northern Ireland to the population of Northern Ireland.

2. BACKGROUND TO SPORT NORTHERN IRELAND

- 2.1 Sport Northern Ireland is a Non-Departmental Public Body (NDPB) of the Department for Culture, Arts and Leisure (DCAL) and is charged with the development of sport in Northern Ireland. DCAL's vision is of: *"a confident, creative, informed and vibrant community"*.
- 2.2 DCAL intend to realise this vision through the development of policies and resources to: *"Protect, nurture and grow our Cultural Capital for today and tomorrow"* (DCAL Mission).

For DCAL, Cultural Capital is manifested in three ways:

- **People** – the creators and consumers of Cultural Capital, including sportswomen and sportsmen;
- **Infrastructure** – the physical spaces within which culture is created and enjoyed, including sports grounds; and
- **Products and Services** – our cultural output, including sporting success.

- 2.3 Sport Northern Ireland's vision is embedded in DCAL's vision: "*A culture of lifelong enjoyment and success in sport which contributes to a healthy, fair and prosperous society*".

In practice, this means SNI designing and implementing programmes and partnerships that will contribute to the following strategic objectives:

- increased participation in sport and physical recreation;
- improved sporting performances; and
- improved efficiency and effectiveness in the administration of sport.

- 2.4 Sport Northern Ireland's business and the development of sport and physical recreation in Northern Ireland is dependent on an infrastructure of people, organisations and facilities, all of which need to be grown and sustained in the longer term.

3. GENERAL COMMENTS

- 3.1 The Programme for Government 2011-15 "Building a Better Future" in Northern Ireland has highlighted five key strategic and interdependent priorities as follows:

- **PRIORITY 1: Growing a Sustainable Economy and Investing in the Future**
- **PRIORITY 2: Creating Opportunities, Tackling Disadvantage and Improving Health and Well-Being**
- **PRIORITY 3: Protecting Our People, the Environment and Creating Safer Communities**
- **PRIORITY 4: Building a Strong and Shared Community**
- **PRIORITY 5: Delivering High Quality and Efficient Public Services**

- 3.2 The Northern Ireland Marine Bill mainly focuses on priority 3.

- 3.3 While SNI welcomes the Marine Bill and its potential to protect the marine environment, it is concerned that Part 9 of the UK Marine and Coastal Access Act 2009 has been disregarded for Northern Ireland. There are approximately 400 miles of coastline in Northern Ireland and a report for the Council for Nature Conservation and the Countryside

(CNCC) by David Boyd in 2007 highlights that:

- 70 miles are already in Public Ownership – the majority of which is accessible;
- 100 miles are roads and railways; and
- 230 miles are in private ownership and the report highlights the difficulties that there are in negotiating access due to land ownership patterns and Occupiers' Liability concerns.

3.4 The UK Government has highlighted a commitment to creating Coastal Access in England and Wales. While England is currently developing a number of sections of accessible coastline, the Welsh Assembly Government has already developed the whole coastal path and will be launching it on the 5th May 2012. The Welsh Government's commitment to delivering the Wales Coast Path had the following key objectives:

1. To encourage and enable the public, both locals and visitors, to enjoy the coastline of Wales.
2. To encourage and enable more people to enjoy physical recreation at the coast, thus helping in efforts to become a fitter, healthier nation.
3. To make coastal access a 'flagship' tourism product, thus bringing economic benefit to coastal communities.

3.5 The project was co-ordinated by the Countryside Council for Wales and delivered on the ground by those Welsh local authorities through which the coastal route passes. Funding was secured from the European Union, the Welsh Assembly and Welsh local authorities.

3.6 Scotland already has a fully accessible coastline through the Land Reform Act (Scotland) 2000.

3.7 Northern Ireland lags behind other European Countries in terms of access to the natural environment for recreation as there is limiting legislation on access and extremely low mileage of public rights of way despite having some of the most fantastic scenery and landscapes in the British Isles. In other parts of the UK access legislation has been updated through the Countryside and Rights of Way Act (2000) and the Land Reform (Scotland) Act (2003). The 1983 NI Access Order does not provide the same level of right of access nor the responsibilities on

users as these other pieces of legislation.

3.8 SNI, in partnership with the Northern Ireland Environment Agency (NIEA) has been leading a series of public consultations on the development of a new Outdoor Recreation Action Plan for Northern Ireland to update, refresh and replace the 1998 Countryside Recreation Strategy in line with the aspirations, vision and targets of 'Sport Matters'. 91 different organisations have provided responses to this consultation and the recurrent issues emerging are lack of access, limited numbers of walking and cycling routes and the perceived weaknesses within the NI Access Order and the Occupiers' Liability legislation.

3.9 SNI believes that the Marine Bill presents an opportunity to help redress this situation and to show a commitment by the NI Assembly to improve access especially to a Northern Ireland showcase feature – the shared coast.

3.10 SNI believes that the Marine Bill, as currently drafted, may be a missed opportunity to address a number of 'Programme for Government' priorities such as:

- PRIORITY 1: Growing a Sustainable Economy and Investing in the Future
- PRIORITY 2: Creating Opportunities, Tackling Disadvantage and Improving Health and Well-Being

SNI believes that the development of improved and extended coastal access could help to improve opportunities for tourism and to improve the health and well-being of the people of Northern Ireland.

3.11 Finally it has been clearly shown through research such as the Natural England Monitoring and Engagement with the Natural Environment Survey (MENE) that the involvement and engagement of people with the natural environment engenders a strong sense of ownership and protection for that environment. Therefore providing improved coastal access should engage more people with the fantastic coastline of Northern Ireland and create a stronger voice for its protection and conservation.

4. SNI SPECIFIC RESPONSES TO CONSULTATION

4.1 Part 2 – Marine Plans

4.1.1 SNI supports the Department's powers to create marine plans for inshore regions and notes that the plan should state the policies of the relevant Northern Ireland departments. SNI would point out that "Sport Matters," while developed by Sport NI and the Department of Culture Arts and Leisure, is a cross cutting government strategy. The strategy highlights the importance of access to the natural environment for sport and recreation and SNI would point out that the marine environment and the coastal fringe is extensively used by a great range of sports and activities including but not limited to the following:

- Angling;
- Canoeing and kayaking;
- Coasteering;
- Cruising;
- Diving;
- Horse riding;
- Power boating;
- Rock climbing;
- Swimming;
- Sailing;
- Sand yachting;
- Surfing;
- Walking.

4.1.2 Research undertaken on behalf of Sport Northern Ireland by the Countryside Access and Activities Network into the Trends in Adventure Sports 1995 – 2008 has highlighted significant growth in a range of sports including the following sports that make use of the marine environment:

Sport	Participant Numbers	
	1995 data	2008 data
Sailing	9,900	12,000
Canoeing	772	2,600
Surfing	Not provided	7,580

SNI would point out that while some vessels will create a significant wake or produce a lot of noise when moving at speed this is not the case for all watercraft – particularly those under human or wind power. The impact of such activities can be considerably less than motorised craft. Therefore it may be useful in an appendix to consider a definition of a vessel (which is normally considered as motorised).

- 4.4.5 Section 24 (3) (e) prohibits or restricts the killing, taking, destruction, molestation or disturbance of any animals or plants of any description in the MCZ.

SNI would have concerns that this could have a very negative impact on sea angling – which is a very sustainable method of fishing but which supports some rural economies. Further under the legislation for the Natura 2000 sites there has been considerable debate across Europe about what constitute significant disturbance – as insignificant disturbance does not require any restrictions. SNI would therefore suggest the wording of section (e) be changed to include the word significant and that further work is done to help provide information on what may constitute significant disturbance. SNI has commissioned work on this with respect to the impact of events in the Mourne Special Area of Conservation (SAC) and the Countryside Access and Activity Network (CAAN) is currently developing a website that provides further information on this. (www.outdooreventsni.com)

- 4.4.6 SNI has some concerns about Section (10) whereby the remainder of the section can be ignored if the Department thinks it necessary to urgently protect an MCZ as the lack of consultation and a considered approach may result in poorer protective measures and significant impacts on activities that may take place in that MCZ.

4.5 Schedule 1 – Marine Plans: preparation and adoption

- 4.5.1 SNI would note that the schedule places a duty on the Department in Section 4 to consult with other departments during the preparation of the consultation draft and the settling of the text of the plan for adoption and publication of the plan and SNI welcomes this duty.

- 4.5.2 SNI also welcomes the requirement to prepare and publish a statement of public participation.
- 4.5.3 SNI would note that in section 8 the Department may seek advice and assistance from any body or person with a particular expertise. SNI would propose that this is changed to be a requirement rather than an optional addition.
- 4.5.4 SNI would request to be named as a statutory consultee in relation to how the exercising of the Department's powers could impact on sport and recreation opportunities.

6. CONTACT DETAILS

6.1 For further information contact:
Mike McClure
Outdoor Recreation Development Officer
c/o Tollymore National Outdoor Centre
Hilltown Road
Bryansford
CO. Down
BT33 0PZ

Tel: 028 90383855
mikemcclure@sportni.net

Strangford Lough and Lecale Partnership Submission



The Marine Bill

27th April 2012

The Strangford Lough and Lecale Partnership Advisory Committee (SLLP – AC) welcomes the opportunity to submit comments to the Environment Committee on the proposed Northern Ireland Marine Bill.

The SLLP has been informed by the responses of some of its member organisations including the Northern Ireland Environment Link and it shares that organisation's general comments on the Marine Bill as follows:

The SLLP recommends that the proposed NI Marine Bill should have an overarching aim or general duty against which the provisions and actions taken under the Bill can be assessed of the Scottish Act where it is a requirement that Ministers and Public authorities: ...must act in the way best calculated to further the achievement of sustainable development... and ... must act in the way best calculated to mitigate and adapt to climate change..." We believe a similar requirement should be at the core of a NI Marine Bill.

The Bill should create a network of Marine Protected Areas that improves Northern Ireland inshore waters as well as contributing to the improvement of the wider UK Marine Area and should include a specific clause that enables the creation of highly protected Marine Conservation Zones.

It is important to integrate and synchronise the MCZ and MSP processes as planning for the future use of our seas should be informed by which areas need to be conserved.

Specific comments:

The Marine Task Force is a member of the SLLP – AC and they have prepared a response which has had the benefit of legal advice and which the SLLP wishes the Department to consider in full. Many SLLP members are generally supportive of the Marine Task Force's views and queries but the Northern Ireland Fish Producer's Organisation are vehemently opposed to its recommendations with respect to governance. The SLLP recommends that the proposed NI Marine Bill should make provision for a review of marine management structures in that there is need for better cohesion and integration in dealing with marine matters. The Royal Yachting Association also have specific issues and views which will differ from that of the Marine Task Force and their views will be contained within their individual response.

The SLLP recommends that in view of the particularly diverse, fragile and often unseen ecosystems and their scientific and technical complexity that all bodies and persons have the right of third party appeal. If it is considered that allowing individual persons' right of third party appeal could produce spurious or unreasonably large numbers of appeals, the right could be limited to valid organisations.

The concept of permission to manage research or demonstration areas, take part in wildfowling and other recreational activities is inadequately covered. There needs to be a specific simple permit system with appropriate conditions.

Sections 20 and 21 relate to public bodies decisions concerning acts affecting MCZs. There is very general reference to decisions affecting MCZs. This area of concern needs to be given greater guidance with respect to the potential of terrestrial developments and planning and other decisions to impact a neighbouring MCZ. Continuity of effect from terrestrial to marine should be acknowledged and the MCZ protected.

Para 32 (1) (e) and 32 (2) potentially constitute a contravention of the right to anchor in an emergency, leaving the person responsible, however remotely, for the emergency with no defence.

Para 32 (4) (b) should be reworded – substitute ‘foreseen’ for ‘avoided’. This would require a higher degree of defence.

Para 36 (7) mentions ‘member State’. There is no indication of what this means.

The definition of seashore in Para 39 is open to interpretation – what is ‘ordinary movement of the tide’? Most references to shore levels are described with reference to MSL as in 1 (2) (a). All definitions should be in one place.

The reference in Schedule 2 to a tribunal is vague and suggests that convening such a body would be a rare event. We suggest that this will be frequent enough to require a permanent Appeals Commission properly constituted and appropriately trained.

Ards Borough Council
National Trust
Royal Yachting Association
Association of Strangford Lough Yacht Clubs
Centre for Maritime Archaeology
Down District Council
Ulster Farmers’ Union
East Down Rural Community Network – Community & Regeneration
NI Fed of Sub-Aqua Clubs
Northern Ireland Agricultural Producers’ Association
Northern Ireland Environment Link
Historic Monuments Council
Joint Council of Wildfowlers
Marine Task Force
Northern Ireland Fish Producers Organisations
Queen’s University
Sports Council for Northern Ireland
Strangford Lough Fishermen’s Association
Strangford Lough Tourism Destination Management Forum
Ulster Farmers’ Union
Wildfowl and Wetlands Trust

University of Ulster Centre for Maritime Archaeology Submission

Response to the marine Bill consultation

Thomas McErlean and Kieran Westley
Centre for Maritime Archaeology
Dept of Environmental Science
University of Ulster
Coleraine

Dear Sir

We are very disappointed and concerned that there is no specific mention of maritime archaeology in the Bill. We see the failure to recognise the importance of maritime cultural heritage and as a serious omission from the Northern Ireland Bill. In support of our request we would point out that the Scottish Act, which is stronger on Marine conservation, specifically mentions the protection of historic monuments and further specifies the creation of Historic Marine Protection Zones. We quote the relevant section of the Scottish Act below.

73 Historic MPAs: additional requirements etc.

1. *(1)An area may be designated by a designation order as a Historic MPA if the Scottish Ministers consider it desirable to do so for the purpose of preserving a marine historic asset of national importance which is, or which they are satisfied may be, located in the area.*
2. *(2)The order must—*
3. *(a)specify any marine historic asset located, or which the Scottish Ministers are satisfied may be located, within the area,*
4. *(b)state the preservation objectives for the asset and the area,*
5. *(c)identify the area's boundaries.*
6. *(3)For the purpose of subsection (2) (c), an order may provide for the boundary to be determined by, or by reference to, mean high water spring tide.*
7. *(4)A Historic MPA may include (in addition to an area of sea referred to in section 67(1)) an area of seashore lying above mean high water spring tide if the area of seashore adjoins the area of sea.*
8. *(5)For the purposes of this Part, a marine historic asset is any of the following—*
9. *(a)a vessel, vehicle or aircraft (or a part of a vessel, vehicle or aircraft),*
10. *(b)the remains of a vessel, vehicle or aircraft (or a part of such remains),*
11. *(c)an object contained in, or formerly contained in, a vessel, vehicle or aircraft,*
12. *(d)a building or other structure (or a part of a building or structure),*
13. *(e)a cave or excavation,*
14. *(f)a deposit or artefact (whether or not formerly part of a cargo of a ship) or any other thing which evidences, or groups of things which evidence, previous human activity.*

A short but important provision is included in the **Marine and Coastal Access Act 2009 (the UK Act)**, which states under the grounds for designation of a MCZ a reference to *The reference in subsection 7.....includes a reference to any social consequence of doing so for any site in that area (including any site comprising or comprising the remains of, any vessel, aircraft or marine installation) which are of historic or archaeological interest (Marine and Coastal Access Act 2009 117:8)*. They also note that included in the Maritime Environment are features of archaeological or historic interest (ibid 186).

Statutory protection of cultural material on the seabed or in intertidal zone in Northern Ireland is covered principally under two legislative measures.

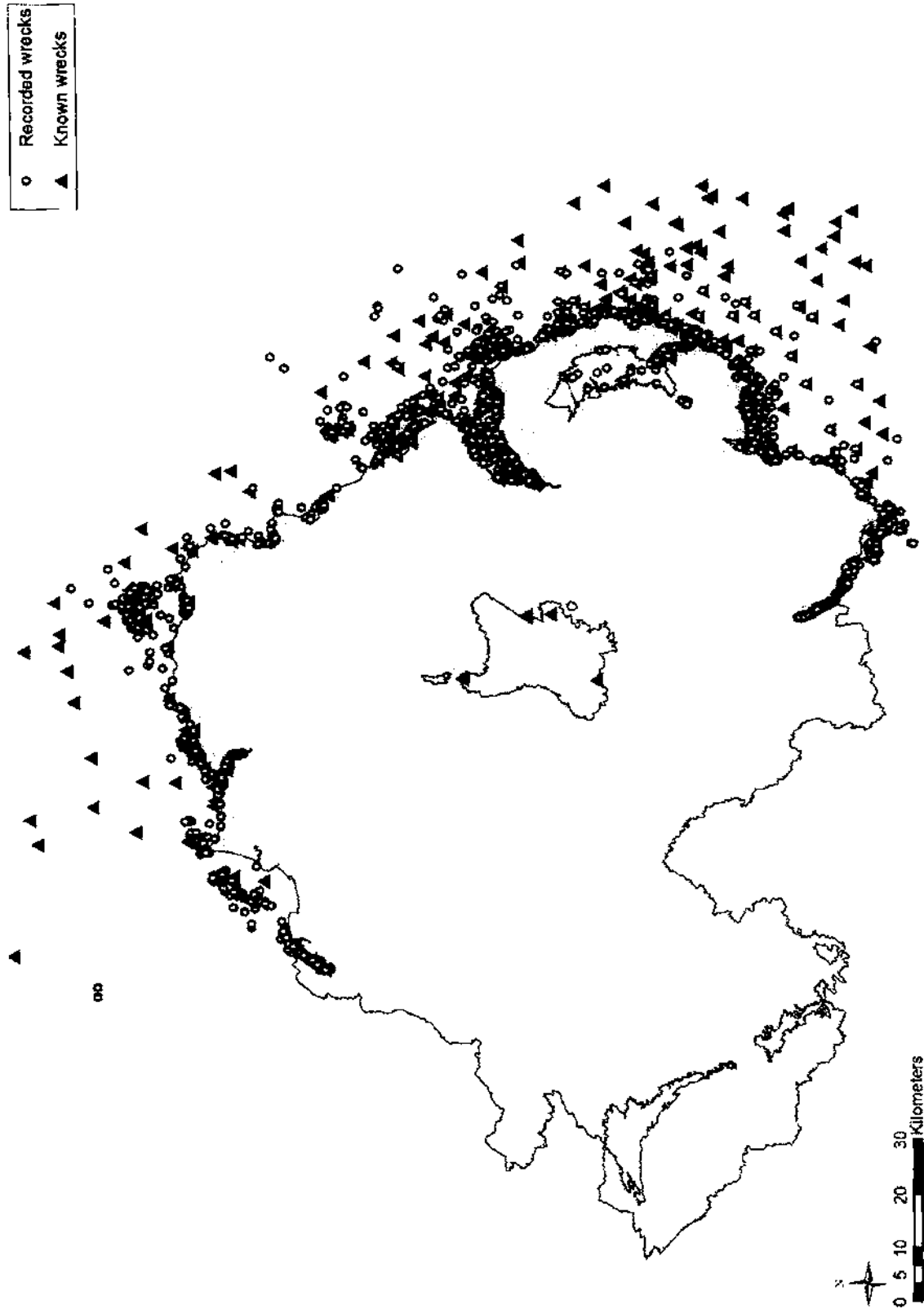
- 1 The Protection of Wrecks Act 1973
- 2 Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

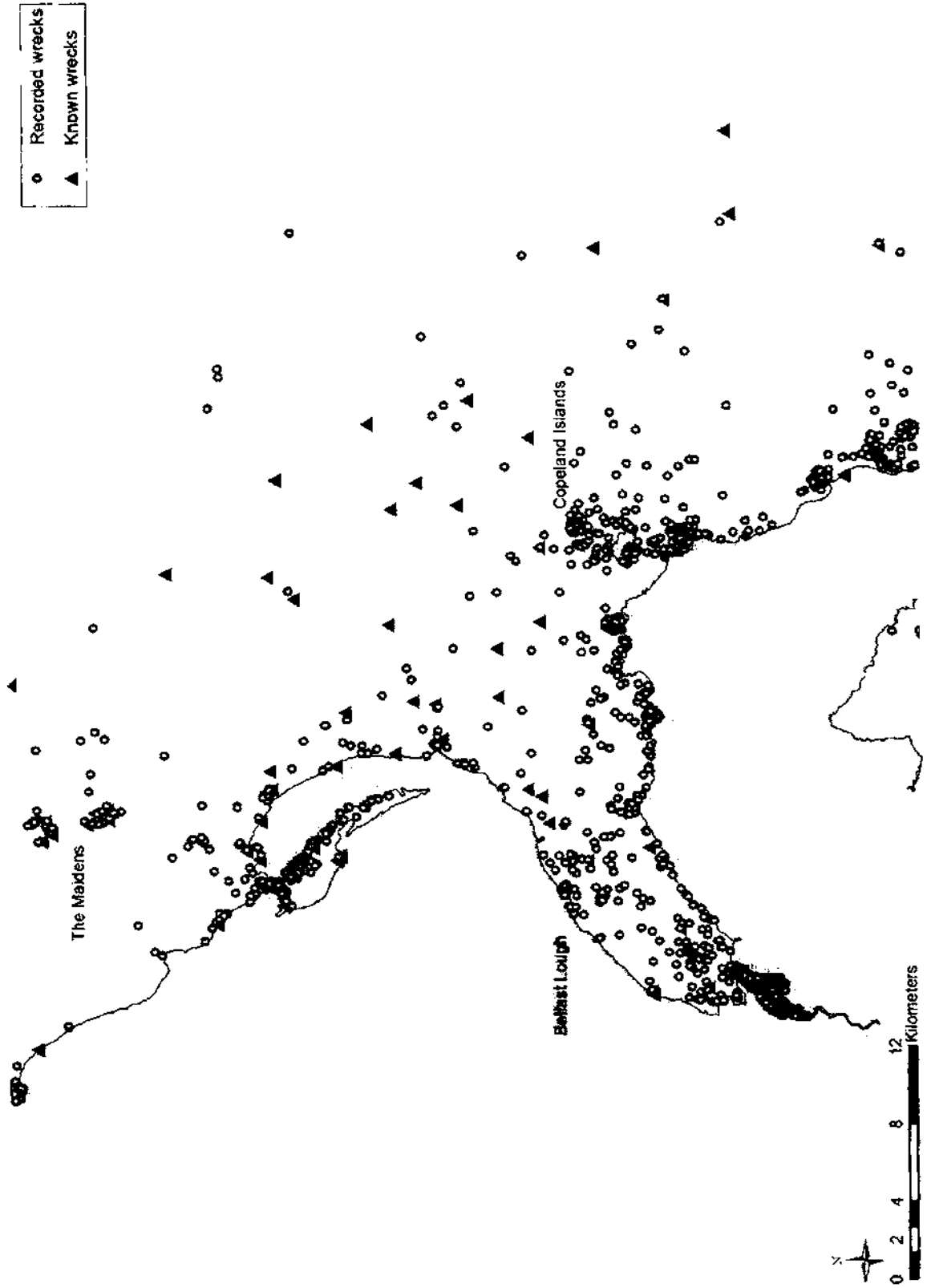
Both have inadequacies regarding their ability to protect archaeological sites or material on the seabed and the proposed act provides the opportunity to rectify this.

Suggested amendment

An ideal scenario would be to follow the Scottish route and have Historic Marine Protection Zones and copy their clauses into the Bill. Failing this we suggest that at the very least that in the section 3 of the bill concerning the grounds for designation of Marine Conservation Zones (MCZ) clause 12 which reads '*(c) features of geological or geomorphological interest*', that a phrase **or of archaeological interest** be added here. If this is done it may or may not be necessary to insert qualifying phrase in other relevant places.

Maritime Archaeology Briefing - Additional Paper







Northern Ireland
Assembly

Appendix 4

List of Witnesses

List of Witnesses

Mr Ken Bradley, Department of the Environment

Ms Brenda Cuning, Department of the Environment

Mr Angus Kerr, Department of the Environment

Ms Gerardine McEvoy, Department of the Environment

Mr Colum Delaney, Northern Ireland Marine Task Force

Mr Richard Devlin, Northern Ireland Marine Task Force

Mr Andrew Ryan, Northern Ireland Marine Task Force

Ms Marguerite Tarzia, Northern Ireland Marine Task Force

Ms Meabh Cormacain, Northern Ireland Renewables Industry Group

Mr Mike Harper, Northern Ireland Renewables Industry Group

Mr Grant McBurney, Northern Ireland Renewables Industry Group

Mr Paul Reynolds, Northern Ireland Renewables Industry Group

Mr Peter Archdale, Council for Nature Conservation and the Countryside

Mr Patrick Casement, Council for Nature Conservation and the Countryside

Mr Tommy Mayne, British Association for Shooting and Conservation

Mr Lyaill Plant, Countryside Alliance Ireland

Mr Thomas McErlean, Centre for Maritime Archaeology

Mr Tim Howard, Institute for Archaeologists

Mr Garry Gregg, Irish Federation of Sea Anglers

Mr Mike McClure, Sport NI

Mr David Hill, Anglo-Northern Irish Fish Producers' Organisation

Mr Alan McCulla, Anglo-Northern Irish Fish Producers' Organisation

Mr Dale Rodmell, National Federation of Fishermen's Organisations

Prof Greg Lloyd, University of Ulster

Mr Paddy Campbell, Department for Agriculture and Rural Development

Mr Ian Humes, Department for Agriculture and Rural Development

Mr Oliver Donnelly, NI Schools Marine Bill Advocacy Group

Mr Matthew Ferguson, NI Schools Marine Bill Advocacy Group

Miss Hannah Geary, NI Schools Marine Bill Advocacy Group

Miss Carol Moorhead, NI Schools Marine Bill Advocacy Group

Mr Emmett Rice, NI Schools Marine Bill Advocacy Group

Mr David Knott, Belfast Harbour Commissioners

Mr Peter Conway, British Ports Association



Northern Ireland
Assembly

Appendix 5

Research Papers



Northern Ireland
Assembly

Research and Information Service
Briefing Paper

Paper 000/00

11 June 2012

NIAR 000-00

Suzie Cave

Marine Bill: Sustainable Development and Climate Change General Duties

This paper looks at the general duties in respect of sustainable development and climate change. It sets the context by giving a brief overview of the situation in the Marine (Scotland) Act and the UK Marine and Coastal Access Act, before exploring the general duties in NI and how they may apply to the Northern Ireland Marine Bill.

Scotland

Part 2 (s3 and s4) of The Marine (Scotland) Act 2010 provides a series of general duties and for the creation of a series of objectives to guide activity in the Scottish marine area from mean high water mark to 12 nm. The general duties are:

- **Sustainable development:** In exercising any function that affects the Scottish marine area Scottish Ministers and public authorities must act in a 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 is consistent with the proper exercise of that function; and
- **Climate Change:** In exercising any function that affects the Scottish marine area under this Act, the Climate Change (Scotland) Act 2009 or any other enactment, Scottish Ministers and public authorities must act in a way best calculated to mitigate and adapt to climate change so far as it is consistent with the purpose of the function concerned.

A Scottish Marine plan must also state:

- Ministers' policies in connection with the sustainable development of the area to which the plan applies (Part 3 s 5); and

For the purposes of preparing a national marine plan Scottish Ministers must set

- Economic, social and marine ecosystem objectives; and
- Objectives relating to the mitigation of, and adaptation to, climate change (Part 5 s4).¹

UK

In contrast The Marine and Coastal Access Act 2009 has comparatively little on general duties and objective setting in relation to sustainable development and climate change. However, the Chapter 1 of the Act identifies the Marine Policy Statement as a document which states the policies for contributing to the achievement of sustainable development in the UK marine area:

For the purposes of this Act a “marine policy statement” (an “MPS”) is a document—

(a) in which the policy authorities that prepare and adopt it state general policies of theirs (however expressed) for contributing to the achievement of sustainable development in the UK marine area,²

Northern Ireland

- 1 According to information from the Department of the Environment, there is no requirement to include a sustainable development duty in the Marine Bill as the Northern Ireland (Miscellaneous Provisions) Act 2006 already places such a duty on all public authorities:

Section 25 of the Act states that:

(1) A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case.

(2) For this purpose—

1 Marine (Scotland) Act 2010 http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf

2 UK Marine and Coastal Access Act

(a) a public authority must have regard to any strategy or guidance relating to sustainable development issued by the Department of the Environment, and

(b) a public authority other than a Northern Ireland department must have regard to any guidance relating to sustainable development issued by a Northern Ireland department other than the Department of the Environment.

The Bill does not give a definition of what is meant by 'sustainable development', however, part 2 of section 25 states that any public authority must have regard to any strategy/ guidance issued by the Department i.e. the Northern Ireland Sustainable Development Strategy (SDS) 2010. **Most importantly there does not appear to be any reference made in the Bill to the Miscellaneous Provisions Act 2006 to inform the reader of the already existing duty.**

2 The Sustainable Development Strategy 2010

The SDS does not directly give a definition of sustainable development; however it refers to sustainable development in a number of ways:

To “ensure socially responsible economic development while protecting the resource base and the environment for the benefit of future generations (UNCED 1992)”

“Sustainable development aims to bring viability, stability and opportunity to all our social, economic and environmental activities and programmes”³

The Strategy also makes a strong connection with the importance of adapting to and mitigating climate change:

“It is clear that climate change is one of the most serious problems facing the world. While we recognise that it requires action internationally, we are determined to play our part in addressing this challenge by reducing our impact on climate change.”⁴

“As more information becomes available on the likely impacts of climate change it is clear that, as well as efforts to control greenhouse gas emissions, there is a need to adapt and manage the effects.”⁵

The Strategy also states that it is about creating a balance:

“Sustainable development is not only about climate change and the acknowledged consequences that this will bring.....We also want to protect our communities and our economic well-being.”⁶

The Strategy reiterates that all new strategies and policies should be subject to a 'sustainability scan' as part of the Impact Assessment process -

Commitment 1 states:

“In the development of new strategies and policies, we will require departments to incorporate comprehensive ‘sustainability scans’⁷ as one component of their impact

3 NI Sustainable Development Strategy – Everyone's Involved 2010 (p.1) http://www.ofmdfmi.gov.uk/sustainable-development-strategy-lowres__2_.pdf

4 Ibid (p.2)

5 Ibid

6 Ibid

7 According to DFP, the first step is to screen projects to identify whether they are likely to have a significant sustainability impact. All options should initially be screened against a number of potential social, economic and environmental impacts. Further details on these impacts and a framework for screening are set out in Workbook 4 of OFMDFM's Policy Toolkit.

assessment process, which will provide SMART⁸ evidence of the inclusion of sustainability criteria.”⁹

Commitment 9 states:

“We will ensure that guidance relating to the existing Statutory Duty on Sustainable Development, contained within Section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2010 is appropriate in supporting our ongoing sustainable development ambitions.”¹⁰

3 The NI Marine Bill

The Department of Environment have informed that the Bill includes several binding provisions in respect of sustainable development:

- Clause 2(3) (b) defines a Marine Plan as a document which states the policies of the relevant Northern Ireland departments (DOE, DCAL, DARD, DETI & DRD) for and in connection with sustainable development. For example, PPS1 General Principles- The Department’s Approach to Planning: Sustainable Development states:

“In working towards sustainable development, the Department will aim to:

- plan for the region’s needs for commercial and industrial development, food production, minerals extraction, new homes and other buildings, while respecting environmental objectives;
- conserve both the archaeological and built heritage and natural resources (including wildlife, landscape, water, soil and air quality), taking particular care to safeguard designations of national and international importance;
- shape new development patterns in ways which minimise the need to travel;
- give preference, in the zoning of land, to the development of brownfield sites within built-up areas, before considering the development of greenfield sites, provided that this creates or maintains a good living environment.
- encourage the use of already developed areas in the most efficient way, while making them more attractive places in which to live and work; and
- concentrate developments that generate a large number of trips in places well served by public transport”.¹¹

- In addition, paragraph 10 of Schedule 1 requires the Department to undertake a Sustainability appraisal of the proposals for inclusion in a marine plan. The Department can only proceed with these proposals if the appraisal indicates that this is appropriate:

10.— (1) The Department must carry out an appraisal of the sustainability of its proposals for inclusion in any marine plan...

(2) The Department may proceed with those proposals only if it considers that the results of the appraisal indicate that it is appropriate to do so.¹²

8 SMART meters send electricity consumption data to the utility. They can also record the energy that you feed back into the distribution network from things such as wind turbines and solar panels. <http://www.nie.co.uk/Network/Future-networks/Smart-meters>

9 NI Sustainable Development Strategy – *Everyone’s Involved 2010* (p5) http://www.ofmdfmi.gov.uk/sustainable-development-strategy-lowres__2_.pdf

10 Ibid (p.21)

11 PPS1 General Principles: Sustainable Development http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps01/pps01_approach/pps01_sustainable_dev.htm

12 NI Draft Marine Bill http://www.doeni.gov.uk/marine_bill__as_introduced_.pdf

4 UK High Level Marine Objectives

The Department has stated that the sustainable development aims for the marine environment were set out in the High level Marine Objectives published jointly by all the UK Administrations in April 2009.¹³ The Government's overall vision of 'clean, healthy, safe, productive and biologically diverse oceans and seas' is to ensure that 'Good Environmental Status' required by the European Marine Strategy Framework Directive, and 'Good Status' required by the European Water Framework Directive is met¹⁴.

With this in mind, the high level marine objectives are set out to reflect the five principles of sustainable development:¹⁵

- Achieving a sustainable marine economy by giving support (i.e. infrastructure) to marine businesses to operate efficiently and competitively, and maximising the sustainable use of the marine environment and its resources, while respecting sustainable limits and social responsibilities.
- Ensuring a strong, healthy and just society where people have equal access to the marine environment and its resources, and that they appreciate the diverse assets it has to offer in terms of physical and mental wellbeing, climate change mitigation, and as a defence mechanism for the UK and its interests.
- Living within environmental limits: The conservation and protection of biodiversity to support the diverse range of biological communities, and the functioning of healthy, adaptable marine ecosystems, and rare and vulnerable species.
- Promoting good governance: Appreciating the different management systems in the UK because of administrative, political or international boundaries; this includes the use of integrated coastal zone management plans to ensure marine, land and water management mechanisms work together based on a spatially planned marine environment that encompasses all aspects, including marine cultural heritage.
- Using sound science responsibly: New scientific research and data collection is essential to give the knowledge required for sound evidence and monitoring of the marine environment, which is necessary for effective marine management and policy development. Particular attention is drawn to the Precautionary principle as applied to the UK Government and devolved administrations' sustainable development policy.¹⁶

Climate Change

There is no direct duty in relation to climate change in the NI Marine Bill; however, the Department of Environment has advised that there is a requirement to take the effects of climate change into consideration as part of the marine planning process and the designation of Marine Conservation Zones (MCZ), for example the Department refers to:

Clause 2 (5):

Unless relevant considerations indicate otherwise, a marine plan must be in conformity—

(a) with any marine policy statement which governs marine planning for the marine plan area; and

13 Our seas- a shared resource: high level marine objectives <http://www.scotland.gov.uk/Resource/Doc/1057/0080305.pdf>

14 DEFRA, 2009 <http://archive.defra.gov.uk/environment/marine/documents/ourseas-2009update.pdf>.

15 Our seas- a shared resource: high level marine objectives <http://www.scotland.gov.uk/Resource/Doc/1057/0080305.pdf>

16 *ibid*

(b) in the case of a plan for part of the Northern Ireland inshore region, with any marine plan in effect for the whole of that region.

There does not appear to be any direct mention of climate change in this clause; therefore it must be assumed that the marine plan is based on the Marine Policy Statement which is developed from the High Level Objectives, where objective 5 is concerned with climate change mitigation (as described in section 4 of this paper)

Clause 5:

The Department must keep under review the matters which may be expected to affect the exercise of its functions.....

The matters include—

2(a) the physical, environmental, social, cultural and economic characteristics of the Northern Ireland inshore region and of the living resources which the region supports.....

3 (b) the effect that any such changes may have in relation to the sustainable development of the region, its natural resources, or the living resources dependent on the region.

Again as there is no direct statement on climate change; it appears that any connection to it is dependent on the regards given to sustainable development. However, the Bill does not give a direct definition of sustainable development and its connection with climate change, but refers “to any strategy or guidance relating to sustainable development issued by the Department of the Environment “i.e. the Sustainable Development Strategy of Northern Ireland 2010 (more detail in sections 1 and 2 of this paper)

Clause 6 (1):

A public authority must take any authorisation or enforcement decision in accordance with any appropriate marine plan, unless relevant considerations indicate otherwise.

As mentioned before, any duty to addressing climate change is dependent on the assumption that a marine plan will have the appropriate regard and consideration given to climate change.

Clause 13 (3):

An MCZ may (in addition to an area of sea) include an area of the seashore lying above mean high water spring tide if—

(a) the area of seashore adjoins the area of sea; and

(b) any of the conditions in subsection (4) is satisfied.

(4) The conditions are that—

(a) the protected feature or features leading to the designation of the area of sea is or are also present in the area of seashore;

(b) the area of sea is designated for the purpose of conserving marine flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, the area of seashore;

(c) without the inclusion of the area of seashore, the identification of the boundary of the MCZ (either in the order designating the area or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

This clause deals with the designation of MCZs, **however there does not appear to be any direct or indirect mention of climate change, not even through the link with sustainable development.**

Schedule 1 paragraph 9:

- (1) *The matters to which the Department is to have regard in preparing a marine plan include each of the matters in sub-paragraph (2).E+W+S+N.I.*
- (2) *Those matters are—*
- (a) *the requirement under section 2(5)(a) for a marine plan to be in conformity with any marine policy statement which governs marine planning for the marine plan area, unless relevant considerations indicate otherwise,*
 - (b) *the duties imposed by paragraph 3(1) with respect to securing compatibility with marine plans or development plans for areas which are related to the marine plan area,*
 - (c) *the effect which any proposal for inclusion in the plan is likely to have on any area which is related to the marine plan area,*
 - (d) *the results of the review required by section 5,*
 - (e) *the SPP,*
 - (f) *any representations made in response to the invitation issued pursuant to sub-paragraph (5) of paragraph 5,*
 - (g) *any advice received under paragraph 8(1),*
 - (h) *any plan (not falling within paragraph 3(1)) prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources, in the marine plan area or in any adjoining or adjacent area in Northern Ireland or the UK marine area (within the meaning given by section 42 of the 2009 Act),*
 - (i) *the powers and duties of the Crown Estate Commissioners under the Crown Estate Act 1961, and such other matters as the Department considers relevant.*

Similar to Clause 2 (5) there does not appear to be a direct mention of climate change in relation to the list of matters that must be considered in the development of a marine plan. It appears that it is left up to the assumption that the marine plan is based on the Marine Policy Statement which has been developed from the High Level Objectives, where objective 5 is concerned with climate change mitigation (as described in section 4 of this paper).

The UK Climate Change Act 2008

It is worth noting that while the Department has not drawn attention to it, S.60 of the UK Climate Change Act 2008 places a duty on the Department of the Environment to develop a programme for the adaptation to climate change. Most importantly, the Act states that the programme must contribute to sustainable development, illustrating the connection between climate change and sustainable development.

Section 60 states:

“Programme for adaptation to climate change: Northern Ireland

This section has no associated Explanatory Notes

(1)It is the duty of the relevant Northern Ireland department to lay programmes before the Northern Ireland Assembly setting out—

- (a)the objectives of the department in relation to adaptation to climate change,*
- (b)the department’s proposals and policies for meeting those objectives, and*

(c)the time-scales for introducing those proposals and policies,addressing the risks identified in the most recent report under section 56¹⁷.

(2)The objectives, proposals and policies must be such as to contribute to sustainable development.

(3)The second and each subsequent programme under this section must contain an assessment of the progress made towards implementing the objectives, proposals and policies set out in earlier programmes.

(4)Each programme under this section must be laid before the Northern Ireland Assembly as soon as is reasonably practicable after the laying before Parliament of the report under section 56 to which it relates.

(5)The relevant Northern Ireland department must send a copy of each programme under this section to the other national authorities.”¹⁸

However, while this Act places a duty on the Department of the Environment in relation to climate change adaptation, there is no reference made to this in the NI Marine Bill.

17 This is a report on the impacts of climate change prepared by the Secretary of State, sent to all national authorities.

18 UK Climate Change Act (s.60) <http://www.legislation.gov.uk/ukpga/2008/27/section/60>



Northern Ireland
Assembly

Research and Information Service
Bill Paper

Document Date

Suzie Cave

Northern Ireland
Marine Bill

NIAR 000-00

This paper gives background to the introduction of the NI Marine Bill, an overview of the policy principles, and considers some of the main issues with the provisions.

Key Points

- The Northern Ireland Marine Bill (the NI Bill) was introduced in the Assembly on 21 February 2012 to to progress nature conservation, develop aspects of planning in the marine environment, and further streamlining of licencing
- The Bill consists of 48 clauses, 5 Parts and 2 Schedules, and contains provisions for:
 - Marine planning; Marine plans to be prepared for all or part of the Northern Ireland inshore region (out to 12 nautical miles)
 - Marine protection; Designation of conservation zones in the inshore region
 - Marine licencing; Further provision in relation to certain electricity works in the inshore region.
- Most of the issues raised are taken from the responses to the consultation, comparisons with the Marine (Scotland) Act and the UK Marine and Coastal Access Act, second reading of the Marine Bill, and the NI Marine Taskforce event on the Marine Bill on the 22nd March 2012, and include:
 - Territorial/Jurisdictional coverage issues: the Bill is unclear around the coverage of the area over-seen by the Loughs Agency (i.e. Carlingford and Foyle).
 - While there has been widespread support for an MMO, the Department of Environment has responded that it intends to keep the DoE as the marine planning authority.
 - There have been issues raised regarding some of the wording of the Bill which has been criticised for being ambiguous, unclear and insufficient
 - There needs to be clarity on whether the Department will produce an overarching Statement for Public Participation, or produce a separate SPP for each marine plan, similar to the procedure in England.
 - Concern has been raised over the fact that there is currently very little in the Bill on the nature of designation of MCZs and the level of protection they provide.
 - The NI Bill does not provide for the designation of historical/archaeological sites as MCZs. Whereas the Marine (Scotland) Act 2010 makes provision for Historical Marine Protection Areas (MPAs).
 - Part 3 (s 23) of the NI Bill has been criticised for the fact that in the event of a public authority causing harm/damage to an MCZ, all that is required is an explanation from the public authority to the Department of Environment.
 - Of particular concern is the potential impact or displacement of fishing by the creation of marine plans and MCZ
 - Other issues discussed are the lack of provisions for coastal zone management and climate change.

Executive Summary

This paper gives background to the introduction of the NI Marine Bill, an over view of the five parts of the Bill, and will include issues that have been raised in relation to each section. Most of the issues raised are taken from the responses to the consultation, comparisons with the Marine (Scotland) Act and the UK Marine and Coastal Access Act, second reading of the Marine Bill, and the NI Marine Taskforce event on the Marine Bill on the 22nd March 2012.

The Northern Ireland Marine Bill (the NI Bill) seeks to build upon the provisions of the UK Marine and Coastal Access Act 2009 to include:

- Marine planning; Marine plans to be prepared for all or part of the Northern Ireland inshore region (out to 12 nautical miles)
- Marine protection; Designation of conservation zones in the inshore region
- Marine licensing; Further provision in relation to certain electricity works in the inshore region

While the introduction of a Marine Bill for NI has been met with widespread support, there have been a few issues discussed throughout the consultation process. In relation to territorial and jurisdictional coverage, it has been suggested that the Bill is unclear around the coverage of the area over-seen by the Loughs Agency (i.e. Carlingford and Foyle). Of interest is a recently agreed Memorandum of Understanding between the UK and ROI Governments, in respect of the development of offshore renewable energy developments (particularly around Carlingford and Foyle).¹

While there has been widespread support for an MMO, the Department of Environment has responded that it intends to keep the DoE as the marine planning authority. Other issues discussed in this paper include ones raised regarding some of the wording of the Bill which has been criticised for being ambiguous, unclear and insufficient.

It was also suggested that there needs to be clarity on whether the Department will produce an overarching Statement for Public Participation, or produce a separate SPP for each marine plan, similar to the procedure in England. Some stakeholders have expressed their concern over the fact that there is currently very little in the Bill on the nature of designation of MCZs and the level of protection they provide, and that the Bill does not provide for the designation of historical/archaeological sites as MCZs.

Part 3 (s 23) of the NI Bill has been criticised for the fact that in the event of a public authority causing harm/damage to an MCZ, all that is required is an explanation from the public authority to the Department of Environment.

Of particular concern is the potential impact or displacement of fishing by the creation of marine plans and MCZ. Respondents to the consultation requested the inclusion of all activities in the licensing regime, in particular the aquaculture and fishing sectors, the renewable energy sector, and ports and harbours. Other issues discussed are the lack of provisions for coastal zone management and climate change.

1 MOU between UK Government and ROI Government http://www.detini.gov.uk/memorandum_of_understanding.pdf

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1 Background

The Northern Ireland Executive has brought forward legislation in the form of the Marine Bill. This legislation will be in addition to other European and UK legislation that provides the framework for marine protection across the UK. The purpose of this section is to provide a synopsis on the context of the Northern Ireland Marine Bill and seeks to explain the reasons why the Bill has been introduced and what it hopes to achieve

1.1 Marine policy and legislative framework

UK Marine and Coastal Access Act 2009

In December 2008 the UK Marine and Coastal Access Bill was introduced with the aim of providing a new system of marine management. Earlier that year, NI Executive approval was granted for Northern Ireland to participate in the UK Marine Bill with plans to introduce a Northern Ireland Marine Bill.

The UK Act provides for a new marine planning system including a marine policy statement; provision for changing the licensing system and the designation of conservation zones.

Northern Ireland is included in the UK Act for the provisions relating to the marine policy statement, marine planning in Northern Ireland's offshore area (from the 12 nautical mile limit to the boundary of the Northern Ireland zone) and the reform of marine licensing insofar as it relates to the Food and Environment Protection Act 1985 and marine aggregates extraction.² It was envisioned that a Northern Ireland Bill would progress nature conservation, further aspects of planning and further streamlining of licencing.

The UK Marine and Coastal Access Act received Royal Assent in November 2009.

Marine objectives 2009

In April 2009, the UK Government, the Welsh Assembly Government, Scottish Government and the Northern Ireland Executive published High Level Marine Objectives for the UK marine area in *Our seas - a shared resource: High Level Marine Objectives*. It sets out the objectives that all UK Administrations are seeking to achieve in relation to the UK marine area.

Marine Strategy Regulations 2010

In July 2010, UK-wide Marine Strategy Regulations came into force in order to transpose the Marine Strategy Framework Directive (2008/56/EC). The Directive requires the UK to achieve or maintain good environmental status in the marine environment by 2020.

Marine Policy Statement 2011

The UK Marine Policy Statement, as provided for in the UK Marine and Coastal Access Act 2009, was adopted on 18th March 2011 and covers all of the UK administrations. The Statement aims to support and facilitate the formulation of marine plans to ensure that marine resources are used in a sustainable way in accordance with the high level marine objectives. The marine plans are being introduced through the Northern Ireland Marine Bill.

Marine Licensing 2011

In order to implement the new marine licensing system, DoE as the marine licensing authority for the Northern Ireland inshore region, introduced the following 5 pieces of subordinate legislation which became effective on 6 April 2011.

2 Department of Environment, UK Government's Marine Bill http://www.doeni.gov.uk/index/protect_the_environment/water/marine_bill_.htm

- The Marine Licensing (Application Fees) Regulations (Northern Ireland) 2011;
- The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011;
- The Marine Licensing (Register of Licensing Information) Regulations (Northern Ireland) 2011;
- The Marine Licensing (Appeals) Regulations (Northern Ireland) 2011; and
- The Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011

1.2 Provisions of the NI Marine Bill

The Northern Ireland Marine Bill (the NI Bill) seeks to build upon the provisions of the UK Marine and Coastal Access Act 2009, therefore it was proposed that the main purpose of the NI Bill would be to progress nature conservation, further aspects of planning and further streamlining of licencing. The Bill was introduced in the Assembly on 21 February 2012.³ The policy proposals to be included in the Marine Bill went out to consultation in April 2010 and closed on 9th July 2010. The Bill consists of 48 clauses, 5 Parts and 2 Schedules.

The Bill contains provisions for:

- Marine planning; Marine plans to be prepared for all or part of the Northern Ireland inshore region (out to 12 nautical miles)
- Marine protection; Designation of conservation zones in the inshore region
- Marine licensing; Further provision in relation to certain electricity works in the inshore region

It is envisaged that the NI Bill will contribute ultimately to the United Kingdom's vision of clean, healthy, safe, productive and biologically diverse oceans and seas.⁴

The Executive have stated they aim to have the Marine Bill on the statute book by 2013. Subsequently, it is anticipated that a marine plan will be in place by 2014.⁵

1.3 Marine Position Paper

The DoE has released a draft Marine Position Paper⁶ which was open for consultation until 23 April 2012. It seeks to provide an overview of existing marine policies and legislative framework in Northern Ireland. It also provides information on the relevant public bodies responsible for the management of the marine area. It provides a synopsis of the policy context in which a Northern Ireland Marine Plan will be developed.

3 Northern Ireland Assembly, Marine Bill <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/primary-legislation-current-bills/marine-bill/>

4 Northern Ireland Assembly, Marine Bill Introduced Explanatory and Financial Memorandum <http://www.niassembly.gov.uk/assembly-business/legislation/2011-2016-mandate/primary-legislation-current-bills/marine-bill/marine-bill-as-introduced-explanatory-and-financial-memorandum/>

5 Northern Ireland Executive press release, Marine Bill will give better protection to our seas-Attwood, 5 March 2012 <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-doe/news-doe-050312-marine-bill-will.htm>

6 Department of Environment, Consultation on draft Northern Ireland Marine Position Paper (2012) http://www.doeni.gov.uk/consultation_on_draft_marine_position_paper.pdf

2 Policy Principles

The following section will give an over view of the five parts of the Bill and will include issues that have been raised in relation to each section. Most of the issues raised are taken from the responses to the consultation, comparisons with the Marine (Scotland) Act and the UK Marine and Coastal Access Act, second reading of the Marine Bill, and the NI Marine Taskforce event on the Marine Bill on the 22nd March 2012.

Part 1: The Northern Ireland Inshore Region

The marine area around the UK coast is divided into different zones. The Northern Ireland zone comprises the sea adjacent to Northern Ireland and an area of the Irish Sea west and south of the Isle of Man Sea, which is illustrated on the following chart⁷

Adjacent Waters Boundaries (Northern Ireland) Order 2003 - chart to show "the Northern Ireland Zone" as defined in Order - for information purposes only



As it stands in the new NI Bill, the offshore region of Northern Ireland (>12 nm) lies under the auspices of the Crown Estate, therefore anything lying beyond 12nm of the coast of Northern Ireland is controlled by the UK Government. This Bill covers the inshore region of NI (<12nm), for which powers have been devolved to Northern Ireland to take forward marine planning through its own legislative process. The marine authority responsible for policy and decision making in NI is the Department of Environment.

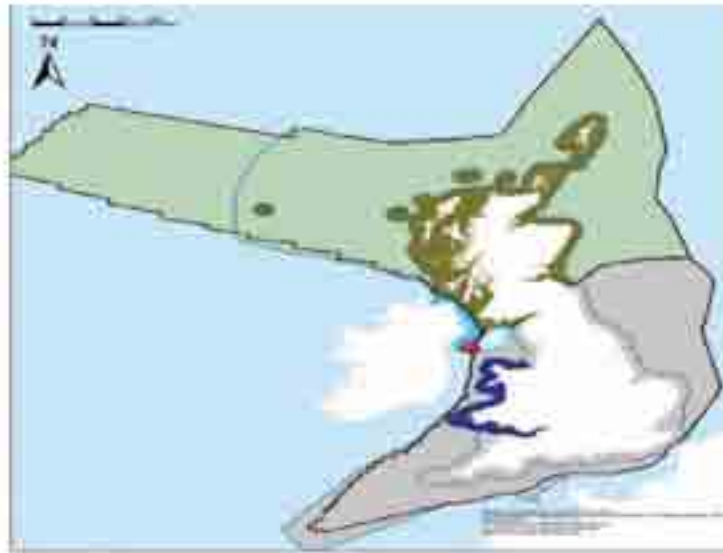
⁷ DOE, 2010, Marine Bill Policy Proposals Consultation Document http://www.doeni.gov.uk/consultation_northern_ireland_marine_bill_-_policy_proposals.pdf

The Executive's objectives for the ongoing sustainable development of marine inshore activities are outlined in Chapter 3.

2.0 The Northern Ireland marine area comprises the "inshore" and "offshore" regions. The inshore region is the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland, i.e. out to 12 nautical miles. The area includes parts of the Gulf of

Sea and Atlantic Ocean and areas within the "exclusive zone" that is the area which is above water at low tide and below water at high tide. The offshore region is the area from the 12 nautical mile limit to the boundary of the territorial sea zone, Northern Ireland's waters, therefore, abut those of Scotland, Wales, the Isle of Man and the Republic of Ireland.

UK Marine Plan Area – Inshore And Offshore Regions



Key to Northern Ireland Marine Area	
	Northern Ireland inshore region
	Northern Ireland offshore region

¹ See Article 12(2)(b) of the United Nations Convention on the Law of the Sea (UNCLOS).
² The Secretary General also has the power, exercising his or her functions under Article 108 of the Convention, to suspend the Convention in whole or in part.

(Source: DoE Consultation on Draft Marine Position Paper⁸)

Issues with Part 1 Territorial and Jurisdictional coverage:

In terms of coverage of the inshore region, the Bill is unclear around the coverage of the area over-seen by the Loughs Agency (i.e Carlingford and Foyle). These areas include the seaward area of Lough Foyle extending 12 nautical miles from the low water mark, and the whole of the sea within a straight line from Cranfield Point (Co Down) and Ballaghan Point (Co Louth). The Loughs Agency is legislated for by the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 and the British-Irish Agreement Acts 1999 and 2002, and is over-seen by the North-South Ministerial Council.

The explanatory memorandum makes it clear that the NI Marine Bill is intended to establish a strategic system of marine planning in Northern Ireland’s inshore region. However, it is not clear how the Agency will be consulted or included within the Northern Ireland marine plan.

8 Consultation on Draft Marine Position Paper http://www.doeni.gov.uk/consultation_on_draft_marine_position_paper.pdf

Mou:

However, the UK and RoI Governments have recently signed (in 2012) a Memorandum of Understanding (MOU)⁹ in respect of the development of offshore renewable energy developments (particularly around Carlingford and Foyle). The two Governments may each arrange for the lease of the seabed to facilitate the development of offshore renewable energy installations, and for the licensing of construction and operation of such installations, up to their respective sides of the two lines shown in the maps in Annex A and B

This represents a political agreement between the two that each government can promote and develop offshore renewable energy in their respective territorial waters. The MOU does not represent a formal delimitation between the territorial waters of NI and RoI, but rather an agreement only in respect of developing renewable energy.

Part 2: Marine Planning

Introduction

This part of the Bill introduces a new system of marine planning to address the challenges emanating from the growth in competing uses of the sea. There is recognition of the need in Northern Ireland for more integrated and strategic management of the marine environment and any associated activities that may provide greater clarity and direction for marine stakeholders.

A new marine planning system is proposed which would assist public authorities and stakeholders to coordinate policies and actions in the marine environment using a more holistic and joined up approach, and to achieve effective and long term sustainable development needed to secure and protect the marine environment and its resources.

As mentioned above, the production of the Marine Policy Statement (MPS) in March 2011¹⁰, under the UK Marine and Coastal Access Act 2009 (the UK Act), provides for the production of marine plans by each of the devolved administrations so as to translate the overarching UK MSP to the local level. The UK MSP together with the marine plan(s) (to be developed by each devolved administration) is expected to create a link between national policies, territorial policies, terrestrial policies and individual developments; creating a framework for controlled marine planning in NI.

The Department of Environment, in consultation with all other Northern Ireland Departments with marine functions¹¹, will take the lead in marine planning and development of a marine plan, which will then be agreed by the Secretary of State.

Marine Plans

This section provides for the creation of marine plans, listing the basic requirements to their content and the way in which they should be prepared as listed in Schedule 1 of the Bill, which also includes the Statement of Public Participation (SPP) and the Sustainability Appraisal.

Marine plans are to be created and adopted by the appropriate marine authority in NI i.e. the Department of the Environment. The Bill requires that the Department of Environment consult

9 MOU between UK Government and ROI Government http://www.detini.gov.uk/memorandum_of_understanding.pdf

10 HM Government, 2011, UK Marine Policy Statement [Online] London Stationary Office. Available from <http://www.doeni.gov.uk/marine-policy-statement.pdf> (accessed 18th August 2011)

11 5 main departments: DOE, DARD, DCAL, DRD, DETI

with other relevant NI departments when developing the marine plan (i.e. DCAL, DARD, DETI, DRD). The following process must be used when preparing marine plans:

A duty is placed on the Department of the Environment, to notify the Secretary of State¹², terrestrial local and regional planning bodies, other marine authorities and NI departments of their intention to plan, so that they can consider their level of involvement. This is to ensure that marine planning can work effectively across boundaries between areas or regions. The plan authority must ensure compatibility between the new marine plan and existing marine or terrestrial development for areas which are adjacent or 'related to' the area of the proposed marine plan. This includes areas across a boundary between different marine planning regions.

The DOE will need to determine the appropriate area to be covered by individual plans, within the limits of the regions they are responsible for. In deciding this, the authority will need to take account of current administrative boundaries, existing management processes, information known about natural resources, patterns of human activities, and where marine planning can add value. This will need to be done in discussion with local regulators and other interested parties.

NI Marine Position Paper:

It is worth noting that currently out for consultation is the NI Marine Position Paper which identifies the policy context within which a NI Marine Plan will be developed, complementing the UK Marine Policy Statement.¹³

Statement of Public Participation (schedule 1):

Schedule 1 states the requirements for a SPP where the DOE is required to publish a SPP at the beginning of the development of each plan, stating who it believes is likely to be interested in, or affected by the plan, and how it will include their involvement into the planning process. The statement will also give people the opportunity to comment on what they feel should be included in a plan, drawing out local knowledge and giving those with an interest the chance to voice their views and ideas for that part of the marine area.

The DOE will be required to keep the statement up to date, ensuring that it always represents an accurate picture of the expected process, timetable and opportunities for engagement in the plan development. This will include updating or amending the statement throughout the process to take account of any changes or to correct flaws.

The Bill enables the DOE to use 'steering' or 'advisory' groups to seek advice from individuals or organisations with particular interest or expertise to assist in the development of plans.

Sustainability appraisal (Schedule 1):

Whilst developing and considering the possible policies for inclusion in a marine plan, there is a requirement on the DOE to examine their sustainability. This will include consideration of the likely environmental, social and economic effects the plan proposals will have. Within this process, the DOE must also meet the requirements of EU legislation on Strategic Environmental Assessment (SEA). The Bill makes clear that this Sustainability Appraisal should directly steer the selection of proposals to be included in the draft plan for consultation, and that the sustainability report is published in parallel with the consultation.

12 A notice must be sent to the Secretary of state to state whether the DOE (or appropriate department) intends for the plan to include provision for "retained functions" i.e. matters which are not in its devolved competence); whether an intended plan will not be in conformity with any marine policy statement covering an area; and whether any intentions of the DOE change whilst the plan is being prepared.

13 NI Marine Position Paper http://www.doeni.gov.uk/consultation_on_draft_marine_position_paper.pdf

There is provision for the establishment of an independent investigation into the draft plan, to ensure that any issues raised during the consultation have been acknowledged and/or appropriately resolved. The plan authority must then publish the recommendations of the appointed investigator.

Amendment and Withdrawal of a marine plan (s. 3/4)

In exceptional circumstances, it may become necessary to withdraw a plan for which the Bill provides mechanisms for (any withdrawal must be published in the appropriate newspapers). However, in all but the most extreme cases it is possible to amend a particular part of a plan, rather than withdrawing it entirely. This enables those aspects of the document which do not need to change to remain effective, whilst other elements are updated. An amendment follows the same process for the preparation and adoption of the original plan.

Duty to keep relevant matters under review (s. 5)

The plan authority must review matters affecting their functions of identifying marine plan areas and preparing their plans i.e. historical and archaeological factors. This is to ensure that plan authorities stay up-to-date with their region of the marine area.

Decisions affected by a marine plan (s. 6)

This section makes provision about the effect that appropriate marine policy documents are to have on decisions made by public authorities. To put it in context, the MPS establishes the overarching objectives and priorities for the UK as a whole, while the marine plan(s) will point out what is known about the characteristics of NI's marine environment, the designations already in place, e.g. for heritage or conservation, and what activities are already in action in a given area.

The combination of these documents will guide developers and decision makers about appropriate locations to carry out activities, or where conditions or restrictions may affect their plans. This approach generates consistency in decision making by providing common documents and information for operators and regulators in a particular area to base their decisions on.

Monitoring and Review (s.7)

A plan comes into effect when it has been 'adopted' by being published by the plan authority. Before this can happen, any plan produced for NI must be agreed by the Secretary of State.

The DOE must report every 6 years (until 2030) on its planning activity, such as details of the new plans, any amendments it expects to make to those plans, and any new plans it intends to prepare. This six year reporting cycle will enable these reports to be combined with those required by the Marine Strategy Framework Directive¹⁴ on the measures being taken to ensure 'good environmental status (GES)' in the UK marine area. This reporting will also enable the NI Assembly to hold the DOE to account for its planning activity.

In addition, each marine plan must be reviewed by the DOE every three years. After each review, the DOE will determine whether the plan is still sufficient, or needs to be amended or replaced with a new one.

14

The Directive, which came into force on 15 July 2008, sets the overall goal of achieving Good Environmental Status (GES) for Europe's seas by 2020.

The Bill states that ‘replacing’ a plan means following the procedure for preparing and adopting a new one, along with withdrawing the existing plan.

Validity amendments and powers of the High Court (s.8 and 9)

People may challenge the content of marine plans through the court. The court can make changes if it is satisfied that the marine plan authority (DoE) acted outside or beyond the powers contained in the document, or that the applicant has been substantially prejudiced by a failure to meet a procedural requirement. The court can either quash the whole or part of the document, or send it back to the DoE to make changes.

Issues with Part 2 Marine Planning:

MMO establishment

Many respondents to the consultation recommended the establishment of a Marine Management Organisation for handling marine planning, licensing and designating Marine Conservation Zones (MCZs).¹⁵ While there has been widespread support for an MMO, the Department has responded that it intends to keep the DOE as the marine planning authority, and that it will consult with other departments with marine functions. It is intended that an Interdepartmental Marine Co-ordination Group will be responsible for cross departmental co-ordination and collaboration,

“The marine planning process will drive integration as the preparation of the plan, the reform of licensing and the designation of MCZs will be done in conjunction with other departments with marine functions and will be subject to Executive agreement. Coherence will be achieved by the Interdepartmental Marine Co-ordination Group. A close collaborative approach will be taken and duplication will be removed, where it exists.”

One of the main concerns with this approach is the potential lack of communication and collaboration between departments, and across borders. With the dispersal of marine functions across a number of different departments, the challenge will be for the DoE to ensure that an integrated approach is applied to the development of marine plans and management. Until specific detail on exactly how the DoE, along with the Interdepartmental Marine Co-ordination Group (IMCG), intends to deliver this, stakeholders and the public may remain sceptical on the DoE’s ability to perform these functions, based on the fact that both England and Scotland did not opt for this approach and set up the UK MMO and Marine Scotland (a directorate of the Scottish Government).

There has already been delay with the introduction of the Bill to the Assembly due to disagreement between DETI’s role in issuing generating applications under Article 39 of the Electricity Order. This typifies the problems that could be expected with having functions and roles dispersed under different departments, which has already led to delay before the process has properly begun.

The Department’s response focuses on the fact that the IMCG will help to promote cross departmental co-ordination, with little mention of cross border collaboration or details on how it intends to do this.

Marine Plans:

Under the Scottish model the Scottish Government is currently developing a National Marine Plan which will set the wider context for marine planning in Scotland.¹⁶ From this National Marine Plan, regional plans will be developed allowing more local ownership and decision making about the specific areas within a smaller area. Under the Marine (Scotland) Act powers were given to Scottish Ministers to decide on the boundaries of Scottish marine regions and to delegate any regional planning to a nominated individual and either a public authority. A consultation on how to create these regions was carried out in 2010/2011.¹⁷

In relation to the NI Bill, it is not clear whether it will have a two tiered approach similar to Scotland, or just produce marine plans for each marine plan region. How this is going to be done has yet to be clarified. However, one of the major concerns may be in relation to who will take responsibility for the marine plans (i.e. local authorities, regionally set up groups etc.) especially post RPA. Already local authorities are concerned about the new powers and responsibilities they will be taking on in relation to the resources available to carry them out effectively.

Respondents to the consultation on the NI Bill suggested the use of Marine Planning Partnerships, similar to those in the Scottish Bill; however, the Departmental response was not clear as to whether these would be considered or not stating that the Marine Plan Authority (DoE) would ensure full engagement with stakeholders. In Scotland, the Rural Affairs and Environment Committee suggested that MPPs should be diverse bodies, drawing their membership from a wide selection of local stakeholders. The Committee felt that a single public authority would not be an appropriate “partnership” and requested the provision enabling this to be removed from the Bill.¹⁸

Language used:

There have been issues raised regarding some of the wording of the Bill which has been criticised for being ambiguous, unclear and insufficient, examples include:¹⁹

- the Department ‘may ‘prepare a marine plan (s. 2)
- A public authority must have ‘regard to ‘ a marine plan (s.6)
- ‘must identify(by means of a map or otherwise) the marine plan area’ and ‘unless relevant considerations indicate otherwise’ (s. 2 and 6)²⁰

Similarly in Scotland, the Rural Affairs and Environment Committee recommended that that Bill make provision for the Scottish Ministers to issue guidance as to what would amount to “relevant considerations” permitting a public authority to depart from a marine plan.²¹

However, during the Environment Committee’s visit to Marine Scotland, officials explained that while they had similar concerns raised by many stakeholders in relation to the language used, the reason for such language was to afford a degree of flexibility in the Bill should alterations or suggestions be made a later date through secondary/subordinate legislation. They explained that the purpose of the Bill was to provide a framework from which the detail would be developed

16 A National Marine Plan –pre-consultation Draft was launched in 2011 to allow for early consultation with stakeholders so that a consultation of the actual Draft Plan, rather than its proposals, can be held.

17 For further information visit <http://www.scotland.gov.uk/Topics/marine/seamanagement/regional>

18 Rural Affairs and Environment Committee, 11th Report, 2009 <http://archive.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-11-vol1-01.htm#1>

19 Legal commentary on Bill by Andrew Ryan from Tughans at the NIMTF event 22/03/12

20 Jim Allister, Official Hansard Report 5th March 2012 <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012/20120305.pdf>

21 Rural Affairs and Environment Committee, 11th Report, 2009 <http://archive.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-11-vol1-01.htm#1>

and delivered through secondary legislation; if it was too rigid it would restrict the ability to address needs and issues that may change over time, which they explained that due to the dynamic nature of the marine environment can happen quickly and frequently.²²

Statement of Public Participation

There needs to be clarity on whether this is comparable to terrestrial planning, where the Department is to have an overarching statement from which each marine plan is developed. If so, the Department will be tasked with the difficulty of ensuring it will be flexible enough to cover the diversity of plans produced. In England, the MMO publishes the Statement of Public Participation at the beginning of developing each plan

Judicial Review

Under this part of the NI Bill, the validity of a marine plan can be challenged by judicial review only by the person aggrieved by it. The grounds for challenge include: that the plan is not within the appropriate powers, or that a procedural requirement has not been complied with. Any challenges are to be brought within six weeks of the adoption of a marine plan. However this section of the Bill has been criticised for the 'draconian curbs' placed on the ability to seek a judicial review of a marine plan, and it puts the UK in danger of breaching its international obligations (article 6 of the European convention) to provide access to justice in environmental matters.²³

It is felt that the rights of an aggrieved person are further diminished where clause 8 gives an aggrieved person the right to bring a High Court challenge if there is a procedural requirement that has not been complied with, however clause 9 states that an aggrieved person can only succeed in that challenge if it can be shown that there was not just procedural irregularity, but substantial prejudice by reason of procedural irregularity.²⁴

In terms of seeking judicial review of a marine plan, an application must be made no later than 6 weeks after publication of the document; according to Mr Ryan (speaking at the NIMTF event 22nd March 2012) this is an unusually short timeframe as it does not give the general public enough time for consideration²⁵.

Notification duties

The Marine (Scotland) Act 2010 contains a stipulation within Schedule 1 that Scottish Ministers will notify a number of parties, including the Northern Ireland Department of the Environment, regarding a decision to prepare any marine plan. Paragraph 3 of Schedule 1 provides that the Department must take all reasonable steps to secure compatibility between a marine plan for a marine plan area and marine plans or terrestrial development plans for 'related' areas (that is, areas which adjoin or are adjacent to the area of the proposed marine plan, or which affect, or might be affected by, the area of the proposed marine plan)²⁶.

However, the equivalent provision, of the Northern Ireland Minister notifying the Scottish authorities, is not explicitly provided for in the NI Marine Bill. Indeed, the Republic of Ireland (the Loughs Agency) is also not named as a statutory consultee which has particular importance in relation to the Carlingford and Foyle area.

22 The Environment Committee met with Marine Scotland on Wednesday 25th April 2012.

23 Mark Simpson Marine Bill needs Improvement to fulfil potential [accessed 16/04/2012]

24 Jim Allister Official Hansard Report 5th March 2012 <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012/20120305.pdf>

25 Legal commentary on Bill by Andrew Ryan from Tughans at the NIMTF event 22/03/12

26 Marine Bill: Explanatory and Financial Memorandum: p 21 <http://nia1.me/su>

Part 3: Marine Conservation Zones

The Bill provides the tools to designate and protect Marine Conservation Zones (MCZs) to protect areas with rare and threatened habitats and species, and to offer protection for functioning marine wildlife communities and biodiversity. Marine Conservation Zones along with Natura 2000 sites and other forms of Marine Protected Areas will help NI to fulfil the European Commitment to achieving 'Good Environmental Status' through the Marine Strategy Framework Directive.

The areas within which an MCZ may be designated include the offshore waters of Northern Ireland (up to 200 nautical miles), where the Secretary of state is the appropriate authority, and the inshore region of Northern Ireland (up to 12 nautical miles) for which the DOE will be the lead authority.

Section 12 of the Bill states that the Department may make a MCZ designation for the purposes of conservation on three grounds:

- i. marine flora or fauna;
- ii. marine habitats or types of marine habitat;
- iii. features of geological or geomorphological interest.

The grounds for designating the level of protection for a particular MCZ will be determined by the site's conservation objectives set out in the site's designating order. These will be the outcome of scientific evidence determining the extent of the site, what is being protected and the level of protection required. All factors will be taken into account, including the social and economic impacts of designating a site, by enabling MCZs' conservation objectives to be achieved, but at the same time offering an appropriate degree of flexibility where it is considered that development should proceed for the public's interest. However should the value of a site and its conservation objectives require more stringent restrictions, there is scope and flexibility in the Bill for this.

There is also a requirement on the Minister for the Environment to report on the progress in designating the network of MCZs to the Assembly, and must produce follow up reports every 6 years.

Further Provisions, Publication, Hearings and Review

This section lays out further requirements for the designation of MCZs including specifications for determining the boundaries of MCZs. This covers the inclusion of any island in an MCZ even if it lies above mean high water spring tide. Any exclusion of an island should be identified in the designation order. MCZs will also include land whether it is covered by water or not, and will encompass the water column at sea, estuarial/transitional waters, pools and lagoons.

Extensions to an area may be made to include adjacent areas of seashore above mean high water spring tide, provided that the features (including threatened species) identified in the original MCZ are present in the extended area.

Before an area can be designated as an MCZ, the DoE must carry out a consultation with the public and between Ministers in case their respective waters might be affected. A notice of the proposed designation must be published, and a decision made on the site within 12 months of the publication.

Ministers are given the power to hold hearings on the decision of designating an MCZ, and can allow for any individual to be heard by an inspector, orally or in writing.

The Bill also allows for an MCZ to be amended or revoked when requested by the DoE

Network of MCZs

A duty is placed on the DOE to designate MCZs to contribute to the creation of a network of marine sites. Sites are to be based on three conditions, taken from the key elements of the definition of an ecologically coherent network developed for the Convention for the Protection of the Marine Environment of the North East Atlantic. These conditions state that the network should contribute to the conservation of the marine environment, contribute to the protection of a range of features found in the UK marine area, and appreciate that conservation of a feature may require more than one site to be designated.

There is a duty on the DOE to report to the Secretary of State on the progress in developing a network of MCZs to show how the sites designated by the DOE contribute to the achievement of an ecologically coherent network of marine protected areas. It also provides for the designation of the appropriate statutory conservation body (NIEA) to carry out monitoring of MCZs.

The UK Government has issued guidance on the establishment of an ecologically coherent network of Marine Protected Areas. This includes further information on the importance of connectivity within the UK network, and stresses that the network should maximise and enhance linkages among individual Marine Protected Areas and regional networks of Marine Protected Areas using the best current science. Further detailed practical and technical guidance is provided by Statutory Nature Conservation Bodies. This sets out the principles for the design of the network and forms the basis for assessing the ecological coherence of the MPA network. (DEFRA, 2010)²⁷

Public Authorities

Public authorities will have a duty to exercise their functions in ways that will further, or least hinder the conservation objectives of MCZs. The appropriate nature conservation body [NIEA] needs to be notified should a public authority think the objectives will be affected. The appropriate conservation body [NIEA] may issue guidance on routine activities i.e. harbour works that will not require notification. The conservation body has 28 days after being notified, to provide any advice, after which time the public authority may go ahead as planned.

A public authority must report to the DOE for the MCZ area, and the conservation authority [NIEA], should it consider that an offence to has occurred, jeopardising the conservation of an MCZ.

This section also applies to all public authorities with a responsibility for authorising applications for activities that could potentially affect an MCZ i.e. the DOE with the granting of licenses for activities such as dredging, infrastructure development etc, and any planning permission granted by the DOE and local planning authorities. If it is considered that the objectives on an MCZ are likely to be hindered, then a similar notification process to the one mentioned above must be followed

Authorisation is not to be granted unless the department is happy that the activity will not cause any significant risk to the MCZ, or if it meets the following requirements:

- the act cannot be carried out any other way;
- the benefit of the act to the public outweighs the environmental impact; and
- the person responsible will rectify any damage, so much so that it will be environmentally beneficial to the area.

Powers are conferred on the statutory conservation body [NIEA] to give advice and guidance to public authorities on MCZs, for which they should have regard for when carrying out their

27

DEFRA, 2010, Guidance on selection and designation of Marine Conservation Zones [Online] DEFRA, Available from <http://archive.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note1.pdf> accessed 25/08/11)

duties. Should a public authority fail to carry out any of its functions, or fail to follow any guidance, an explanation must be sent to NIEA

Byelaws

While most activities will be controlled through existing regulatory regimes such as licensing, for the protection of biodiversity, it may be necessary to control unregulated activities such as jet skiing and other motorised activities, anchoring of boats, and snorkelling etc. The DOE is able to make byelaws for NI's inshore region (out to 12 nautical miles), and on the seashore adjacent to an MCZ (for the control of noise etc). The DOE can also issue permits to allow for activities that would normally be forbidden under a byelaw.

The DOE must carry out consultation on each byelaw and publish the final draft once it has been confirmed by the Secretary of State.

Byelaws may be made in an emergency without the need for consultation or publication, and without confirmation from the Secretary of State, and may remain in force for up to 12 months. Such a procedure must be published in a notice, allowing the public to respond to the Secretary of State, who has the power to revoke the byelaw.

Interim byelaws may be made for areas not yet designated as MCZs, and for which there is urgent need for protection. The process for an interim byelaw is similar to an emergency byelaw, and remains in force for up to 12 months unless revoked by the Secretary of State. The Secretary of State can hold a hearing when making decisions on the confirmation of byelaws, or revoking an emergency or interim byelaw.

Offences

The enforcement authority is given the power to impose a level 5 fine of up to £5,000 on a person guilty of breaching any byelaw or conservation order.

The Bill also includes a general offence to capture deliberate or reckless damage to an area, knowing that it is a designated MCZ (such as vandalism to plants and animals in an MCZ etc.). Fines are likely to be higher if an individual or corporation is considered to have profited commercially from the offence, or if the act was deliberate.

Exceptions to an offence include: acts done in the interests of national security or for the prevention and detection of crime; acts for which a permit has been issued e.g. scientific investigation; and actions to save a life. A person cannot be prosecuted for the same activity, with both a general offence to an MCZ and contravening a byelaw. A general offence to an MCZ may not be issued if the act was performed for sea fishing and could not have been avoided.

Fixed monetary penalties

A fixed monetary penalty for the breach of any byelaw or conservation order, must not exceed £200 (for minor breaches and individuals, while corporate bodies may be liable for more) provided satisfactory evidence is provided to the authority.

The procedure for issuing a fixed monetary penalty includes the issuing of a notice of intent to the offender from the Department. The individual can either pay the sum of the penalty or make representations to the Department explaining their innocence. A decision will then be made as to whether to issue a final notice or not, for which the person has a right to appeal.

Schedule 2 sets out further provisions regarding the issuing of fixed monetary penalties. These include that the person being issued a penalty is not liable for a criminal prosecution

in respect to the relevant offence; discounts may be awarded for early payment of a penalty, or interest added for late payment; unpaid penalties are to be dealt with through the civil courts.

Consultation must be made between the Department and relevant organisations/persons affected by the proposals when considering fixed monetary penalties. The enforcement authority [NIEA] must produce guidance in relation to these powers, and must keep them revised performing consultation on any proposals for change. The guidance must contain the circumstances in which a sanction is likely to be imposed, the amount of the penalty and the person's right of appeal.

The Department must also produce enforcement policy; this should include the actions the Department may take and the circumstances when it may take such actions. The policy, unlike the guidance, states how particular offences are enforced.

Enforcement powers

The Department may appoint persons for the purpose of enforcing nature conservation legislation. These persons may use their powers in the territorial waters around NI if they are investigating an offence suspected of being committed within the area. These powers may not be used on a ship/vessel belonging to Her Majesty or the Armed Forces.

Under the UN Convention, the activities of certain vessels may be restricted to protect the environment. Now that an exclusive economic zone (EEZ) has been declared under the UK Marine and Coastal Access Act, this applies to all countries' vessels, including third country vessels, without consent of the flag state.

The enforcement powers that may be used are known as the common enforcement powers. Common enforcement powers are not directly listed in the NI Bill, but it clearly states that they are the same as those listed in the 2009 UK Act (Ch 2 Part 8). According to the UK Act, these include:

- the power to board and inspect vessels and marine installations (if they are classed as a dwelling, a warrant is needed);
- the power to enter and inspect premises (this includes land, but not a vehicle, vessel or installation);
- the power to enter and inspect vehicles (this is not a vehicle at sea or installation);
- power in relation to dwellings where entry can only be granted provided the MEO has a warrant, and if any vehicle, vessel or installation is a dwelling, then a warrant is needed for entry; powers to search premises and examine anything in it, including the testing of any object found such as live animals and plants;
- the power to require a person or premises to produce documents or records; and
- powers to seize and detain or remove anything from the premises or the individual, to include any document or record.

Supplementary

The Bill amends the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985²⁸ as there is no longer the need to establish marine nature reserves in NI with the new powers to designate MCZs. Any existing Marine Nature Reserve is to be treated as an MCZ as soon as the Bill comes into force. If the conservation objectives remain unchanged, no consultation will be needed.

All areas established or designated under international, European and national legislation with a marine component will contribute to the MPA network. These include:²⁹

- **Special Areas of Conservation (SACs)** designated under the Habitats Directive: NI has 54 SACs, six of which have been designated for marine components and two more are proposed, these are: Bann Estuary, Murlough, North Antrim Coast, Rathlin Island, Strangford Lough, Red Bay, Skerries and Causeway Coast (proposed), and Maidens (proposed).
- **Special Protection Areas (SPAs)** classified under the Bird Directive: There are 15 SPA sites in NI, nine of which have a marine component for the protection of seabirds and waterbirds, cover areas of their migration routes, breeding and aggregation, these are: Belfast Lough, Belfast Lough Open Water, Carlingford, Killough Bay, Larne Lough, Lough Foyle, Outer Ards, Rathlin Island, and Strangford Lough.
- **Ramsar sites** (wetlands of international importance) designated under the Ramsar Convention on Wetlands 1971: There are 21 Ramsar sites in NI, of these, five have a marine component, and these are: Lough Foyle, Larne Lough, Belfast Lough, Strangford Lough, and Carlingford Lough.
- **Areas of Special Scientific Interest (ASSIs)** designated under the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.
- **National Sites:** NI has one Marine Nature Reserve, Strangford Lough. The purpose is to conserve marine flora and fauna and geological features of special interest, while providing opportunities for the study of marine systems. The current designation of Marine Nature Reserve will be replaced by MCZs.
- **OSPAR Convention:** This Convention acts as an intergovernmental platform for co-operation to protect the marine environment of the North East Atlantic. There are three OSPAR sites in NI, these are: Murlough, Rathlin Island, and Strangford Lough.

Issues with Part 3 Marine Conservation

The nature of MCZs

Concern has been raised over the fact that there is currently very little in the Bill on the nature of designation of MCZs. The provisions in this section of the Bill are very similar to those set out in the UK Marine and Coastal Access Act. According to the House of Commons Research paper the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) develop programmes to enable designation of MCZs by the end of 2012. Sites are selected on best available evidence, and may take into account the social and economic consequences of MCZ designation. In order to identify possible MCZs, the statutory nature conservation bodies are developing regional stakeholder projects based on the 'Finding Sanctuary' model in the southwest.³⁰ The regional projects were asked to consider potential sites on the basis of best available evidence. Similar arrangements have been developed in Wales by the Welsh Assembly Government and Countryside Council for Wales.³¹

29 Consultation on Draft Marine Position Paper http://www.doeni.gov.uk/consultation_on_draft_marine_position_paper.pdf

30 Finding Sanctuary is one of four regional projects tasked with designing MCZs around England and recommending them to Government. To ensure shared decision making, they have worked with stakeholders from the earliest planning stages to explore where MCZs could best be located, identifying possible areas of conflict and finding ways of working around them. <http://www.finding-sanctuary.org/page/home.html>

31 HoC, 2009, Marine and Coastal Access Bill Research Paper 09/56, House of Commons Library.

Level of Protection

Some responses to the consultation felt that MCZs should offer new, additional and more comprehensive protection, in fact during second stage reading of the Bill it was asked would the Bill offer 'highly protected areas' or 'no take zones' which would further limit renewable energy activity, dredging and fishing etc. in particularly sensitive areas. This level of protection would be similar to that given to MCZs in Wales. In Wales MCZs are classed as highly protected, which means they will be exempt from extraction, deposition and all other damaging or disturbing activities.³² However, in England this concept was also suggested by categorising the level of protection i.e. as either more-highly or less-highly protected. It was argued that such categorisation may make it difficult to offer the flexibility that would be needed should levels of restriction change from one season to the next, or from one part of a site to another. Some protected features of an MCZ may only need protection for particular times of the year or due to new information on their state and population numbers for example. The Minister rejected the suggestion as it was felt that the UK Act applied no restrictions on the power of the appropriate authority to set as stringent restrictions as is necessary, and that the powers are 'broad enough in appropriate cases to protect marine conservation zones from all damaging human activities'³³

Historical/Archaeological Sites

Provisions in this section do not provide for the designation of historical/archaeological sites as MCZs. Whereas the Marine (Scotland) Act 2010 makes provision for Marine Protection Areas (MPAs). These can take three forms:

- Nature Conservation MPA (this takes a similar form to the MCZ in NI)
- Demonstration and Research MPA
- Historic Marine Protection Areas

Neither the Demonstration and Research MPA nor the Historic Marine Protection Areas exist as categories of designation in the Northern Ireland Bill.

There is very little provided for in both the NI Bill and the UK Act allowing for the designation of MCZs due to their scientific, historical or archaeological importance. However, with little provided for in the UK Act, some sites are covered under existing legislation in the form of the Protection of Wrecks Act 1973. Sites that are landscape features covered by the fluctuation and change of water levels over the years are not provided for in this Act, however, they are provided for under the Ancient Monuments and Archaeological Areas Act 1979 that specifically mentions the sea bed. At the same time, the Act states clearly that it does not extend to NI, in fact existing NI legislation such as the 1995 Historic Monuments and Archaeological Objects 1995 fails to make any reference to the sea bed or under water sites/monuments/objects. The UK Marine Policy Statement takes historical and archaeological sites into detailed consideration, however, this level of attention and detail does not appear to have transcended into the new Bill.

Protection of environment versus protection of industry

Reference is made in the NI Bill to archaeological/historical sites in relation to the social consequences of designating a site as a MCZ:

"The reference in subsection (7) to any social consequences of designating an area as an MCZ includes a reference to any consequences of doing so for any sites in that area"

32 Wales Environment link http://www.waleslinkmarine.org.uk/marine_protected_areas.html

33 House of Commons Library, Research Paper: Marine and Coastal Access Bill 16/06/2009

(including any sites comprising, or comprising the remains of, any vessel, aircraft or marine installation) which are of historic or archaeological interest.” (Part 3 s12).

Some stakeholders believe that designations should be made purely on the basis of scientific evidence and conservation priorities and are concerned by the fact that selection can be guided by socio-economic factors.³⁴ However, little has been mentioned of the first UK Marine Science Strategy (2010-2025) which should be of particular importance in shaping MCZ designation and development of marine plans. This is a strategy developed between the UK Government, devolved administrations and the main bodies involved in UK marine science to encourage more efficient and effective use of resources for marine science; to tackle barriers to delivery; and to work with industry and international partners.³⁵

However, according to responses to the consultation, industry on the other hand is keen to ensure that MCZs do not become ‘no go’ areas for industry. Of particular concern, for example, for fishing communities is the impact of MCZ designation on the industry.³⁶ Another concern is the impact on the enhancement of ‘blue growth’ (growth in the maritime sector activities including short sea shipping, coastal tourism³⁷, and offshore wind energy etc.) for which there is currently a consultation on an EU Blue Growth initiative. The reason for this initiative is that Europe recognises that while marine and maritime activities are important for Europe’s economy, several sectors have not fulfilled their full sustainable economic potential, causing them to lag behind in terms of growth. Therefore the initiative aims to develop an integrated policy that acknowledges the inter linkages between different domains and functions of the seas, oceans and coastal areas.³⁸

Bye-laws

It states in the UK Act that a copy of a byelaw should be sent to the Welsh Ministers if it is considered that it will affect Wales, however, similar actions are not mentioned in the NI Bill in terms of sending copies to the RoI and any other affected administrations/authorities across borders and boundaries.

Marine Enforcement Officers

In the Bill it only states that MEOs have common enforcement powers but does not clarify what these are and concern was expressed in the consultation document on the lack of information on this subject. The DoE responded that while the role is outlined in the UK Act, it is the intention that subordinate legislation and guidance will be required. Therefore a sufficient consultation exercise will need to be performed at a later date, which will require monitoring to ensure that the proposals address the issue and consider other UK and RoI administrations.³⁹

34 Synopsis of responses to NI Marine consultation, 2010

35 UK Marine Science Strategy 2010-2015 <http://archive.defra.gov.uk/environment/marine/documents/science/mscc/mscc-strategy.pdf>

36 Marine Bill Causes a Wave of Reaction <http://www.downnews.co.uk/2012-down-news-archive/march-2012/environment-2012-march/marine-bill-causing-waves-of-reaction> (09/03/12)

37 For example there has been concern raised by the British Association for Shooting and Conservation in relation to the impacts of the Bill which they feel could ban wildfowling and other country sports that attract a large number of tourists within MCZs – BASC Key Issues

38 EU Consultation on Blue Growth: Sustainable Growth from the Oceans Seas and Coasts http://ec.europa.eu/fisheries/partners/consultations/blue_growth/index_en.htm

39 Synopsis of responses to NI Marine consultation, 2010

Fines

Part 3 (s 23) of the NI Bill has been criticised for the fact that in the event of a public authority causing harm/damage to an MCZ, all that is required is an explanation from the public authority to the Department of Environment. In fact, the only possible sanction is in relation to a fine for the breach of a bye-law; limited to £5000. Whereas, an individual person guilty of causing damage to an MCZ can be subject to an unlimited fine determined by the court (summary conviction limited to £50,000), and a level 5 fine (up to £5000) in relation to breach of a bye-law (Part3 s 30/31). These are similar conditions as those provided for in the UK Act Part 5 Chapter 1.

In general, the range of offences is very similar to the Marine (Scotland) Act 2010, in that they relate to killing or injuring animals in a Marine Conservation Zone, collecting or uprooting plants, taking anything from a protected feature, or destroying or damaging any habitat or feature of a Marine Conservation Zone. However, the NI Marine Bill does not contain the offence of damaging a marine historic asset, whereas the Marine (Scotland) Act 2010 does describe such an offence in section 96.

The NI Marine Bill provides for three different levels of fine to be imposed: level 1 (currently £200), level 5 (currently £5,000), and £50,000, depending on the nature of the offence. The Marine (Scotland) Act 2010 in most cases applies a single fine limit of £50,000, with the single exception of obstructing a marine enforcement officer carrying a fine of £20,000.

Marine Management Schemes

Sections 99 to 102 of the Marine (Scotland) Act set out provision for Marine Management Schemes, which may be established ‘by relevant authorities for Nature Conservation, and Demonstration and Research MPAs within the Scottish Marine Protected Area’. It is not entirely clear what a Marine Management Scheme is intended to do, but the implication would seem to be that it is to define roles and responsibilities for, for example, local authorities and other relevant parties⁴⁰.

The NI Marine Bill does not make provision for marine management schemes and it is not clear how the roles and responsibilities of relevant public authorities, including district councils, will be taken into account in the management of Marine Conservation Zones. However, in Schedule 1(9) it is stated that the department is to have regard in forming a marine plan, to any plan ‘prepared by a public authority in connection with the management or use of the sea or the coast, or of marine or coastal resources’

In terms of roles and responsibilities, section 20 simply places ‘a general duty on public authorities (defined in section 46) to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs’.

The explanatory memorandum for the NI Marine Bill implies that the policies and roles of other public authorities will be stated not in a marine management scheme, but in the text of a marine plan⁴¹.

Consultation before designation

DARD, in its briefing to the Agriculture and Rural Development Committee on the Marine Bill, expressed concern about the power afforded, in clause 14, to allow DoE to introduce MCZs where it is felt that there is urgent need to protect an area, without consultation with others or publication of a notice.⁴²

40 Kenyon, W, Rehfish, A & Wright, K. 2009. The Marine (Scotland) Bill. SPICe Briefing 09/41: p24.

41 Marine Bill: Explanatory and Financial Memorandum: p 4 <http://nia1.me/su>

42 Official Report ,Committee for Agriculture and Rural Development: Marine Bill Departmental Briefing 17/04/12

EU Commitments

EU member states have until July 2012 to announce measures to reduce marine waste, and by mid-2014, to have monitoring programmes in place to address fish and biodiversity loss under the Marine Strategy Framework Directive⁴³. DARD has noted that there is very little detail in the Bill on how the designation of MCZs plans to address these EU requirements.

Part 4: Marine Licensing

This section is concerned with the procedure for applications relating to generating stations. This section takes effect where both a marine licence (from DOE) and consent (from DETI) under Article 39 of the Electricity (Northern Ireland) Order 1992, is needed.

Both the application for consent under the Electricity Order and the application for a marine licence will go through the same administrative procedure. This is to ensure that the two related applications are dealt with in parallel by each of the Departments. DETI is responsible for informing the applicant that both applications will be considered in tandem. Where only one of the applications has been received, it must not be dealt with until the other has been received. Once both applications have been received, the specific process that the application will go through has yet to be determined by the Department.

Issues with Part 4:

Respondents to the consultation requested the inclusion of all activities in the licensing regime, in particular the aquaculture and fishing sectors, the renewable energy sector and ports and harbours.

The UK Act legislates for marine licensing and covers an extensive list of licensing activities (e.g. depositing of substances, scuttling of vessels, construction/alteration of works in the marine area, dredging etc.) in comparison to the NI Bill which only provides for the streamlining of the process for generating stations.

The main aims of or the purpose for marine licensing in the Marine & Coastal Access Act 2009 is: to protect the environment, protect human health and prevent interference with legitimate uses of the sea (s69). This has not been as clearly stated in the NI Bill to illustrate the importance of the principles of sustainable development when making a decision on licensing.

Part 5: Supplementary

This section provides for individual liability in some cases where there is also corporate liability. In fact where an offence has been committed by a firm, an individual partner may be charged as well as the partnership.

Section 3 of the Territorial Waters Jurisdiction Act 1878 does not allow prosecution of those not of British subject for an offence in the territorial sea without consent from the Secretary of State. This section has the power to disapply this in relation to offences under this Bill.

Schedules

Schedule 1 deals with the preparation and adoption of marine plans, the details of which are described in this paper under Part 2 'Marine Plans'.

43

EU countries urged to halve marine waste by 2020 (Euractiv) <http://www.euractiv.com/sustainability/eu-countries-urged-halve-marine-waste-2020-news-512148> [accessed 24/04/2012]

Schedule 2 is concerned with further provision about fixed monetary penalties under section 33 of the Bill, for which details have been described under Part 3 of this paper 'Fixed Monetary Penalties'

Further considerations

Differences on seal conservation and licence measures

The Marine (Scotland) Act 2010 makes it an offence to kill a seal without a licence, and also makes provision for the licensed killing of seals under certain circumstances. Twenty-four clauses deal with this issue, including details of licence conditions, methods of killing, protection of seal 'haul-out' sites, powers to enter land for the purpose of killing seals, protection of fish farm stocks and other related issues.

The NI Marine Bill does not make provision for seal protection or licensing, in fact under the Wildlife NI Order 1985, seals are protected at all times. The UK Marine and Coastal Access Act 2009 does make some provision – in section 9(2) – but this would appear to extend to England only.

Fisheries

Respondents requested the inclusion of Fisheries and aquaculture management in the Bill. The NI Bill does not contain any measures in relation to fisheries, when in fact a requirement of the 2007 Inshore Fisheries Review was to modernise inshore fisheries management.

A respondent stated that the siting of salmon farms needs to be strictly controlled and properly licensed. It was suggested that no farms should be permitted close to a river mouth; and the aggregate extraction at sea must not be allowed to happen as it would destroy the habitat for many different fish species and would most probably result in the decline of many species.⁴⁴

Part 6 of the UK Act changes the legislation relating to the establishment, organisation and responsibilities of Sea Fisheries Committees, establishing in England new bodies called Inshore Fisheries and Conservation Authorities (IFCAs). It imposes on IFCAs duties in relation to fisheries and nature conservation, and confers on them the power to make byelaws. The membership and funding arrangements of IFCAs are also set out.

However Part 7 of the UK Act amends existing legislation relating to marine and freshwater fisheries, and provides new powers in relation to the regulation of commercial and recreational fishing. It also modifies the way that shellfisheries are established, managed and operated. In addition, this Part gives new powers to the Environment Agency to conserve and manage migratory fish, including powers to make emergency byelaws to respond to unforeseen threats to fish stocks and powers to introduce a new regulatory system for the movement of live fish where necessary, to protect national and local biodiversity. This Part also modifies the fishing licensing regime, introduces an authorisation regime for some fishing activities, and deals with offences relating to fishing and with the powers and duties of the Environment Agency.

Fishing

Of particular concern is the potential impact or displacement of fishing by the creation of marine plans and MCZ, for instance in relation to prawn fishing where there is the possibility

44 Synopsis of responses to NI Marine consultation, 2010

that bottom fishing would not be allowed in MCZs.⁴⁵ A respondent to the consultation suggested that designated MCZs should be relaxed for use by the angler to fish in a “catch and release” manner so as to assist the recovery of stock levels.⁴⁶

Coastal Access

Part 9 of the UK Act introduces new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast wide enough to allow unconstrained passage on foot and recreational space. However, there does not appear to be anything of a similar nature provided for in the NI Bill. The UK Act also contains provisions enabling the National Assembly for Wales to create a coastal path around the Welsh coast, however, in relation to NI there is no provision in the UK Act; it is contained in the Northern Ireland Access to the Countryside Order 1982.

Coastal Zone Management

A respondent recommended that proposals in the Bill should refer to coastal change or erosion, with major concerns from farmers regarding loss of land, and it was suggested that a Shoreline Management Planning/Coastal Plan, based on Integrated Coastal Zone Management (ICZM), should be provided for in the NI Marine Bill. Of interest is a €6million IMCORE (Innovative Management for Europe’s Changing Coastal Resources) project on ICZM, led by the National University of Ireland, Cork. It aims to produce a transnational, innovative and sustainable approach to reducing the ecological, social and economic impacts of climate change on the coastal resources of North West Europe, and is due to come to an end April 2012⁴⁷. This project was discussed by the Agriculture and Rural Development Committee during the DARD briefing on the Marine Bill in relation to whether this project was used to inform the DoE’s work on MCZs.⁴⁸

Climate Change

There do not appear to be any provisions in the Bill in relation to climate change. Understanding that climate change is a difficult topic to integrate into a piece of legislation, during consideration of the Scottish Marine Bill, a general concern was expressed by the Rural Affairs and Environment Committee that the Bill did not sufficiently display a commitment to climate change. The Committee recommended that climate change mitigation and adaptation should be included in the list of objectives that a national marine plan may set out. It was also suggested that Scottish Ministers, when drawing up a marine conservation order for an MPA (similar to an MCZ) should have regard to both the social and economic factors, and the desirability of mitigating climate change.⁴⁹

45 Official Report ,Committee for Agriculture and Rural Development: Marine Bill Departmental Briefing 17/04/12

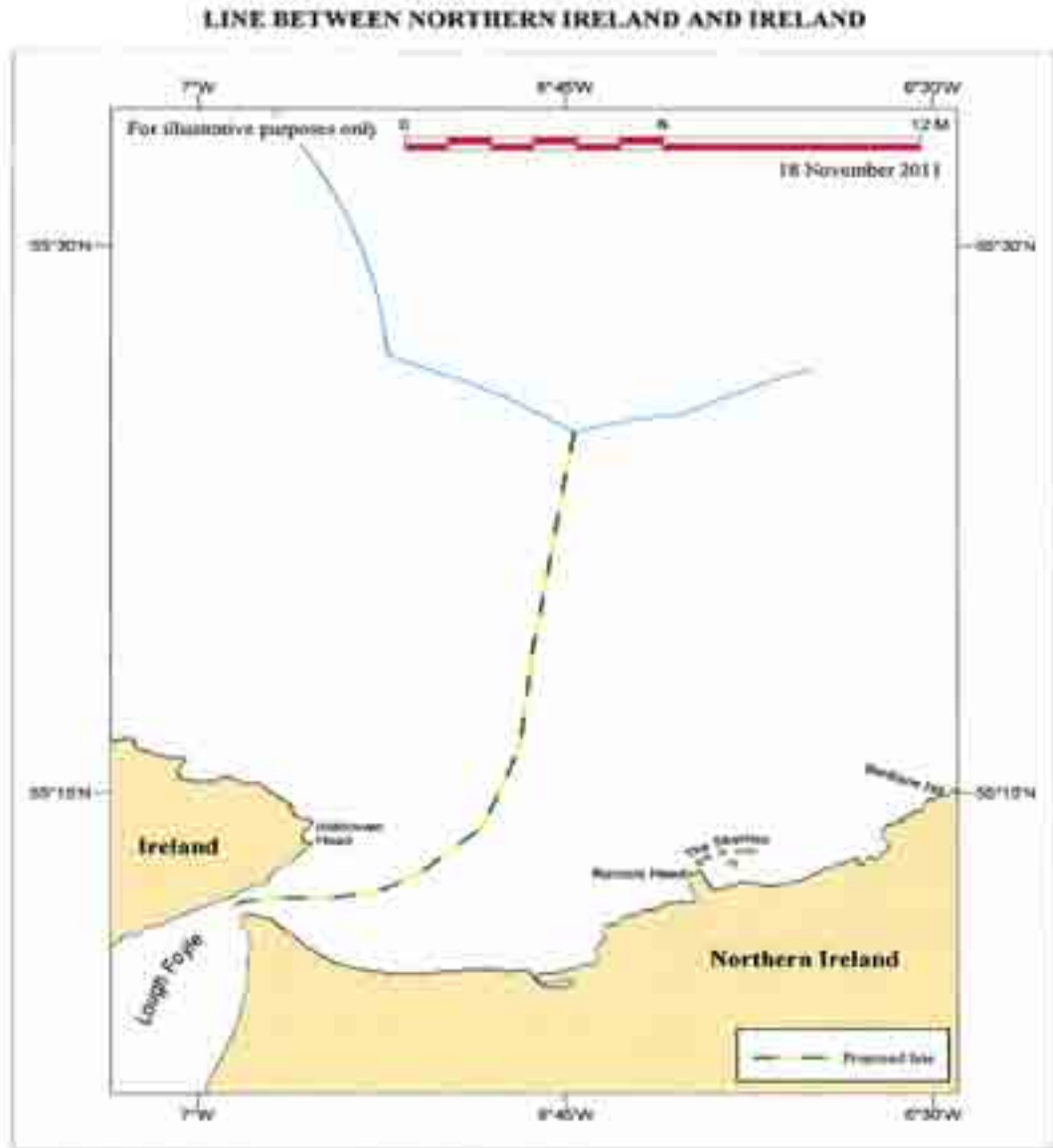
46 Synopsis of responses to NI Marine Consultation, 2010

47 <http://www.imcore.eu/> and for more information <http://www.coastaladaptation.eu/index.php/en/>

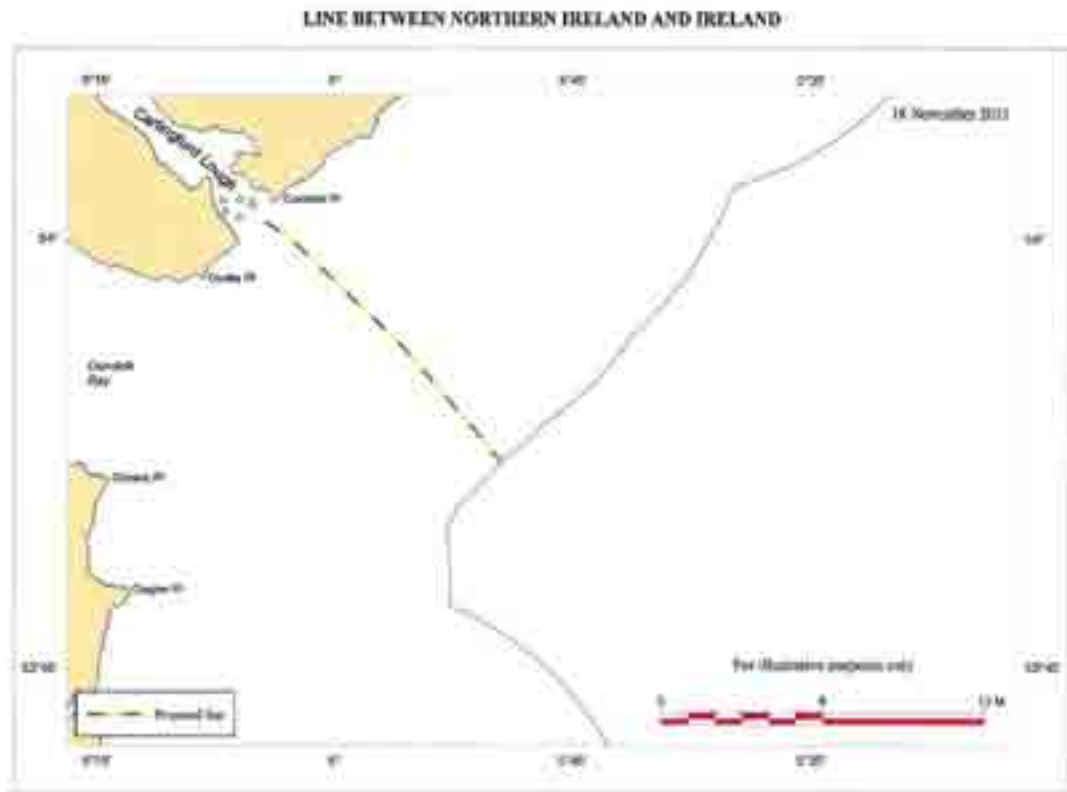
48 Official Report ,Committee for Agriculture and Rural Development: Marine Bill Departmental Briefing 17/04/12

49 Rural Affairs and Environment Committee, 11th Report, 2009 <http://archive.scottish.parliament.uk/s3/committees/rae/reports-09/rur09-11-vol1-01.htm#1>

Annex A: Lough Foyle Area Boundary Map (for off shore renewable energy MOU)



Annex B: Carlingford Area Boundary Map





Northern Ireland
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Research and Information Service
Briefing Paper

Suzie Cave

NI Marine Bill: Comparisons with other jurisdictions

NIAR 000-00

The following table summarises the comparisons between the NI Marine Bill, the Marine (Scotland) Act, and the UK Marine and Coastal Access Act.

Marine (Scotland) Act		UK Marine and Coastal Access Act	
Not included in the NI Marine Bill	Differences between similar provisions	Not included in the NI Marine Bill	Differences between similar provisions
<p>Historic Marine Protection Areas: The NI Marine Bill does not contain provision for the protection of historic assets within a marine zone. Whereas the Scottish Act specifies six categories of Historic MPA (P8)</p>	<p>Territorial coverage: While the Scottish legislation covers all of the waters in its inshore zone, the Northern Ireland legislation omits the area currently overseen by the Loughs Agency (i.e. Carlingford and Foyle). It is not clear in the NI Bill how the Agency will be consulted (p.10)</p>	<p>MMO: The UK Act establishes the MMO, a (NDPB), as the responsible authority for marine planning, environmental licensing, monitoring of marine developments, management and enforcement of fisheries and nature conservation with the designation of MCZs. There are no provisions for a (NI) MMO in the NI Bill (p.11)</p>	<p>Marine Planning: The Marine Authority in England responsible for marine planning and the development of marine plans is the independent MMO. In the NI Bill it is the Department of the Environment who is responsible and will have to consult with all NI Departments with marine functions, to then have final version agreed by the Secretary of State. (p.11)</p>
<p>Marine management schemes (MMS) The Scottish Act sets out provision for Marine Management Schemes for Nature Conservation and Demonstration and Research MPAs. They are intended to define roles and responsibilities of local authorities and relevant parties. There is no provision for MMS in the NI Bill. (p.9)</p>	<p>MMO The Marine (Scotland) Act 2010 does not provide specifically for the creation of a Marine Management Organisation. However, Marine Scotland was created as a directorate of the Scottish Government in advance of the enactment of the legislation. The equivalent in the NI Bill is the DOE (p.7)</p>	<p>Fisheries: The UK Act contains powers for the management of fisheries, shellfisheries, and commercial and recreational fishing. It establishes Inshore Fisheries and Conservation Authorities (IFCAS) responsible for both fisheries and nature conservation. There are no equivalent provisions for fisheries within the NI Bill.</p>	<p>Archaeological/ Historical sites There is very little provided in both the NI Marine Bill and the UK Act allowing for the designation of MCZs due to their scientific, historical or archaeological importance. However, similar to the UK Act (Part 5 Ch 1 s 117) reference is made in the NI Bill to these sites in relation to the social consequences of designating a site as a MCZ. Existing legislation in England provides for the protection of such sites in England and Wales, whereas existing legislation in NI does not appear to. (p13)</p>

Marine (Scotland) Act		UK Marine and Coastal Access Act	
Not included in the NI Marine Bill	Differences between similar provisions	Not included in the NI Marine Bill	Differences between similar provisions
<p>Seal conservation measures:</p> <p>The NI Marine Bill does not make separate provision for seal conservation measures. The Scottish legislation contains 24 clauses dealing with the issue of conserving and culling seals, where it makes it an offence to kill a seal without a licence. (p.10)</p>	<p>MCZs v MPAs</p> <p>The NI Marine Bill makes provision for the establishment of Marine Conservation Zones (MCZ), whereas the Scottish Act makes provision for Marine Protected Areas (MPAs), which include Historic MPAs, and Demonstration and Research MPAs (p.8)</p>	<p>Seals:</p> <p>Under the Wildlife NI Order 1985, seals are protected at all times. Part 1 chapter 2 of the UK Act allows for licenses to kill or take seals; however there is no equivalent provision in the NI Bill. This is not a reserved matter as the UK Act clearly states that this for the whole or any part of England/ English inshore region.</p>	<p>MCZs</p> <p>While both pieces of legislation provide for the designation of MCZs, the NI Bill lacks a timetable marking milestones for the designation of MCZs. The UK Act ensures commitment to designate a network by 2012 to meet international commitments. (p.12)</p>
<p>Common enforcement powers:</p> <p>The NI Marine Bill largely refers to the provision of the UK Marine and Coastal Access Act 2009 for common enforcement powers for enforcing requirements across licensing, nature conservation and fishing, whereas the Scottish legislation makes its own provision for such powers, set out within 27 clauses in Part 7 of the Act. However, there are no major differences in the provisions for common enforcement powers.</p>	<p>Marine licensing:</p> <p>With the exception of a specific section on licensing for electricity generating facilities, the NI Marine Bill does not legislate for marine licensing. However, the Scottish legislation makes its own arrangements for marine licensing (similar to the UK Act) of a number of activities including, removal and disposal of marine dredged material, deposition of substances, coastal and marine developments, wind wave and tidal power.</p>	<p>Coastal Access:</p> <p>Part 9 of the UK Act introduces new powers to extend recreational access to the English coast and to enable the creation, as far as is possible, of a continuous route around the coast wide enough to allow unconstrained passage on foot and recreational space. The UK Act also provides a similar provision for Wales, however, in relation to NI there is no provision; it is contained in the Northern Ireland Access to the Countryside Order 1982.</p>	



Northern Ireland
Assembly

Appendix 6

Other Papers

BASC Comments to Departmental Reply

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference: CQ/155/12
Our reference:

Date: 18 May 2012

Dear Alex,

Following its meeting on the 10th May 2012 the Committee has requested clarification from the Department on a number of legislative provisions.

For convenience, I shall deal with the issues in the order raised.

1. What extent will the byelaws for the protection of Marine Conservation Zones (MCZ), proposed under Clause 24 of the Bill, restrict the activities of sporting, wildfowling and sea angling interests.

Clause 24 gives the Department the power to make byelaws for the protection of features of an MCZ. Byelaws will be site specific and made on a case-by-case basis.

Draft Byelaws will be subject to full public consultation and stakeholder engagement which is specific to the site and activity under consideration.

It is envisaged that most MCZs will be designated primarily for the protection of seabed features and as such any related byelaws will have **little impact** on the sporting, wildfowling and sea angling interests.

BASC has previously received correspondence from the Department dated 22 June 2011, stating that *“they did not think the Marine Bill would have **any impact** on wildfowling activities”* which shows that the Department’s view has changed somewhat. BASC therefore requests that the Department clarify the phrase “little impact”?

BASC further requests an assurance from the Department that MCZ’s **and** other highly protected areas contained within MCZ’s (such as reference areas) will have **NO impact** on wildfowling or access to wildfowling opportunity, or sea angling interests.

BASC also seeks confirmation that in designating MCZ’s the Department **will** take into account the social, economic and **“cultural”** consequences of doing so.

2. In relation to Clause 24(2), the Committee would like clarification of the reference to the potential for byelaws to apply to “any other part of Northern Ireland”.

The reference to ‘any other part of Northern Ireland’ is to cover the situation where an MCZ might include sandbanks, rocks and islands whether or not these are ever covered by the sea at any time. These features would therefore be considered an ‘area of Northern Ireland’ and **not part of the ‘inshore region’**. Islands excluded from an MCZ would be identified in the designation order.

BASC seeks further clarification from the Department in relation to Clause 24 (2) and we would ask for an assurance from the Department that the above byelaws will not be applied to areas such as Lough Neagh and Lough Erne which are not part of the “inshore region”. Furthermore, BASC asks the Department to give a number of examples where the phrase “any other part of Northern Ireland” would be applied?

3. Will protection for a habitat or species provided under an MCZ take precedence over protection already provided by the Wildlife and Natural Environment Act (WANE).

No. It is envisaged that both pieces of primary legislation will complement each other, but will not duplicate or have preference status. It is anticipated that MCZs will primarily be designated for seabed features i.e. habitats, as opposed to mobile marine species such as Seahorses and Seals which are fully protected under the WANE Act.

4. Will the designation of MCZs be evidence based particularly in relation to Clause 12(5) specifying that an MCZ can be designated on the grounds of conserving flora, fauna or habitat “whether or not all of them are rare or threatened”.

The Department’s policy on the designation of MCZS in the Northern Ireland Inshore Region will be based upon the use of the **best available science**. All site boundaries and conservation objectives will be flexible to allow for changing circumstances or additional scientific or other information.

BASC seeks clarification of the Department’s definition of “best available science”

BASC seeks an assurance from the Department that the “flexibility” of site boundaries and conservation objectives will be subject to full stakeholder consultation and engagement

5. In relation to Clause 39(b), members would like to know the extent of this clause.

In general MCZs will be designated below Mean High Water Spring Tide (MHWST). However there may be occasions where an MCZ may extend landward of this line if the designated feature continued or was required to protect the feature(s). This would include, but not be exclusive to, geological features and coastal process (i.e. Sandbanks/ dunes). All proposed MCZ designations will be subject to full consultation and take account of other activities or interests.

BASC requests that the Department provide a number of examples of locations where such a scenario might arise.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO

[by e-mail]

Countryside Alliance Ireland Comments to Departmental Reply

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference: CQ/155/12
Our reference:

Date: 18 May 2012

Dear Alex,

Following its meeting on the 10th May 2012 the Committee has requested clarification from the Department on a number of legislative provisions.

For convenience, I shall deal with the issues in the order raised.

1. What extent will the byelaws for the protection of Marine Conservation Zones (MCZ), proposed under Clause 24 of the Bill, restrict the activities of sporting, wildfowling and sea angling interests.

Clause 24 gives the Department the power to make byelaws for the protection of features of an MCZ. Byelaws will be site specific and made on a case-by-case basis.

Draft Byelaws will be subject to full public consultation and stakeholder engagement which is specific to the site and activity under consideration.

It is envisaged that most MCZs will be designated primarily for the protection of seabed features and as such any related byelaws will have little impact on the sporting, wildfowling and sea angling interests.

CAI: Please clarify/give examples of the reference to **'little impact'**. ie What potential impacts there could be in relation to 'the sporting, wildfowling and sea angling interests?'

2. In relation to Clause 24(2), the Committee would like clarification of the reference to the potential for byelaws to apply to "any other part of Northern Ireland".

The reference to 'any other part of Northern Ireland' is to cover the situation where an MCZ might include sandbanks, rocks and islands whether or not these are ever covered by the sea at any time. These features would therefore be considered an 'area of Northern Ireland'

and not part of the 'inshore region'. Islands excluded from an MCZ would be identified in the designation order.

3. Will protection for a habitat or species provided under an MCZ take precedence over protection already provided by the Wildlife and Natural Environment Act (WANE).

No. It is envisaged that both pieces of primary legislation will complement each other, but will not duplicate or have preference status. It is anticipated that MCZs will primarily be designated for seabed features i.e. habitats, as opposed to mobile marine species such as Seahorses and Seals which are fully protected under the WANE Act.

4. Will the designation of MCZs be evidence based particularly in relation to Clause 12(5) specifying that an MCZ can be designated on the grounds of conserving flora, fauna or habitat "whether or not all of them are rare or threatened".

The Department's policy on the designation of MCZs in the Northern Ireland Inshore Region will be based upon the use of the best available science. **All site boundaries and conservation objectives will be flexible** to allow for changing circumstances or additional scientific or other information.

CAI: This could be taken as both positive and negative. CAI would request assurance that any changes to site boundaries would be subject to stakeholder consultation.

5. In relation to Clause 39(b), members would like to know the extent of this clause.

In general MCZs will be designated below Mean High Water Spring Tide (MHWST). However there may be occasions where an MCZ may extend landward of this line if the designated feature continued or was required to protect the feature(s). This would include, but not be exclusive to, geological features and coastal process (i.e. Sandbanks/ dunes). **All proposed MCZ designations will be subject to full consultation and take account of other activities or interests.**

CAI: We welcome this assurance from the Department.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO

[by e-mail]

DARD Reply re 28 Day Rule

Committee for Agriculture and Rural Development

Room 244

Parliament Buildings

Tel: +44 (0) 28 905 21475

From: Stella McArdle, Clerk to the Committee for Agriculture and Rural Development

To: Alex McGarel, Clerk to the Committee for the Environment

Date: 13 June 2012

Subject: Marine Bill

1. At its meeting of 12 June 2012, the Committee for Agriculture and Rural Development discussed the recent correspondence from the Department of Agriculture and Rural Development regarding Clause 20 and 21 of the Marine Bill, and the impact of the 28 day rule.
2. The Committee agreed that I should forward a copy of the correspondence to you.

Yours sincerely

Stella McArdle
Committee Clerk

<p>Corporate and European Services Division Central Management Branch</p> <p>Stella McArdle Acting Clerk to the Committee for Agriculture and Rural Development Room 243 Parliament Buildings Ballymiscaw Belfast BT4 3XX</p>	<p>Dundonald House Ballymiscaw Upper Newtownards Road Belfast BT4 3SB Tel: 028 9052 4331 Fax: 028 9052 4884 Email: joe.cassells@dardni.gov.uk</p>
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Our Ref:

Your Ref:

Date: 25 May 2012

Dear Stella

At the ARD Committee meeting on 17 April 2012, Mrs Jo-Anne Dobson raised the following question with Departmental officials.

"I refer to the briefing that the Committee Clerk prepared for us. Point 15 is about marine conservation zones and refers to the 28-day rule. Are you concerned that the 28-day rule between DARD and the DOE will penalise DARD because it does not apply when DOE notifies DARD? DARD must make sure that it is not at a disadvantage. Has the Department raised that or any other concerns with DOE?"

The Department has not raised this as a concern with DOE and we do not believe that this places us at a disadvantage. This relates to Clauses 20 and 21 of the draft Marine Bill which requires public authorities to notify DOE if it believes that an act that it is carrying out itself (Clause 20), or authorising a person to carry out (Clause 21), would hinder or may pose a significant risk of hindering the achievement of the conservation objectives of a Marine Conservation Zone.

Where a notification is given to DOE by a public authority such as DARD, the Bill states that the authority must wait 28 days before deciding to carry out the act or grant an authorisation to a person to carry out the act.

This period is to allow DOE sufficient time to consider the notification and to make representations to the public authority so that these may be taken into account before the decision to act, or make an authorisation to act is granted. We feel that this period is reasonable and gives some extra time for arguments not previously considered by the public authority to be raised before proceeding with an act that carries risks.

We do not feel at a disadvantage to DOE because DOE is not issuing a notice to the public authority to stop an activity just pause an activity. Once the 28 day period has expired the public authority may proceed with the act or authorisation. It is still the authority's decision whether or not to proceed.

Clauses 20(8)(b) and 21(4)(b) also permit the public authority to act or issue an authorisation within the 28 day period if it thinks there is an urgent need to proceed.

If the public authority proceeds against DOE advice it must provide an explanation in writing to DOE to explain its decision but DOE cannot prevent the public authority from acting if the authority feels it has good justification.

However a decision to proceed with an act that could potentially damage a conservation feature would not be taken lightly. If the act could cause damage, and if that resulted in a failure to achieve Good Environmental Status targets under the EUs Marine Strategy Directive

the responsible authority could be liable to fines from Europe. Consequently additional mitigation measures may be necessary to compensate for such decisions.

A very important part of the process is for DOE and public authorities to agree the MCZ designations and the management measures required to achieve the conservation objectives. This need for close co-operation has been raised by the Department. If this is done in a positive and constructive way, Clauses 20 and 21 should only come into play in exceptional circumstances.

Grateful if you could bring this to the attention of Members.

If you require any further information please let me know.

Yours sincerely,

Joe Cassells
Departmental Assembly Liaison Officer

Departmental Reply - CNCC & ESR Comments

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ/170/12

Date: 31 May 2012

Dear Alex,

Marine Bill

Following its meeting on 24 May 2012, the Committee requested additional information from the Department in a relation to a paper from the Examiner of Statutory Rules and correspondence from CNCC on shoreline management plans.

For convenience, I shall deal with the issues in the order raised.

1. Comments from Examiner of Statutory Rules

The power in clause 32(5) enables the Department by order to remove or restrict the application of the sea fishing defence provided by clause 32(4) in the Bill. The Department is content that the power to remove or restrict this defence is exercisable by order. While this may not be a common practice, it will be subject to the scrutiny of the Assembly (using the draft affirmative procedure). As outlined in paragraph 5 of the 'ESR Advice on Marine Bill delegated powers' e-mail, the power allows the Department to deal with any potential changes to the Common Fisheries Policy and provides flexibility to permit any required changes to be actioned.

It is also worth noting that these provisions are consistent with the provisions in the Marine and Coastal Access Act 2009 and Marine (Scotland) Act 2010.

With regard to the comments relating to the 'over-complex appearance' of the fixed monetary penalties provisions in the Bill, it should be noted that the Department has already made a similar order for fixed (and variable) monetary penalties in regard to marine licensing under the Marine and Coastal Access Act 2009. The Marine Licensing (Civil Sanctions) Order (Northern Ireland) 2011 would serve as a useful template for framing the order for fixed penalties under the Marine Bill.

The Department has consulted informally with the Department for Justice on the new proposed offences and penalties provisions included in the Bill. A formal appeals mechanism

will help to ensure that civil sanctions are applied fairly and any revenue from the penalties will be paid into a consolidated fund. The Lands Tribunal Northern Ireland has, in principle, agreed to take on the role of appellate body. However, this agreement would be dependant on the number and complexity of cases that may arise.

2. The inclusion of an explicit reference to Shoreline Management Plans.

CNCC has requested that an explicit reference to Shoreline Management Plans should be included in Schedule 1 paragraph 9. This provision relates to the matters to which the Department is to have regard in preparing a marine plan.

Shoreline Management Plans do not extend to Northern Ireland and therefore it would not be appropriate to include a specific reference to them in the Bill.

Paragraph 9 of Schedule 1 has been drafted as a non-exclusive list designed to provide an indication of the range of matters to be considered by the Department. For example, marine planning will have to consider River Basin Management Plans, Flood Risk Management Plans, and terrestrial plans and planning policy, such as PPS21, to the extent that those are relevant to the marine environment.

The flexible nature of the current drafting means that should Shoreline Management Plans (or similar) be developed in Northern Ireland in the future, they would be matters to which the Department would have to have regard in preparing a marine plan.

I trust this information is of assistance, but should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO

[by e-mail]

Departmental Reply re Committee Queries

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Your reference:

Our references: CQ/172/12, CQ/185/12

Date: 15 June 2012

Dear Alex,

Marine Bill

Following briefing on the Marine Bill by stakeholders, the Committee requested additional information from the Department by 15 June 2012.

For convenience, I shall deal with the issues in the order raised.

1. Maintenance dredging protocol

Following a briefing by Belfast Harbour Commissioners and the British Ports Association, the Committee requested more information on the maintenance dredging protocol and how it will work in practice.

The development of a protocol for maintenance dredging is being taken forward by the Department for Regional Development. It is a stated River Basin Management Plan Programme of Measure (within the 'Marine Morphology' Heading) under the Water Framework Directive. The protocol is to be developed for the NI commercial ports sector - it is not envisaged that it will extend to or cover (at this time) other statutory harbour authorities. Implementation of the protocol, once introduced, will be on a voluntary basis - it will have no statutory basis.

The protocol will set out 'best practice' for maintenance dredging activities by the commercial port authorities in assisting them to fulfil their statutory obligations and to ensure compliance with the Habitats, Birds and Water Framework Directives.

Once developed and implemented, the process set out in the protocol is to enable issues associated with a range of environmental European Directives to be dealt with in a streamlined and proportionate manner, and which allows the effect of maintenance dredging to be assessed without placing a disproportionate burden on those who commission or approve maintenance dredging operations.

Each designated Harbour Authority (Belfast, Coleraine, Larne, Warrenpoint and Londonderry) would undertake a Baseline Survey/Assessment of their marine environs.

The Baseline Document would demonstrate the extent of the maintenance dredging operations carried out by the harbour authority and determine the requirements to carry out those dredging operations. All environmental aspects would be assessed / reviewed in co-operation with NIEA officials. Mitigation measures to minimise any adverse impact on the environment would be agreed by NIEA and set out in the Baseline Document.

As the harbour authorities undertake their routine maintenance dredging operations, they would confirm to NIEA that the operations would fall within the agreed workings of the Baseline Document, and only where a significant change to a harbour authority's dredging regime is expected would the Baseline Document require re-assessment. There may also be a requirement that the Baseline Document is revised at least on a 3 or 5 year basis - although this would have to be agreed with the ports.

2. Recycling or use of dredged material

Before a marine licence is granted for disposal of dredged material, the applicant must demonstrate that sea disposal is the best practicable environmental option (BPEO). Consideration must be given to other beneficial reuses such as beach nourishment, which will then be subject to other authorisations or environmental assessments. There are suitability criteria for both beneficial reuse and for sea disposal.

A number of beneficial use projects for maintenance dredge material have been licensed in the past, and the Department encourage applicants to consider this practice as BPEO before considering disposal at sea.

3. Principles to achieve an ecologically coherent network of marine protected areas

Marine Conservation Zones (MCZs) in the Northern Ireland inshore region will be designated for nationally important species. The UK is not a single ecologically entity within a biogeographic context and has ecological subunits that juxtapose with administrative boundaries. The Department's aim is for an ecologically coherent network of Marine Protected Areas (MPAs) to ensure that it meets its obligation under the Marine Strategy Framework Directive.

Natural England and JNCC, in discussion with DEFRA and the devolved administrations, are developing guidance on an ecologically coherent network framework for the UK. This work appears to follow closely OSPAR guidance, which outlines eight principles – Features, Representativity, Connectivity, Resilience, Management, Replication, Adequacy / Sufficiency.

These principles have been widely accepted as best practice for use in MPA network design.

4. Highly protected MCZs

The conservation objectives will reflect the purpose of the MCZ and will determine the level of protection for each site. Conservation objectives for a site will be specific to the species, habitats or geological features designated as an MCZ, and will be based on best available science.

Conservation objectives will enable the identification of potentially damaging activities and appropriate management. Therefore, rather than pre-determine levels of protection, science will be used to identify potential sites and their conservation objectives.

5. MCZ designation process and development of marine plan

The MCZ designation team is not a 'nested part' of the Marine Plan team. However, both teams will work in conjunction with each other during the designation of MCZs and the development of the Northern Ireland Marine Plan. A high level of co-ordination is already taking place.

Strangford Lough will become the first MCZ under the Marine Bill. It is envisaged that conservation objectives for Strangford Lough, as a MCZ, will be developed to allow designation within 12 months of the Bill coming into operation. In addition, consideration will be given to protecting habitats and species which occur in existing Natura 2000 sites. These designations, including any new MCZ sites identified, will play an important role in achieving Good Environmental Status (GES) in the marine environment by 2020.

Preparatory work on the NI Marine Plan has already begun and it is anticipated that a draft Marine Plan will be developed within 2 years. The key steps and associated timeline for the plan preparation process are set out in the Statement of Public Participation which will be published at the end of June.

6. Failure to comply with duties

Public bodies take all statutory duties seriously and can be expected to take all reasonable steps to ensure that the determination of any application will not be detrimental to the protected features of an MCZ. Irrespective of whether an MMO is in place, it is not legally practicable to create sanctions for failure to comply with duties imposed on public authorities under clause 23. However the duties imposed on public authorities under clause 20 and 21 must be exercised in accordance with the requirements of public law, and any failure to do so will leave the public authority in question vulnerable to challenge by way of judicial review.

7. Inter-departmental Marine Co-ordination Group (IMCG)

Information on the composition, terms of reference and legal status of the IMCG were provided by the Department on 14 May (CQ/144/12).

The group last met on 7 March 2012, and is scheduled to meet again on 26 June. It meets quarterly, and has therefore met 6 times in the last 18 months (19 October 2010, 23 February 2011, 10 May 2011, 9 September 2011, 6 December 2011 and 7 March 2012).

The papers for and actions arising from meetings of the IMCG are circulated to members of the group. The 'deliberations' of the IMCG are reflected in the outcomes of the group – for example, co-ordinated Northern Ireland input to the UK-wide Marine Policy Statement, the development of the draft NI Marine Position Paper etc.

8. Public rights of navigation

The Northern Ireland Renewables Industry Group (NIRIG) is represented on the Offshore Renewable Energy Forum, which was established by DETI in 2011 to advise on the implementation of the Offshore Renewable Energy Strategic Action Plan (ORESAP).

NIRIG points out that the issue of public rights of navigation in England, Scotland and Wales has been addressed through the Energy Act 2004 (which amended the Electricity Act 1989, which does not apply to NI or NI inshore region). This is correct.

As set out in the ORESAP, which was published in March 2012, DETI has identified a number of issues (decommissioning, safety zones, navigation rights etc.) which must be provided for the offshore regulatory regime for Northern Ireland, to ensure that it meets the same overall best practice standards/ requirements as the rest of the UK. DETI is taking action to address these, including bringing forward any necessary legislation.

The ORESAP also notes actions for early engagement with developers on the licensing and consenting processes to follow the Crown Estate announcement this autumn, as well as the ongoing work to streamline the processes. Both these points were noted in DETI's evidence to the Committee.

I trust this information is of assistance, but should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Departmental Reply re Departmental Amendments.doc

From: Private Office Assembly Unit [mailto:PrivateOffice.AssemblyUnit@doeni.gov.uk]

Sent: 19 June 2012 11:50

To: McGarel, Alex

Subject: Marine Bill amendments - CQ/185/12

Clause 4 deals with the conditions which must be met for the withdrawal of a marine plan. Clause 2(2) requires that the Department must seek to ensure that every part of the Northern Ireland inshore region has a marine plan in effect. Therefore, if the Department withdrew a plan, a new marine plan would be required under clause 2(2). A marine plan would likely only be withdrawn for the purposes of replacing it. The Department is content that the provisions of clauses 2 and 4, when read together, deal with the issue of replacing a withdrawn plan.

I hope this answers your query. However, if you require any further information/clarification please let me know.

Many thanks

Kathy Monaghan
Private Office Assembly Unit
8th Floor
Goodwood House
Ext 37032

Departmental Reply re Departmental Amendments Annex A

NORTHERN IRELAND MARINE PLAN

STAKEHOLDER SEMINAR FEEDBACK REPORT

1.0 INTRODUCTION

- 1.1 The DOE Marine Plan Team organised a seminar for key stakeholders with an interest in the marine environment aimed at establishing an effective communication network and ensuring a successful stakeholder / public participation process to inform preparation of the forthcoming Northern Ireland Marine Plan.
- 1.2 The seminar was held in the Stormont Hotel on 16 March 2012 and attracted almost 70 delegates, drawn from a wide cross-section of interest groups and organisations including other Government Departments (See Annex A). Speakers included representatives from the Department of Environment's Marine Plan Team and Marine Policy Team; the Northern Ireland Environment Agency; and the Marine Management Organisation (England).
- 1.3 Delegates were invited to complete a feedback questionnaire to garner stakeholder views on various aspects of the marine plan preparation process.

No. of delegates	Completed Feedback Forms	% Return
67	52	77%

- 1.4 In addition, round table discussions focused on the following 'topic' areas:
- **Effective stakeholder engagement;**
 - **What should be included in the marine plan; and**
 - **Evidence for plan making.**

A summary of the comments made from this approach is attached at Annex B.

-
- 1.5 A key aspect of the day was to discuss views around the approach to stakeholder and public engagement set out in a draft of the Statement of Public Participation (SPP). The SPP is a statutory requirement for a marine plan, sets out the methods and approach for engagement with interested parties / groups / individuals throughout the development of the plan. It also provides a timeline for production of the plan and seeks to promote a good communication network, and is intended to ensure that all those with an interest are provided with effective opportunities to put forward their views. Delegates were provided with a working copy of the SPP in advance of the seminar to aid roundtable discussion and assist in the completion of the feedback questionnaire.
 - 1.6 This summary report sets out the key messages derived following analysis of the completed feedback questionnaires, panel question and answer session, and round table discussion on topic areas from those present on the day, and represents the first collective reflection of stakeholder's views on the marine plan process.
 - 1.7 The Marine Plan Team would like to put on record its gratitude to all those who participated on the day, and who contributed in any way to making the event a success. A special mention goes to our guest speaker, Mr Russell Gadbury from the Marine Management Organisation for agreeing to address the seminar and to share his views and experiences on marine plan preparation in the East of England. We are confident that the positive comments and views expressed by delegates augers well for future stakeholder engagement as we take forward work on the Northern Ireland Marine Plan.

2.0 ANALYSIS

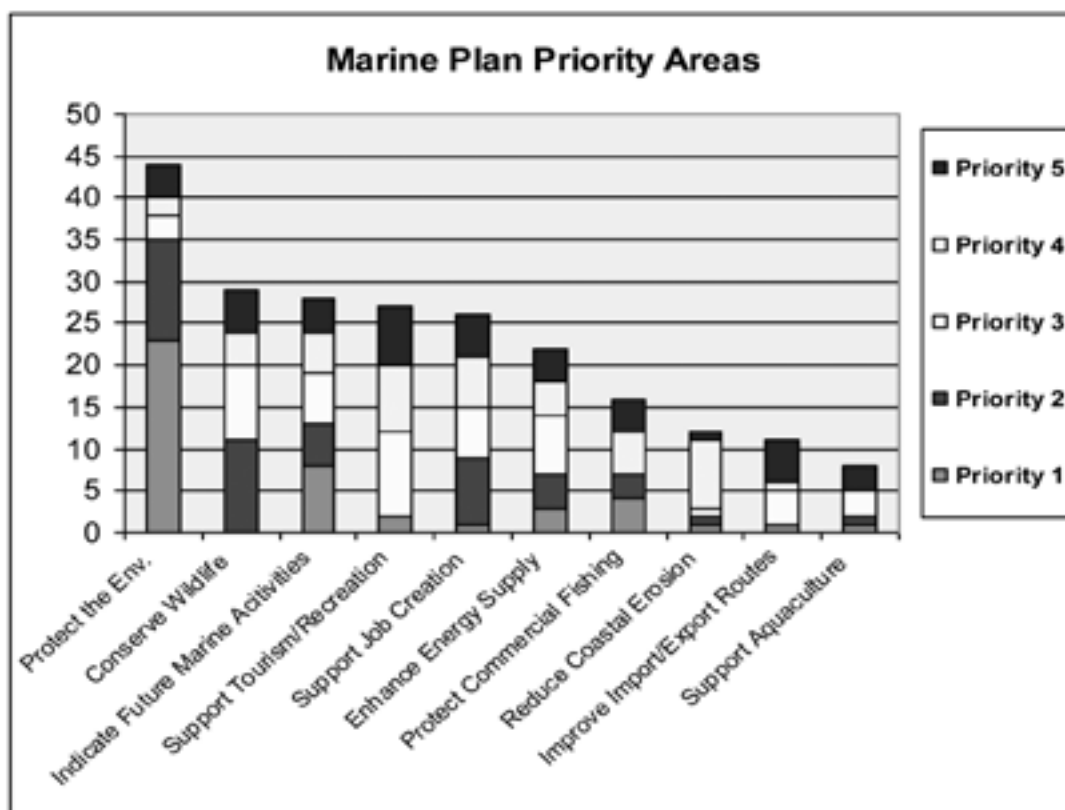
2.1 The feedback questionnaire posed six questions and a summary of the responses are set out below. The completed questionnaires can be broadly categorised by sector as follows:

Sectoral Feedback	%
Government Department	21%
Environmental NGO	17%
Academia	16%
Ports / Harbours / Transport	14%
Commercial Fishing	10%
Energy	10%
Other Commercial Interests	4%
Recreation	4%
Defence	2%
Telecoms / Cables	2%

Question 1: What do you consider should be the main priorities of the Northern Ireland Marine Plan?

2.2 Most respondents considered the protection of the environment and conservation of wildlife should be the primary focus of a future marine plan. Support for job creation, marine tourism/recreation, enhancing energy supply and indication of future marine activities occupy the mid-band of priorities, followed by protection of commercial fishing activity. Lower priority was given to issues around coastal erosion, import / export routes and support for aquaculture.

The graph below shows the cumulative total across the top 5 priority areas.



- 2.3 Outside of the range of issues / areas offered in the questionnaire some respondents indicated a preference for the marine plan to foster sustainable development as a priority with greater co-ordination of marine activities, including the establishment of a criteria based approach to decision making between conflicting demands / activities in the plan area.

Question 2: What do you think are the three main qualities of the Northern Ireland marine plan area?

- 2.4 Around 54% of respondents across a wide range of sectoral interests cited the importance of the marine natural environment / eco-system / biodiversity as the principle quality of the Northern Ireland marine area. Around 40% of respondents also acknowledged the future potential of the marine plan area to deliver growth in both renewable energy supply and other industries such as tourism / leisure and sustainable fishing / aquaculture.

Top three main qualities by rank order.

Rank	Marine Plan Area Qualities
1	Biodiversity / Naturalness / Eco-System
2	Productivity / Future Potential (e.g. Eco-tourism, Leisure, Fishing)
3	Renewable Energy Resource

- 2.5 Outside of the top three 'qualities' illustrated in the table above, the relatively smaller size of the Northern Ireland Plan area compared to those of other Administrations, coupled with the diversity of activities were generally seen as positive attributes.

Question 3: How can we effectively engage with you / the public / coastal communities / groups and organisations?

- 2.6 Most respondents considered the combined format for stakeholder engagement used for the seminar was useful in stimulating debate / discussion across the range of users within the marine plan. Coupled to this is a realisation of the need for individual / group meetings with the representatives of various marine sectors, and a desire to utilise on-line methods of communication, consultation and survey, including a regular 'e-newsletter'. Drop-in sessions and road shows were also considered to be useful but should be accessible to coastal and fishing communities. The idea that the Marine Plan Team should seek to address scheduled meetings of the various sectoral interest groups (where appropriate) was also suggested, which could avoid duplicated effort amongst the relevant parties. Another suggestion put forward was the idea that 'linkages' between marine planning and the schools curriculum should be developed particularly around marine nature conservation and habitat.

Preferred methods of stakeholder / public engagement by rank order.

Rank	Effective Stakeholder / Public Engagement
1	Combined Stakeholder Events
2	Individual / Group Meetings
3	Website (Including online consultation and surveys)
4	e-Newsletter
5	Public Drop-In Sessions
6	Road Shows
7	School Visits

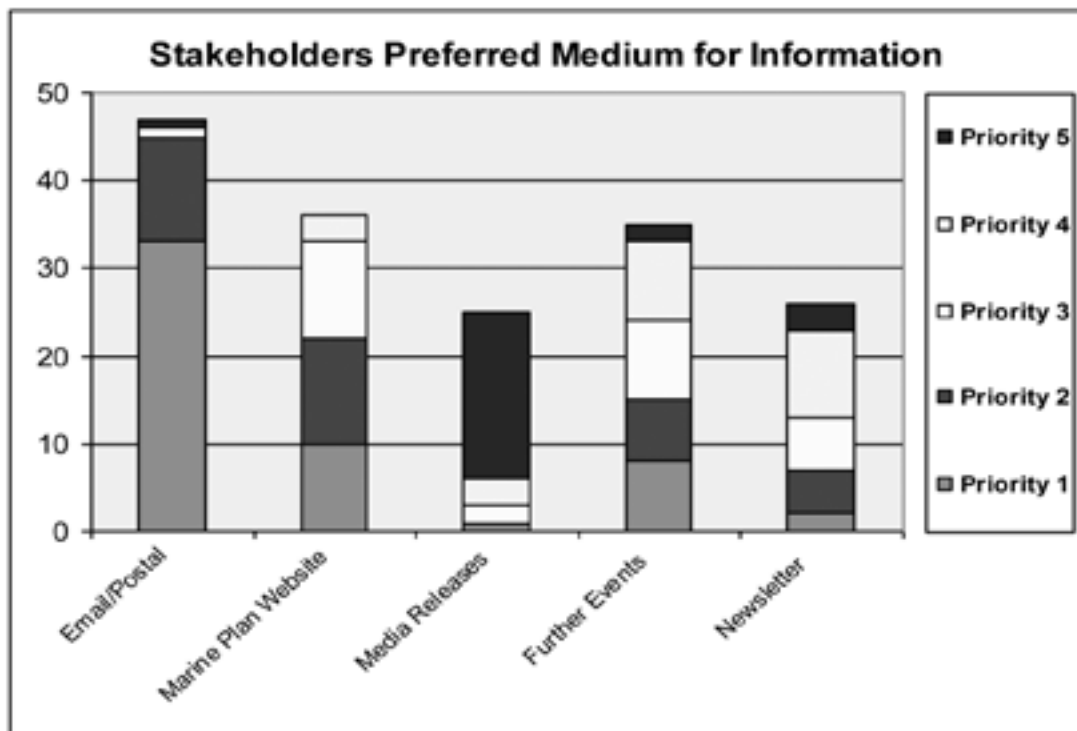
Question 4: Does your organisation hold, or have access to, relevant marine data / information that it would be willing to share with the Northern Ireland Marine Plan Team to assist in the development of the plan?

- 2.7 Many stakeholder groups indicated a preparedness to share data where relevant to the Northern Ireland marine plan area. The range of data and potential sources from those in attendance can be categorised broadly as follows:

Stakeholder Group	Agency / Organisation	Information / Data
Government	DCAL	Salmon Fisheries
	DARD	Sea Fisheries
	DRD	Ports / Transportation
	NIEA	Marine science
	NI Water	Waste-water outfall
	Geological Survey	Seabed maps; seismic data
Research / Science	AFBI	Not specified
	The Crown Estate	Economic / Commercial
	QUB	Studies / Research
	UUJ	Studies / Research
	Centre for Marine Archaeology	Shipwreck Archive; Geophysical
National Museums NI	Marine survey data; Marine Species data	
Commercial	Belfast Harbour Commissioners	Commercial / Port operations; Import/Export data.
	Larne Harbour	Shipping Traffic; Weather / tidal data
	ANIFPO / NIFFO	Sea Fisheries data
	Hibernia Atlantic	Sub-Marine Cables /

		Telecoms
	Seafish NI	Not Specified
Transport / Navigation	Commissioner of Irish Lights	Navigation buoys, beacons, lighthouses.
	RNLI	Casualty / Incident data
	RYA	Recreational usage.
Conservation	Marine Conservation NI	Not specified
	Strangford Lough & Lecale Partnership	Not specified
	UWT	Not specified
	National Trust	Nature / Wildlife data
	NI Bio-diversity Group	Bio-diversity Reports 2005 and 2009
Defence	Royal Navy	Admiralty data

Question 5: What is your preferred way of being kept informed / learning more about the NI Marine Plan and its progress?



- 8 Stakeholders indicated a preference for electronic methods of communicating information and updates in relation to the marine plan preparation process, particularly through email alerts, electronic newsletter and a dedicated marine plan webpage. There was also a desire amongst stakeholders for further events. The Dissemination of information through media releases scored low relative to other

methods of communication, however, it was recognised that it can be an important and effective means of communicating events / information to the wider public or other interested parties beyond targeted stakeholder groups.

Question 6: Did you find the event useful?

- 2.9 The majority of the respondents indicated that they found the event to be a useful exercise. The involvement of other 'interested' groups, particularly local coastal communities in the plan making process was considered to be essential. Some also considered that existing groups, for example, coastal partnerships / forums, recreational associations and diving clubs should be utilised to 'spread the word' about the work being undertaken. Others were mindful of the need to tailor further stakeholder events, in terms of timing, to particular sectors such as the fishing industry.
- 2.10 Some hold the view that one-to-one meetings will be very important in order to obtain accurate opinions from particular sectors, together with targeted stakeholder workshops where individual groups could present the 'case' for their industry / sector. This is seen as building confidence amongst stakeholders that their opinion counts.
- 2.11 The Coastal & Marine Forum, established in part to aid the implementation of the Integrated Coastal Zone Management Strategy, is also viewed as a potentially useful vehicle to advance the management and awareness of issues particular to the coast and wider marine area. It was also recognised that further consideration should be given to its potential role in the marine plan preparation process.

3.0 FLOOR DISCUSSION

- 3.1 Following on from the presentations stakeholders had an opportunity to quiz the panel on a number of issues and to raise some concerns. The Ulster Wildlife Trust for example was concerned that the plan needs to fully appreciate the 3-D nature of the marine environment. The CNCC

also questioned whether socio-economic evidence / data used in the plan making process would be subject to the same level of scrutiny / peer review as other environmental data, while the NI Bio-diversity Group queried how terrestrial and marine plans would interact, and if they could be 'retro-fitted'. The University of Ulster indicated that as 'marine planning' was likely to be very contested and political, whether the marine plan would have 'teeth'.

- 3.2 Also, and as indicated earlier, a more comprehensive summary of comments made during roundtable discussions is attached at Annex B.

4.0 NEXT STEPS

- 4.1 This report together with all additional comments, issues and opinions received will be factored into our consideration as we finalise the Statement of Public Participation. This will ensure the framework for effective stakeholder and public engagement is as comprehensive as is possible, and tailored to the various sectors with an interest in the marine plan preparation process.
- 4.2 Following relevant Ministerial clearances it is anticipated that the SPP for the Northern Ireland Marine Plan will be issued during June 2012, which will mark formal commencement of work on the plan. We are however required to keep the SPP under review, and will publish any changes or amendments to bring it to the attention of interested parties / stakeholders.

Annex A

List of Participants – NI Marine Plan Stakeholder Seminar

Name	Organisation
Brenda Cunning	DOE – Marine Policy
Russell Gadbury	Marine Management Organisation
Claire Vincent	NIEA
Mary MacIntyre	DOE – Strategic Planning Division
John Linden	DOE – Marine Plan Team
Gerard McClarey	DOE – Marine Plan Team
Tom Mathews	DOE – Marine Plan Team
Jonny McNee	DOE – Marine Plan Team
Mary McNeill	DOE – Marine Plan Team
Carol O' Boyle	DOE – Marine Policy
David Steele	DOE – Marine Policy
Jim Ramsey	DOE – Marine Policy
Susan Cramer	DOE - Marine Policy
Dan Hull	NI Assembly
Mike Young	DETI – Geological Survey
Olivia Burgess	Crown Estate
Matt Service	AFBI
Professor Greg Lloyd	University of Ulster
Linda McElduff	University of Ulster
Suzie Cave	University of Ulster
Katherine Yates	University of Ulster
Claire Goodwin	National Museums NI
Sarah Walker	Turley's
Angela Halpenny	Northern Ireland Water
Rosemary Bradley	NIEA
Joe Breen	NIEA
Liz Pothanikat	NIEA
Keith Hunt	DARD – Rivers Agency
Karen Simpson	DCAL – Fisheries
Philip Cairns	DRD – Water Policy
Ken Bradley	DOE – Environmental Policy
Barbara Swann	DETI – Energy Branch
Paddy Campbell	DARD – Fisheries
Billy McCabe	DRD – Regional Planning
Mike Warnock	DRD – Regional Planning
Gareth McLoughlin	SONI - System Operator for NI
Alasdair Wilkie	Hibernia Atlantic
Stephen Swift	Hibernia Atlantic
Dick James	NI Fish Producers Organisation
Alan McCulla	Anglo-North Irish Fish Producers
Martin Flanagan	Cross Border Aquaculture Initiative
Lynn Gilmore	Sea Fish

Sarah Noble	Countryside Access & Activities Network
Mary Ferrell	Royal Yacht Association of NI
Garry Gregg	Irish Federation of Sea Anglers
Judith Annett	NI Biodiversity Group
Prof. Andrew Cooper	NI Coastal and Marine Forum
Thomas McErlean	University of Ulster
Kieran Westley	University of Ulster
Geraint Ellis	Queens University
Dr Sue Christie	Northern Ireland Environment Link
Richard Devlin,	NI Marine Task Force
Marguerite Tarzia	Ulster Wildlife Trust UWT
Jade Berman	Ulster Wildlife Trust UWT
Geoff Nuttall	World Wildlife Fund
Helen Kirk	National Trust
Phil Davidson	National Trust
Caroline Nolan	Strangford Lough & Lecale Partnership
Peter Archdale	CNCC
Nigel Hamilton	Marine Conservation NI
Maebh Cormacain	NI Renewables Industries Group
Michael Harper	B9 Energy
Sacha Workman	B9 Energy
Darina Brennan	Providence Resources Plc (Dublin)
Bob Gatliff	British Geological Survey
David Knott	Belfast Harbour
Kevin Allen	Belfast Harbour
Paul Bryson	Londonderry Port & Harbour Commissioners
Commander JA Gray	Royal Navy
Tim Ryan	Commissioners of Irish Lights
Gareth Morrison	RNLI
Mike Grocott	RNLI
Sarah Lewis	Queens University of Belfast
Trevor Wright	Larne Harbour
Patrick Casement	CNCC
Davy Hill	ANIFPO

Annex B

Summary of comments made following roundtable discussions

Topic 1 – How do we get ‘interested people’ effectively involved in the marine plan?

- Involve general public through use of drop-in sessions in local areas and at local attractions particularly where and when the public are out and about;
- Attract a diverse range of interests and hold meetings in local areas;
- Make use of existing networks e. g. groups set up to take forward WFD (RBMPs), local interest groups, coastal communities;
- Consider use of on-line and social media;
- Important to manage expectations on what a marine plan can deliver by explaining how the information will be used and be clear on how people can influence and shape the marine plan;
- Use local newspapers;
- NI Tourist Board seen as an important stakeholder and its engagement in the process is encouraged;
- Lack of infrastructure within government for recreational sea angling seen as an obstacle to their concerns being effectively considered;
- Avoid jargon and explain technical terms in plain English to make papers readable thereby encouraging engagement with ‘non-interested people’.

Topic 2 – What should be included in the Marine Plan?

- Integration with terrestrial planning and recognition of role of ICZM to co-ordinate the overlap between terrestrial and marine areas;
- Explore links with ROI plans, other emerging plans & NI terrestrial plans as Marine Plan must be cross boundary with practical arrangements for co-national co-operation / agreement;
- The links between different plan authorities should be strengthened and terrestrial plans should clearly define the link with and impact on marine plans;
- The Plan should contain an outline on how decisions will be made when there are conflicting interests;
- Ownership and accountability should be clearly understood and defined in the Marine Plan;
- The Plan should include all relevant parties with an interest in the marine environment and all activities;
- Consideration to be given to a mini marine plan for the North Channel due to the number of activities and interests there;
- There should be a unified approach among departments;
- This unified approach will benefit investors of marine culture and recreation which will be a source of income for present and future coastal communities;
- It will also encourage the commercial viability of ports and harbours whilst protecting spawning areas and migration species.

Topic 3 – Evidence for plan making: What's needed, where is it, how do we get it, and where are the 'gaps'?

- Identify what data is available from both Government and external sources and build evidence- base of data;
- Identify the gaps in data;
- Gather social, economic and environmental data – set up an audit to determine what is needed and what should be built on;
- All data needs to be quality-assured and robustly analysed;
- The necessity to pay for data may also have to be considered;
- Consider existing enforcement system and ensure that resources are sufficient to cope with demand;
- Plan needs to take account of climate change e.g. changing topography of seabed;
- The plan should highlight high risk species and identify hot-spots therefore more research may be required as the data needs to be credible.

Departmental Reply re Historic MPA

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Your reference:

Our reference: CQ 132/12

Date: 27 April 2012

Dear Alex,

Marine Bill

Following its meeting on 19 April 2012, the Committee requested additional information from the Department on legislative provisions for historic sites; and on the possibility of introducing time limits in relation to any independent investigation into the consultation draft of a marine plan.

For convenience, I shall deal with the issues in the order raised.

1. Reasons why the Scottish Government felt the need to include provisions on the designation of historic assets in the Marine (Scotland) Act 2010.

In Northern Ireland, the Historic Monuments and Archaeological Objects (NI) Order 1995 provides for the scheduling of any archaeological site to 12 miles offshore. Scotland does not have equivalent provisions in their legislation. In addition to this, historic wrecks are currently protected by the UK-wide Protection of Wrecks Act 1973.

Scottish Ministers considered that new legislation was needed to reform the Scottish marine heritage protection regime and that the Scottish Marine Bill was the best vehicle to achieve this. Scotland decided to legislate separately for its marine heritage interests within the Marine (Scotland) Act 2010 and repealed section 1 of the Protection of Wrecks Act 1973. Historic Scotland now leads on the Historic MPAs, albeit working closely with Marine Scotland

2. Information on the existing legislative capacity to deal with historic sites in Northern Ireland's inshore region.

At present, the Department's view is that the overall protection regime currently operating in Northern Ireland is considered robust enough to protect Northern Ireland's valuable marine assets.

However, the Marine Bill team are in further discussions with colleagues in Built Heritage Directorate to get their opinions on the existing legislation and determine if there is any merit in including maritime archaeology in the Marine Bill. The Committee will be informed on the outcome of these discussions

3. Introduction of time limits in relation to any independent investigation into the consultation draft of a marine plan.

Departmental Reply re Issues Raised during 2nd Stage Debate



DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Date: 7 June 2012

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Alex,

Marine Bill Second Stage Debate

Please find attached a summary of, and answers to, the questions which were not fully addressed during the Second Stage debate on the Marine Bill.

In his response to the debate, the Minister gave a commitment that any outstanding matters would be answered through Environment Committee.

Although the majority of the questions were raised by members of the Environment Committee, in order that all MLAs will have access to the answers, the Department will make arrangements for a copy of this document to be placed in the Assembly Library.

I trust this information is of assistance, but should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

Questions & Issues Raised by Members at Second Stage Debate Marine Bill – 5 March 2012

- * Raised by non-Committee Member – Mr Agnew
- ** Raised by non-Committee Member – Mr Allister
- *** Raised by non-Committee Member – Mr McMullan

1. **Cost & Resources required for full implementation of the Marine Bill**

There are no additional costs associated with the Bill's introduction per se, as the Department has found the resources necessary from within its existing allocations to take forward the legislative process.

There are, of course, indicative costs associated with the Bill's implementation, which are identified in the Regulatory Impact Assessment that accompanies the Bill. These relate largely to the Northern Ireland Marine Plan (NIMP) and proposed marine conservation zones (MCZs); and there are also indicative, but less significant, costs associated with the reformed marine licensing regime as provided for by the Bill.

Northern Ireland Marine Plan (NIMP)

It is estimated that the preparation, adoption and publication of the NIMP could cost approximately **£1.87 million** (see table 1) spread over three to four years.

This indicative cost includes the staff required to prepare the plan, initial data collection and management, stakeholder engagement, public consultation, impact appraisals, and the "buy in" of other specialist services such as legal, economics and science on a needs basis. It also includes provision for independent investigation of the plan, should this be necessary.

Table 1

Cost Category	Indicative Cost of NIMP* (£m)
Plan preparation	1.42
Independent investigation of plan (examination in public)	0.25
Impact appraisals (eg Strategic Environmental Assessment, Regulatory Impact Assessment)	0.2
Total indicative cost	1.87

*Figures estimated based on terrestrial planning experience.

Marine Nature Conservation

It is estimated that the implementation and management of a network of MCZs could cost approximately **£195k - £221k** per site in initial, one-off costs; and approximately **£163k** per site in annual costs, starting in 2013/14, and possibly taking upwards of 5 years in which to complete the designation process (see table 2).

However, it is important to exercise a high degree of caution with these indicative costs as the number, size and complexity of the network will only become clear once the public consultation process has been completed. In addition, many of the costs will be site specific.

The initial, one-off costs include the identification, selection and designation of sites, establishment of the enforcement regime and the introduction of byelaws; and the annual, ongoing costs include site management and reviews of the protection measures to ensure that the conservation objectives are being met.

Table 2

Activities	Cost per Site*
Survey costs	£100k - £120k
Site selection	£20k - £25k
Consultation	£50k
Management Schemes	£23k
Designation orders	£2k - £3k
Total one-off costs	£195k - £221k
Implementation – review of consents	£1k
Monitoring of conservation status	£150k
Enforcement	£12k
Total annual costs	£163k

* Figures estimated using information in ABPmer study 2007, commissioned by the Scottish Government.

Marine Licensing

The majority of costs associated with the reform of the marine licensing regime relate to the Marine and Coastal Access Act 2009. Accordingly, the additional costs associated with the licensing provisions in the Bill are not expected to be significant. These will relate to the publication of procedural guidance for regulators and applicants for licences, estimated at approximately **£1.5k - £4k**.

2. Timeline for full implementation of the Marine Bill

The growing scientific knowledge of the seabed through ongoing research work for marine European designations will help to identify potential national sites for designation when the Marine Bill comes into operation.

Strangford Lough, Northern Ireland's only Marine Nature Reserve (MNR), designated under the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, will become the first MCZ. It is envisaged that Strangford Lough will be fully designated within 12 months of the Marine Bill coming into operation.

Consideration will also be given to using the flexibility of the MCZ mechanisms, contained in the Marine Bill, to protect habitats and species which occur in existing marine Natura 2000 sites. These designations, including any new MCZ sites identified, will play an important role in achieving Good Environmental Status (GES) in the marine environment by 2020.

The Department, as Marine Plan Authority, is already taking forward certain preparatory work in advance of the Marine Bill being enacted, including work on a Statement of Public Participation. This Statement, work on which is well advanced, will include a timeline setting out the key steps in the marine plan-making process from initiation and early stakeholder engagement to publication of draft plan and adoption.

3. How integration will be achieved/how conflict will be resolved

It is worth emphasising that the Executive has already signed up to the introduction of the Marine Bill itself, and to the Marine Policy Statement which was adopted in March 2011. This is a key document in the marine planning process, as it sets out a framework of high-level objectives for the marine environment and how it should be sustainably managed. It brings

together, in one document, departments' existing marine policies and articulates how they relate to each other.

In turn, the importance of this document is reflected in the Bill, which requires that the marine plan must be in conformity with the Marine Policy Statement, unless relevant considerations indicate otherwise.

Furthermore, the Bill provides for extensive consultation arrangements between the Department, as the Marine Plan Authority, and those other departments that have marine responsibilities. This requires consultation to take place during preparation of the consultation draft of the marine plan and during the settling of its text for adoption and publication.

In effect, the marine planning process will progressively bind departments, so that agreement is reached. This "binding" will also extend into the decision-making process, whereby "public authorities", which includes Ministers and departments, will have a duty placed on each to take any authorisation or enforcement decision in accordance with the marine plan, unless relevant considerations indicate otherwise.

The Bill further places a duty on a "public authority", which includes a department, to state its reasons for not taking an authorisation or enforcement decision in accordance with the (appropriate) marine plan.

Finally, and insofar as MCZs are concerned, the Bill will place a duty on the Department to consult with "interested persons" before making a designation order – this will, of course, include other departments.

4. Consultation/participation – need to include all those impacted, and for it to be meaningful

An important element of MCZ designation will be stakeholder involvement. In contrast to the designation process for the European marine sites, the MCZ process will take account of socio-economic impacts. It is intended that the creation of an ecologically coherent network can be achieved whilst minimising the economic and social impacts, thereby maximising the wider benefits to society.

The development of MCZs will be undertaken in collaboration with marine stakeholders. As well as marine interests and organisations, stakeholders will include local authorities, communities nearby to proposed sites and users from a wider geographic area, such as recreational interests.

Engagement will be undertaken throughout the process, from discussions on boundaries, setting conservation objectives (which will determine the level of protection) to management measures. However, the nature, timing and those involved may vary as the process progresses. In the early stages, work will focus on data collection, and identification of conservation features and locations. This will be achieved mainly through discussions with representatives of organisations which may hold relevant data. As the process continues, engagement will increasingly involve stakeholders at a local level.

Awareness raising and provision of updates will be important throughout the process. Existing forums, sectoral meetings and various media, for example newspapers, Afbi and DARD communications with stakeholders, will be used to reach a wide range of organisations and people and to encourage feedback. All proposed MCZs will be subject to a 12-week public consultation.

Consultation and participation is an integral component of the Marine Plan process. It is strengthened in the Bill by the provision for consultation with other Government departments with marine responsibilities. Also included is the production of a Statement of Public Participation, which will set out arrangements for engaging effectively with as wide a range of interests as possible. Work on this Statement is well advanced. Initial views on

the Statement are currently being sought, and it was discussed at an event for sectoral stakeholders held on 16 March.

5. Marine governance structure/arrangements

The foundations for the marine governance arrangements are to be found both in the Marine and Coastal Access Act 2009, which makes the Department the policy authority for the purpose of the Marine Policy Statement and the marine plan authority for the Northern Ireland offshore region; and the Marine Bill, as introduced to the Assembly, which similarly makes the Department the marine plan authority for the Northern Ireland inshore region.

As the marine environment is very much a cross-cutting issue, the Department will consult with all other departments that have marine functions during preparation of a consultation draft of Northern Ireland's marine plan; and during the settling of its text for adoption and publication.

Likewise, the Department will be the appropriate authority for the purpose of designating MCZs, and, again, will consult with departments that have marine functions before it makes a designation.

Members will, of course, be aware that the Minister's preferred structure of marine governance involves the establishment of a marine management organisation; and he is convinced that this remains the best vehicle by which to manage and reconcile the many interests and needs of marine management.

This requires the Executive's agreement, which has, thus far, noted the intention to explore options for the achievement of improved co-ordination of marine management and to bring recommendations to it in due course. The Minister intends to continue his conversations with the Executive on this matter.

6. Data collection and information sharing

The Department has been engaged in systematic surveys of many parts of the Northern Ireland inshore region since 2006 for the identification and assessment of European designated sites, and in order to monitor marine priority species.

There is a wealth of information available in Northern Ireland's recently published 'State of the Seas' report. Furthermore, Northern Ireland is part of the UK Marine Science Strategy, which will ensure that an integrated approach is sustained.

The Department will continue to follow developments on the regional MCZ pilot projects being undertaken across the UK, including the Irish Sea Conservation Zones project.

The assessment of results and analysis of data collected through these various sources will be key to informing our marine nature conservation process.

The Department is considering how best to gather and analyse its own data and then extend this collection to other departments before exploring other external sources. Quality assuring the data will be a challenge for the Department, however the Marine Plan team will not be limited to Government sources as communities, groups and industry have good local knowledge which will be an important element of the marine plan process. The issue of data collection and information sharing was discussed at the Department's sectoral stakeholder event held on 16 March.

7. Independent Advisory Body – to provide expert advice to DOE

It has been suggested that an independent advisory committee might be established. It is worth noting that the Bill (at Schedule 1, paragraph 8) already provides for the Department, in connection with the preparation of a marine plan, or of any proposals for a marine plan, to

“seek (the) advice or assistance from any body or person in relation to any matter in which that body or person has particular expertise.”

Creating an independent advisory committee is not as straightforward a proposal as it might first appear – for instance, it is clear that any such committee would need to perform a role that was sufficiently distinct from that of existing advisory committees. It is a matter to which some further thought will be given, as part of the exploration of options for improved co-ordination of marine management.

8. Supremacy of Bill in relation to rights and powers under other legislation – salmon net licences**

A question was asked about the supremacy of the Bill in relation to the exercise of existing rights and powers, and the application of the term ‘relevant considerations’ in clauses 2 and 6 in respect of the duties imposed on ‘public authorities’ by the Bill.

All ‘public authorities’, which includes Ministers, departments and their agencies (including the Loughs Agency), will have a duty placed on each to take any authorisation or enforcement decision in accordance with the marine plan, unless relevant considerations indicate otherwise. This duty is already in place in relation to compliance with the Marine Policy Statement under the terms of the Marine and Coastal Access Act 2009.

This duty includes decisions relating to authorisation or enforcement decisions in respect of salmon netting.

Although both the Marine and Coastal Access Act 2009 and the Bill will enable decision-makers to depart from the policies set out in the MPS (or plan), the intention is that this flexibility should not be used as a matter of course, and that the ‘relevant considerations’ should be fully justifiable.

In fact, needing to depart from the MPS or plan could indicate that they are not working effectively, and should be amended. Alternatively, needing to depart from the MPS or plan could indicate that other legislation may need to be updated to reflect current obligations.

9. Boundaries & Extent of Marine Bill – inclusion of Lough Foyle and Carlingford Lough and Loughs Agency (clauses 1, 46 and 11(4) 13(3)&(4))*

A number of questions were raised regarding the extent of the Marine Bill and the boundaries of the area covered.

The Marine Bill applies to the ‘**Northern Ireland inshore region**’. This area is defined in clause 1 of the Bill. The inshore region comprises all our marine waters, including tidal rivers and all our sea loughs (including Lough Foyle and Carlingford Lough), out to the 12 nautical mile limit. Rathlin Island is within this area.

The Marine Bill applies to both Carlingford Lough and Lough Foyle, and existing arrangements put in place under the Belfast Agreement for joint management of the two cross-border loughs, Carlingford Lough and Lough Foyle (the Foyle, Carlingford and Irish Lights Commission’s Loughs Agency) will be employed to assist with the implementation of the Bill in these areas.

Marine Conservation Zones

10. Size and nature of restrictions for MCZ – impact on other users

MCZs will be designed to safeguard vulnerable or unique species and habitats of national importance in the Northern Ireland inshore region. They will have flexible boundaries, with the level of protection being dependent on the feature to be protected and the activities deemed to be detrimental to it. MCZs will be agreed on a site-by-site basis.

The development of new MCZs will be carried out in collaboration with key stakeholders, and potential MCZs will be subject to full consultation.

Fishing and other organisations' responsibilities will be taken into account in the process of identifying and designating MCZs. Equally as important, they will take account of socio-economic interests.

The Bill provides for a designation regime which is flexible depending on the particular habitat or species requiring protection. The level of protection will be determined on a site-by-site basis, and could range from very minimal, right through to a high level of protection.

11. Evidence base for MCZ designation

The Department's approach to identifying new MCZs in the Northern Ireland inshore region will be based upon the use of best available science.

While some existing data, for example, the Northern Ireland Sublittoral Survey and the Northern Ireland Littoral Survey can be used to identify where potential MCZs may be, new surveys will be required to fill in the gaps, in order to provide a full picture of the number, size or complexity of possible MCZs in our waters.

12. Relationship between the Bill and EU Directives – for eg, MSFD and WBD

It is a requirement under the Wild Birds Directive to classify Special Protection Areas (SPAs) for birds, listed in Annex 1 of the Directive, that occur in the marine area. Northern Ireland has fulfilled this obligation through the creation of 9 SPAs with a marine component for such species of birds.

It is, however, a further requirement of the Directive to create protected areas for other species of birds occurring in the marine area that are not listed in Annex 1. The ability to create MCZs will allow Northern Ireland to meet this obligation.

It is also a requirement to maintain and manage habitats inside and outside of protected areas, to re-establish destroyed habitats and to create habitat. The power to establish MCZs is the structural mechanism by which Northern Ireland can meet these obligations.

The Marine Strategy Framework Directive, which has been transposed into national legislation, establishes a framework within which Member States are required to take measures to achieve or maintain 'Good Environmental Status' in the marine environment by 2020. The designation of MCZs as part of an ecologically coherent and well-managed network of marine protected areas (MPAs) will play an important role in helping to meet the obligations under this Directive.

13. Balance of interests – if no agreement will matter be referred to Executive (clause 12)

Clause 12 sets out the circumstances in which the Department may designate an MCZ. Before designating a site the Department will take account of any economic or social consequences of designation and the views of all key stakeholders. The Department is required through clause 14 to consult widely with stakeholders. MCZs will be designated by the Department with the agreement of the Secretary of State.

It is not envisaged that each MCZ will be subject to Executive approval. However, in specific cases where issues, for example, cut across the responsibilities of two or more Ministers, then the Minister would bring it to the attention of the Executive Committee as outlined in the Ministerial Code before the designation order is made.

14. Delineation and policing of MCZs (clause 13)

The approach to setting boundaries for MCZs will broadly follow the approach which has developed through the experience of setting boundaries for European marine sites.

Management of activities within an MCZ will only be effective if the boundary is accurately drawn and represented on a map - for example, by a series of co-ordinates (degrees of longitude/latitude). Copies of these maps will be available on the NIEA website. The boundary of a new MCZ should reflect current knowledge on the distribution of a feature so that it is relevant to planning, management and use of a specific area. Boundaries should be as simple as possible to ease compliance and to facilitate the enforcement of management measures.

The use of best available scientific knowledge and information should be used to delineate boundaries. In addition, boundaries may need to be revised in future years should features move beyond existing boundaries.

It is proposed that NIEA will be the primary enforcement body in relation to marine nature conservation in the inshore region.

15. Timescales for designation of MCZs – does process start again if order not made (clause 14)

The provisions in clause 14 include a time limit for designating individual MCZs. This provision ensures that the Department must make a MCZ designation order within 12 months of publishing notice of the proposal under clause 11(1).

These provisions will ensure that all interested parties have a clear understanding of the timescale involved in the MCZ designation process and provide more certainty for developers and sea users. Designating authorities will be aware of the importance of keeping the momentum up in the designation process. Imposing a timetable for individual MCZs will help to speed up the creation of an ecologically coherent network of sites in the medium to long term.

If the Department fails to designate a site within 12 months of publishing notice of the proposal then the process will need to begin again before an area can be designated as an MCZ. However, a new notice could be issued and be identical in terms of the original notice.

16. 'Least hinder conservation objectives' – what does this mean (clause 20)

Clause 20 places a general duty on public authorities to inform the Department when they think that the exercise of their functions might significantly hinder the achievement of conservation objectives for an MCZ. There may be situations when a public authority needs to grant a licence for an activity to be carried out despite knowing that the activity could have a detrimental impact on the site. In these circumstances, it is right that a public authority should assess the likely impact of its functions on MCZs. Therefore, they must be aware of the designated site and minimise any potential damage, as furthering the conservation objectives of the MCZ should be their goal.

17. Fines – concern about the levels and also amounts being included in the Bill, clarification of how case might be prosecuted in order to secure higher penalty*

Clause 30 provides that anyone who contravenes a byelaw would be committing an offence and if convicted, fines of up to £5,000 may be imposed. This is based on the current amount of a Level 5 fine and is the same as the UK provisions.

Clause 31 provides a general offence for acts of deliberate or reckless damage to protected features of an MCZ. Intentional or reckless acts of damage are likely to have longer term and more permanent effects.

Clause 31(4) details the related fines. Anyone found guilty of committing the general offence could be fined up to £50,000 on summary conviction or an unlimited amount on indictment. There are provisions in this clause for a court determining the level of the fine to have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be. In addition, it is worth noting that £50,000 is consistent

with section 140(4) of the Marine and Coastal Access Act 2009 and section 95(4) of the Marine (Scotland) Act 2010.

If the damage to the feature of the MCZ occurred in the course of a licensable activity, then enforcement, including the use of civil sanctions and prosecution, would be undertaken in line with the procedures for the appropriate licensing/authorisation regime.

18. Fixed monetary penalties – ‘substantially change’ what does this mean schedule 2, paragraph 4(2)

Fixed monetary penalties are fines for relatively low fixed amounts that are intended to be used in respect of minor instances of regulatory non-compliance.

The procedure for fixed monetary penalties is provided for on the face of the Bill and requires the Department to consult (schedule 2, paragraph 4(2)) relevant organisations when it proposes to make an order allowing the use of fixed monetary penalties.

Following consultation, if it appears necessary to substantially change the proposals for the order, the Department will be required to undertake further consultation as it considers appropriate in regard to the changes. A substantial change could be, for example, doubling the amount of the fixed monetary penalty.

19. Potential for conflict because of different approach to MCZs in inshore and offshore regions**

The procedures for the designation and enforcement of MCZs in the inshore region are provided for in the Bill.

MCZs will be identified using best available science. Potential sites for MCZs will be selected for formal designation following discussions and consultations with stakeholders. All MCZ designations will be subject to public consultation. MCZs will be designated by the Department, by Order, with the agreement of the Secretary of State. These procedures mirror those which apply in the offshore region.

MCZs in the offshore region will be designated by the procedures contained in Part 5 of the Marine & Coastal Access Act 2009. The UK Government asked Natural England and Joint Nature Conservation Committee (JNCC) to work in partnership with stakeholders to identify and recommend potential MCZs through four regional projects. Defra has recently commissioned significant additional work to improve the evidence base underpinning the designation of MCZs. Following recommendations from Defra, the Secretary of State will designate MCZs by Order.

Enforcement officers in the inshore region, who will be appointed by the Department, have access to the same suite of enforcement powers as officers for the offshore region, who will be appointed by the MMO. Therefore, the Department does not envisage any potential for conflict between the inshore and offshore regions.

20. Burden of proof for offences – apparent differences in standard to be applied (clauses 31 and 32)**

Clause 31 makes it an offence for any person to intentionally or recklessly damage the protected features of an MCZ in such a way that the conservation objectives have, or may have, been significantly hindered. There are provisions in this clause for a court determining the fine to have regard to any financial benefit the person obtained by committing the offence: the greater the gain, the higher the penalty is likely to be. Enforcement will be proportionate and in line with the nature of the offence.

Clause 32 contains details of activities which are exempt from the general offence, which includes acts in the interest of national security or for the prevention or detection of a crime.

The Department considers that there is no reason to depart from the general position regarding the onus and standard of proof as reflected in clause 32(4).

In addition, a defence is provided for actions undertaken in pursuit of sea fishing where the accused person can prove that the damage could not reasonably have been avoided.

In regard to establishing the defence in relation to offences in Part 3 of the Bill, the Department is content that clauses 31 and 32 do not depart from the general position that the standard of proof is on the balance of probabilities.

As a regulator, it is the responsibility of the Department to investigate breaches of the legislation for which it is responsible by gathering evidence and presenting this to the prosecutor. The decision to prosecute and to conduct the case on behalf of the Department is ultimately made by the Public Prosecution Service for Northern Ireland, (PPS). The PPS is wholly independent from both the investigating agency and government. Its decisions will be based on impartial and professional assessment of the available evidence and the public interest.

21. Sea fishing defence – concern about standard of proof to be applied and ability to amend this exception (clause 32(4) & (5))**

The Bill includes provisions for a ‘general defence’ of damaging the protected features of an MCZ.

There is a statutory defence at clause 32 (4) which specifies that a person cannot be guilty of the general offence if the act involved was done whilst sea fishing and the effect of that act on the protected feature could not necessarily be avoided.

We cannot at present remove the sea fishing defence because to do so would leave us in breach of our European obligations under the common fisheries policy.

This clause mirrors section 141 of the Marine and Coastal Access Act 2009 which was included as an amendment to ensure that the rules apply equally to fishermen from the UK and from elsewhere. It needs to be considered in the context of the CFP reform.

Clause 32(5) ensures that the defence only applies where it is relevant. It provides the necessary flexibility to deal with potential changes to the CFP. This clause enables the Department to restrict or remove the sea fishing defence as necessary following the reform of CFP.

As any order to be made under clause 32(5) must be laid in draft and approved by the Assembly before making, the Assembly shall have an opportunity to scrutinise the draft order.

Marine Plan

22. Reporting system – operation of 3 & 6 year reporting system

The reporting mechanism provided for in the Bill directs the Department to keep under review certain matters and prepare reports every 3 years on the effectiveness of an adopted Marine Plan. A report is also required 6 years from the enactment of the MCA Act identifying any marine plans, the intention to amend any marine plan and the intention to prepare and adopt any further marine plans. These reports will be laid before the Assembly.

23. Challenge to validity of documents – no closing timescale (clause 8)

Clause 8 of the Bill allows a person to apply to the High Court should he/she feel aggrieved, on specified grounds, about the validity of a marine plan or any amendment of a marine plan, within 6 six weeks of the plan’s publication. It has been pointed out that the Bill does not specify an “end date” for proceedings, should such a challenge be made.

Should a person make an application challenging the validity of a marine plan, it would be for the High Court, in accordance with clause 9, to further proceedings until they are finally determined.

24. Validity of documents – concern regarding grounds for challenge in respect of HR (clauses 8 & 9) **

Clauses 8 and 9 of the Bill provide for a form of statutory judicial review of the marine plan. The specific ground for the review of administrative acts (as developed by the common law) are reflected in clauses 8 and 9.

The Department has taken legal advice on this matter and is content that a marine plan is not determinative of any civil rights or obligations. Hence Article 6 of the European Convention on Human Rights is not engaged.

Marine Licensing

25. Licensing – clarification of ‘parallel’ applications

Concern was raised about the provision allowing for applications for electricity generating stations to be considered in parallel and consequently the possibility of one developer ‘blocking’ an application by another developer.

Clause 40 applies to the situation where a single operator requires both a marine licence from DOE, under Part 4 of the Marine and Coastal Access Act 2009, and also a generating station consent from DETI, under Article 39 of the Electricity (Northern Ireland) Order, for the construction and operation of a renewable energy installation. It is these two applications for the same project which would be considered in parallel.

This process is separate to the Crown Estate Leasing Round during which it is possible that two potential operators may apply for a lease for the same site. Crown Estate provides exclusivity agreements for sites with developers, however, these lease agreements are issued subject to the securing of statutory consents from the Northern Ireland departments with marine functions – primarily DOE, DETI and DARD.

Departmental Reply re Resources

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Your reference:

Our reference: CQ/75/12

Date: 13 March 2012

Dear Alex,

Marine Bill

The Department briefed the Environment Committee on the Marine Bill on 2 March 2012, following which it asked the Department to provide additional information.

For convenience, I shall deal with the issues in the order raised.

1. Indicative costs of the Bill's introduction and implementation

1A. There are no additional costs associated with the Bill's introduction *per se*, as the Department has found the resources necessary from within its existing allocations to take forward the legislative process.

1B. There are, of course, indicative costs associated with the Bill's implementation, which are identified in the Regulatory Impact Assessment that accompanies the Bill. These relate largely to the Northern Ireland Marine Plan (NIMP) and proposed marine conservation zones (MCZs); and there are also indicative, but less significant, costs associated with the reformed marine licensing regime as provided for by the Bill.

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This indicative cost includes the staff required to prepare the plan, initial data collection and management, stakeholder engagement, public consultation, impact appraisals, and the "buy in" of other specialist services such as legal, economics and science on a needs basis. It also includes provision for independent investigation of the plan, should this be necessary.

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*Figures estimated based on terrestrial planning experience.

Marine Nature Conservation

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However, it is important to exercise a high degree of caution with these indicative costs as the number, size and complexity of the network will only become clear once the public consultation process has been completed. In addition, many of the costs will be site specific.

The initial, one-off costs include the identification, selection and designation of sites, establishment of the enforcement regime and the introduction of byelaws; and the annual, ongoing costs include site management and reviews of the protection measures to ensure that the conservation objectives are being met.

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*Figures estimated using information in ABPmer study 2007, commissioned by the Scottish Government.

Marine Licensing

The majority of costs associated with the reform of the marine licensing regime relate to the Marine and Coastal Access Act 2009. Accordingly, the additional costs associated with the licensing provisions in the Bill are not expected to be significant. These will relate to the

publication of procedural guidance for regulators and applicants for licences, estimated at approximately **£1.5k - £4k**.

2. Access to EU funding towards the Bill's implementation

2A. EuroSeaPlan – INTERREG IVC Application

As the Department embarked on its marine spatial planning process, it became a participant, in conjunction with Scotland and in partnership with 12 other European parties, in an application for European funding to carry out a EuroSeaPlan project.

This project was aimed at promoting and exchanging experience on Maritime Spatial Planning (MSP) throughout Europe. As the MSP process was in its infancy, the project would have proved timely both for the Marine Plan team and for our colleagues in Marine Scotland.

Unfortunately the application did not receive the approval of the IVC Monitoring Committee (MC) in December 2011. The application failed to meet the requisite threshold by a single point.

Nevertheless, other partners to the EuroSeaPlan application, while disappointed, have already indicated their preparedness to re-engage with NI and others in future application rounds on the same topic when these arise. The Marine Plan team will do all it can to ensure NI participation in future applications, where relevant to the advancement of marine spatial planning. The Minister attended the Environment Council meeting in Brussels on Friday 9 March. He is actively working to develop future initiatives that would result in additional EU funds to Northern Ireland.

2B. Marine Nature Conservation

In recent years, the Department has been able to avail of EU funding in partnership with the Republic of Ireland for seabed mapping around North Antrim and off the Annalong coast. This mapping was to assist in gathering data for the identification of potential EU sites under the Habitats Directive.

Current opportunities for EU funding are limited as many of these mechanisms require partnerships with other Member States to meet stringent EU criteria. As the Republic of Ireland is not taking forward marine nature conservation measures at a national level at this stage, this limits opportunities. However, we will look at other ways to secure EU funding in relation to general data gathering and other scientific research work in the marine environment. Also, we will seek to better utilise the scientific work undertaken by AFBI, etc. to assist in gathering information for taking forward MCZs.

3. Mechanisms to ensure agreement between departments

It is worth emphasising, in the first instance, that the Executive has already signed up to the Marine Policy Statement. This is a key document in the marine planning process, as it sets out a framework of high-level objectives for the marine environment and how it should be sustainably managed. It brings together, in one document, departments' existing marine policies and articulates how they relate to each other.

In turn, the importance of this document is reflected in the Bill, which requires that the marine plan must be in conformity with the Marine Policy Statement, unless relevant considerations indicate otherwise.

Furthermore, the Bill provides for extensive consultation arrangements between the Department of the Environment, as the Marine Plan Authority, and those other departments that have marine responsibilities. This requires consultation to take place during preparation of the consultation draft of the marine plan and during the settling of its text for adoption and publication.

In effect, the marine planning process will progressively bind departments, so that agreement is reached. This “binding” will also extend into the decision-making process, whereby “public authorities”, which includes Ministers and departments, will have a duty placed on each to take any authorisation or enforcement decision in accordance with the marine plan, unless relevant considerations indicate otherwise.

The Bill further places a duty on a “public authority”, which includes a department, to state its reasons for not taking an authorisation or enforcement decision in accordance with the (appropriate) marine plan.

Finally, and insofar as MCZs are concerned, the Bill will place a duty on the Department of the Environment to consult with “interested persons” before making a designation order – this will, of course, include other departments.

I trust this information is of assistance, but should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]

ESR Advice on Marine Bill - Delegated Powers

Scrutiny of Delegated Powers Advice to the Committee for the Environment from the Examiner of Statutory Rules on the Marine Bill

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.
2. The Bill contains a number of powers to make subordinate legislation. Most are either provisions for the making of regulations and orders (orders, that is, which are intended by the Bill to be statutory rules as distinct from administrative orders) which are subject to negative resolution (see clauses 16(3) and 29(4) on procedural matters) or provisions for the making of byelaws which are intended to regulate local activities and are not subject to any Assembly procedures (see clauses 24 to 28). And, as is the usual practice, commencement orders under clause 47(1) are not subject to Assembly procedure. I do not raise any point on these for the attention of the Committee.
3. **Clause 32(5)** contains a power to remove or restrict the sea fishing defence (to a charge under clause 31) set out in clause 32(4). The power to remove or restrict the defence is exercisable by Order subject to draft affirmative procedure. At Second Stage, on 5 March 2012, Mr Allister queried the appropriateness of this provision in subordinate legislation and the Minister (Mr Attwood) responded in that debate in terms of the future amendment of the common fisheries policy of the European Union:

“The Minister (Mr Attwood): In my view, that defence was primarily a sea fishing defence. I am advised that the answer to [Mr Allister’s] question is that the sea fishing defence largely relates to controlled fishing practices. Given that those practices change, not least because of the common fisheries policy and the adjustments that might be sought therein by the European Union, the power to amend is necessary. ”.

4. There is a similar power in section 141(5) of the Marine and Coastal Access Act 2009. That provision (in a Commons amendment to the Bill which became the 2009 Act) was mentioned in paragraphs 4 to 6 of the Thirteenth Report of the House of Lords Delegated Powers and Regulatory Reform Committee for Session 2008-09 (5 November 2009) on Commons amendments to the Bill: the Committee drew attention to the power and invited the House to seek the explanation as to why it was appropriate to deal with this matter in subordinate legislation. The Minister (Lord Davies of

Oldham) provided the explanation in House of Lords (Consideration of Commons Amendments, 11 November 2009), again, similarly, in terms of the common fisheries policy:

“Lord Davies of Oldham: My Lords, this is an important amendment.

There was considerable debate about the relationship between marine conservation and commercial fishing. We all know the importance of that debate. ... The Government amended the Bill to future-proof it in anticipation of reform of the common fisheries policy. The principal amendment adds a new subsection (4A) after Clause 141(4). The new provision gives a power to the Secretary of State to restrict or remove the sea fisheries defence in Clause 141(4).

We cannot at present remove the sea fishing defence because to do so would leave us in clear breach of our European obligations under the common fisheries policy. However, we wish stronger recognition of our environmental objectives to emerge from the forthcoming reform of the common fisheries policy. The amendment sets us up to be able to take advantage of that as and when it occurs. It gives us the necessary flexibility to deal with potential changes to the common fisheries policy. The amendment enables us to restrict or remove the sea

fishing defence. An important feature is that it is a one-way ratchet. Once restricted, we could not then broaden the defence again.”.

5. So the explanation of the power seems to be that it provides flexibility (subject to the scrutiny of draft affirmative procedure) to remove or restrict the sea fishing defence as and when that is possible under a reformed EU common fisheries policy. **The Committee may wish to consider that the use of subordinate legislation to remove or restrict a defence set out in primary legislation is appropriate in those (fairly limited and special) circumstances, given that the power is subject to draft affirmative procedure.**

6. **Clauses 33 to 35 and Schedule 2** set out the framework for developing a system of fixed monetary penalties as an alternative to prosecution for contravention of byelaws: the Department is given to power in clause 33 to make an Order (subject to draft affirmative procedure) providing for this in relation to offences under clause 30; and the fixed penalties would be capped at an amount not exceeding level 1 on the standard scale (currently £200). The provisions envisage that the Department would be the primary tribunal of fact with an appeal to a statutory tribunal (what tribunal, one wonders – an existing one or a new one?) other than a court. Plainly, a high level of scrutiny would be appropriate for penalty provisions of this nature: hence an Order under clause 33 is subject to draft affirmative procedure. And it is appropriate that the penalties that could be created are circumscribed on the face of the Bill (in this case, limited to a maximum of level 1 on the standard scale: *quaere* whether, strictly, clause 33(4) should be expressed in terms of the penalty being limited to an amount equivalent at the time of the contravention to which the penalty relates to a fine not exceeding level 1 on the standard scale since, where there is a fixed monetary penalty, there is not actually a fine in summary proceedings to which would the standard scale would apply).

7. In terms of my remit being defined strictly, **I would probably incline to the view that these provisions had an appropriate level of scrutiny**, and I have the benefit of considering the conclusions of the Second Report of the House of Lords Delegated Powers and Regulatory Reform Committee for Session 2007-08 on the Bill that became the Regulatory Enforcement and Sanctions Act 2008: there is perhaps a precedent of sorts for a regime of this nature in Part 3 of the 2008 Act (which part is mostly confined to England and Wales, at least where the Scottish Parliament and the Northern Ireland Assembly have legislative competence) and the Environmental Civil Sanctions (England) Order 2010 S.I. 2010/1157, made under those powers: clauses 33 to 35 and Schedule 2 seem to be a cut-down version of the provisions in the 2008 Act for the purposes of this Bill. **But the Committee may wish to explore the proposed working of these provisions with the Department**, and I cannot resist the observation that in the context and structure of the Bill they have a rather over-complex appearance for what they seem to do. And one immediate problem for the Department that I see (and to which I alluded in paragraph 6), to take an example, is that there is no actual provision for an appeal tribunal from the Department’s decision on a penalty notice on the face of the Bill: instead this is left to the Order under clause 33 (see Schedule 2, paragraph 3), and one wonders how a suitable tribunal is to be created or assigned for the purposes of clause 33 et seq.. These are matters that the Committee may care to pursue with the Department, and I cannot (and do not) take it any further. It seems to me that, **were these provisions to be enacted as the Bill stands, the resulting Order (by way of statutory rule subject to draft affirmative procedure) would not be in any way an easy instrument for the Department to frame.**

8. **There are no other matters to which I would draw the attention of the Committee for the Environment in this regard.**

Gordon Nabney
Examiner of Statutory Rules

11 May 2010

Jim Shannon MLA Submission

Jim Shannon
Constituency Advice Centre
34a Frances Street
Newtownards
BT23 7DN
Tel: 02891 827990
Fax: 02891 827991
Email Jim.shannon1@btopenworld.com

8th May 2012

To all MLAs

I am contacting you regarding the draft Marine Bill. I have been in contact with various Country Sport's organizations who have provided me with a very comprehensive brief which I am sure has also been sent to you. As you are aware shooting sports contribute 45 million annually to the Northern Ireland economy and employ over 2000 people. There are aspects of this draft Bill which my adversely affect shooting sport's and at this time of economic uncertainty it is essential that we encourage economic growth as opposed to curtailing it.

In England , similar legislation is currently causing major problems for a number wildfowling clubs and we must now seize the opportunity to ensure the best possible legislation comes through which will recognise the traditional sport of wildfowling and the associated conservation work

I would ask that you carefully consider the points raised below regarding the Marine Bill and ensure that the future legislation is fit for purpose and inclusive of those who depend on and engage in sustainable management of the rich marine resources of Northern Ireland.

Clause 2 – Marine Plans for NI Inshore Region

2(9) - A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

BASC recommends that a marine plan should come into effect **21 days** after it has been published by the Department in accordance with Schedule 1. A marine plan should come into effect only after an agreed period of time has elapsed and not on publication, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed. It is easier and much less disruptive to amend a marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan could be postponed.

Clause 8 – Validity of Marine Plans subsections 4 and 5

8(4-5) - A person aggrieved by a relevant document may make an application to the High Court.....

BASC recommends that an alternative means of challenging a marine plan is provided, e.g. a path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to either the NI Environment Minister or the Secretary of State for NI.

BASC feels it is not acceptable for anyone challenging a plan to be forced to prove the plan's faults to the High Court in the first instance. An individual wishing to challenge a plan could be prevented from doing so due to the potential cost implications incurred from High Court action.

Clause 11 & 12 – Designation of MCZ's

With the agreement of the Secretary of State Clause 11(1) allows the Department to designate any area of sea, or any island in the sea, falling within the NI inshore region as an MCZ if it *“thinks that it is desirable to do so.”*

BASC recommends that clause 11(1) be reworded – inserting the words “after consultation with key stakeholders, registered with the department”. If abused these Clauses could prohibit or seriously restrict wildfowling and access to wildfowling on or around the coast of NI.

Clause 12 – Grounds for Designating MCZ's

*12(5) – conserving marine flora, fauna or habitat **whether or not** any or all of them are rare or threatened.*

12(7) – in considering whether to designate an area as an MCZ, the Department may have regard to any economic or social consequences of doing so.

BASC recommends that the Department **must** have regard to **cultural, social and economic** consequences and that ‘conservation of flora, fauna or habitat whether or not any or all of them are rare or threatened’ disregards the principles of sustainable use of such features.

BASC seeks written assurance that any decision to designate an MCZ will be proportionate and based on good science and supported by evidence. Furthermore, BASC contends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure. For example where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.

Clause 14 – Consultation before Designation

*14(4) – The Department must consult (a) the Secretary of State; and (b) any other persons who the Department **thinks are likely** to be interested in, or affected by, the making of the order.*

14(6) - In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)

BASC recommends that the Department creates a register of interested stakeholders who must be consulted prior to any designation, even in urgent cases. BASC recommends that those with shooting interests are included in any consultation process.

Clause 15 – Publication of Orders

15(3) -‘.....be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.’

BASC recommends that the Department should be required to publicise their intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department.

Clause 24 – Byelaws for Protection of MCZ's

*24(2) - Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region **or in any other part of Northern Ireland.***

BASC requests a written explanation on why the words ‘any other part of Northern Ireland’ have been included under 24(2) as the introduction to the draft Bill and Part 1 of same categorically specifies and defines the area that this legislation is designed to protect, i.e. –

the NI inshore region. BASC would ask what relevance a piece of legislation dealing with the NI inshore region has to any other part of Northern Ireland?

24(4) - The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.

BASC believes that this provision has the potential to restrictively impact on the cultural, social and economic activities of many people particularly when the definition of 'seashore' contained within clause 39 is applied: "seashore" means (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity. Clause 24(4) could potentially extend the MCZ into land that has no direct influence on the marine features that the MCZ has been designated to protect.

24(5) - Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.

BASC has experience of administering permit schemes for various shooting activities. BASC requests a written explanation on how the Department envisage administering such a scheme and what the financial implications would be.

24(8) - Byelaws under this section may make different provision for different cases, including (in particular): (a) different parts of the MCZ; (b) different times of the year; (c) different means or methods of carrying out any activity.

BASC is concerned that this wording allows the creation of higher protected areas without there being any requirement to justify the designation of such areas. BASC requests a written explanation on why higher protected areas are needed, and where and how they will be created.

BASC recommends that Clause 24 should be reworded in it's entirety to reflect the legitimate interests of wildfowlers

Clause 25 & 26 – Emergency Byelaws

Whilst Clause 25 sets out the consultation process prior to making byelaws, it also makes provision for consultation to be waived in cases of 'urgent need'. The procedure for enacting emergency byelaws is contained within Clause 26.

Whilst BASC recognises that there could be necessity for emergency byelaws e.g. pollution incidents, BASC recommends that there must be a form of emergency consultation prior to implementation and that a fast track system similar to the procedures for severe weather Special Protection Orders be established.

Clause 27 – Interim Byelaws

27(1) - The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks: (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and (b) that there is an urgent need to protect the feature.

BASC is concerned that the wording 'an area in Northern Ireland' could be misconstrued to include areas that do not fall within the NI inshore region and BASC recommends that this should be reworded to avoid confusion.

BASC seeks written assurance that proposals for interim byelaws will be proportionate and based on good science and evidence and subject to consultation with registered

stakeholders. Furthermore, BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ byelaws.

Clause 31 – Offences

31(2)(a-d) refers to ‘*protected features*’ – given that specific flora and fauna are already afforded protection under the Wildlife (NI) Order 1985, the draft Bill seeks to introduce another layer of protection that will be confusing and difficult to administer and could lead to fewer successful prosecutions than would otherwise be the case.

BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985, this should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict legitimate activities.

Clause 32 – Exceptions

32(1)(c) – *A person is not guilty of an offence under section 30 or 31 if the act which is alleged to constitute the offence was done in accordance with a permit issued by the Department (whether under section 24(5) or otherwise)*

BASC has experience of administering permit schemes and seeks a written explanation of how the Department envisages administering such a scheme and what the financial implications might be.

Clause 39 – Interpretation

‘Seashore’ - (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity.

BASC proposes that this part of the definition of seashore should be removed as this wording could allow inclusion of large expanses of land that have little or no impact on the marine features that this draft Bill seeks to protect.

BASC is particularly concerned with the application of this definition to Clause 24(4) and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of this interpretation implies that an MCZ could in effect be extended through restriction/prohibition into any land adjoining the seashore; this raises the question - where would the MCZ stop?

The proposed interpretation of seashore could lead to severe negative impacts on landowners, user groups and other local businesses

Clause 45 – Crown Application

This Clause ensures that there will be no exemptions for holders of Crown Estate leases. BASC members who are holders of such leases have asked for confirmation that the Department have consulted with Crown Estate on this matter. BASC asks that the Department write to BASC to confirm that Crown Estate have been consulted in relation to the draft Bill.

Schedule 1

Statement of Public Participation

Sch1 5(8)(a) - Definition of ‘interested persons’ – ‘any person **appearing** to the Department to be **likely** to be interested in.....’

BASC proposes that the Department retain a register of interested persons who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons being excluded or overlooked.

Should you need any further information please do not hesitate to contact me.

Yours Sincerely

A handwritten signature in black ink that reads "Jim Shannon". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Jim Shannon MP for Strangford

Marine Bill (Northern Ireland) Summary

Marine Bill (Northern Ireland) – Summary

The Marine Bill sets out a new framework for Northern Ireland's seas based on: a system of marine planning that will balance conservation, energy and resource needs; improved management for marine nature conservation; and streamlining of marine licensing for some electricity projects.

The Bill will apply to the territorial sea and the seabed adjacent to Northern Ireland (from mean high water spring tide out to 12 nautical miles). This is the Northern Ireland inshore region.

Marine Planning

Under the Bill, the Department of the Environment may prepare a marine plan for all or part of the inshore region. A marine plan will bring together information and policies on the multiple uses of the marine area, together with spatial and temporal data (e.g. seasonal changes) for the water column and the seabed, using maps where appropriate. As a strategic tool, it will allow decisions to be made about the best use of the marine area, in order to maximise compatibility of activities and achieve sustainable development.

The inshore region overlaps with the area covered by terrestrial planning, which extends to the low water mark, therefore the Department must take all reasonable steps to ensure compatibility between a marine plan and any related terrestrial development plan.

The Bill details the procedure by which the Department must prepare, consult on and publish a marine plan. This procedure will require the publication of a Statement of Public Participation, which will set out how interested parties will be involved in the planning process.

The provisions in the Bill relating to the preparation and adoption of a marine plan also apply to any amendments of that plan.

The Department must consult with other Departments with marine functions (DARD, DCAL, DETI and DRD), as the marine plan will state their policies in connection with the sustainable development of the marine area.

The Bill provides that all public authorities (including UK and NI departments, district councils, statutory undertakers and non-departmental public bodies) must take any authorisation or enforcement decisions **in accordance** with the marine plan, unless relevant considerations indicate otherwise. Other types of decisions must be taken with **regard to** the marine plan.

Where a marine plan applies to retained functions (e.g. those which are carried out or authorised by a UK department), the Secretary of State must approve the marine plan before it can be adopted.

The Bill sets out how a marine plan can be withdrawn by the Department, or as a result of the Secretary of State withdrawing approval.

The Department will be required to keep various issues under review, such the environmental, social and economic characteristics of the inshore region and the purposes for which this region is being used. The effects of the policies in the marine plan, progress towards objectives etc. must also be kept under review and reported on at least every three years. A report on marine planning itself (i.e. how many plans have been prepared, intention to amend plans or prepare further plans) must be made every six years until 2030.

Marine Nature Conservation

The Bill allows the Department to designate areas as marine conservation zones (MCZ), with the agreement of the Secretary of State. Designation may be carried out for certain circumstances (e.g. conserving species of marine flora and fauna), taking fully into account any economic or social consequences of designation. Islands may be within an MCZ, and adjacent areas of the seashore may also be included if certain conditions apply.

The Department must publicise proposals for MCZ designation, and must consult the Secretary of State and interested parties before making a designation order.

The Bill places a duty on the Department to designate MCZ which contribute to the creation of a network of marine sites for the conservation or improvement of the marine environment in the UK marine area. A report on the achievement of this objective must be laid before the Assembly by 2018 and every six years thereafter.

Public authorities must carry out their functions in a manner which they consider best furthers, or least hinders, the conservation objectives set for MCZ. The Department may give advice and guidance (e.g. on the effect of activities on an MCZ) to public authorities, which must have regard to any such advice.

The Bill allows the Department to make byelaws to protect MCZ, through a procedure of publication to bring them to the attention of persons likely to be affected and confirmation by the Secretary of State. The byelaws are intended to be flexible to meet the conservation needs of a particular area – a byelaw could for example prohibit the anchoring of vessels within part of an MCZ, at particular times of year.

The Bill provides that it is an offence to contravene a byelaw, which could result in a fine upon conviction, or the imposition of a fixed monetary penalty. The procedure for the use of fixed monetary penalties is set out in the Bill, including the process for notification of a fixed penalty, discharge of liability and grounds for appeal.

It is also an offence to carry out a prohibited act in relation to an MCZ (e.g. intentionally or recklessly destroying or damaging a habitat which is a protected feature of an MCZ).

The Bill enables the Department to appoint officers for carrying out enforcement of byelaws and in relation to prohibited acts.

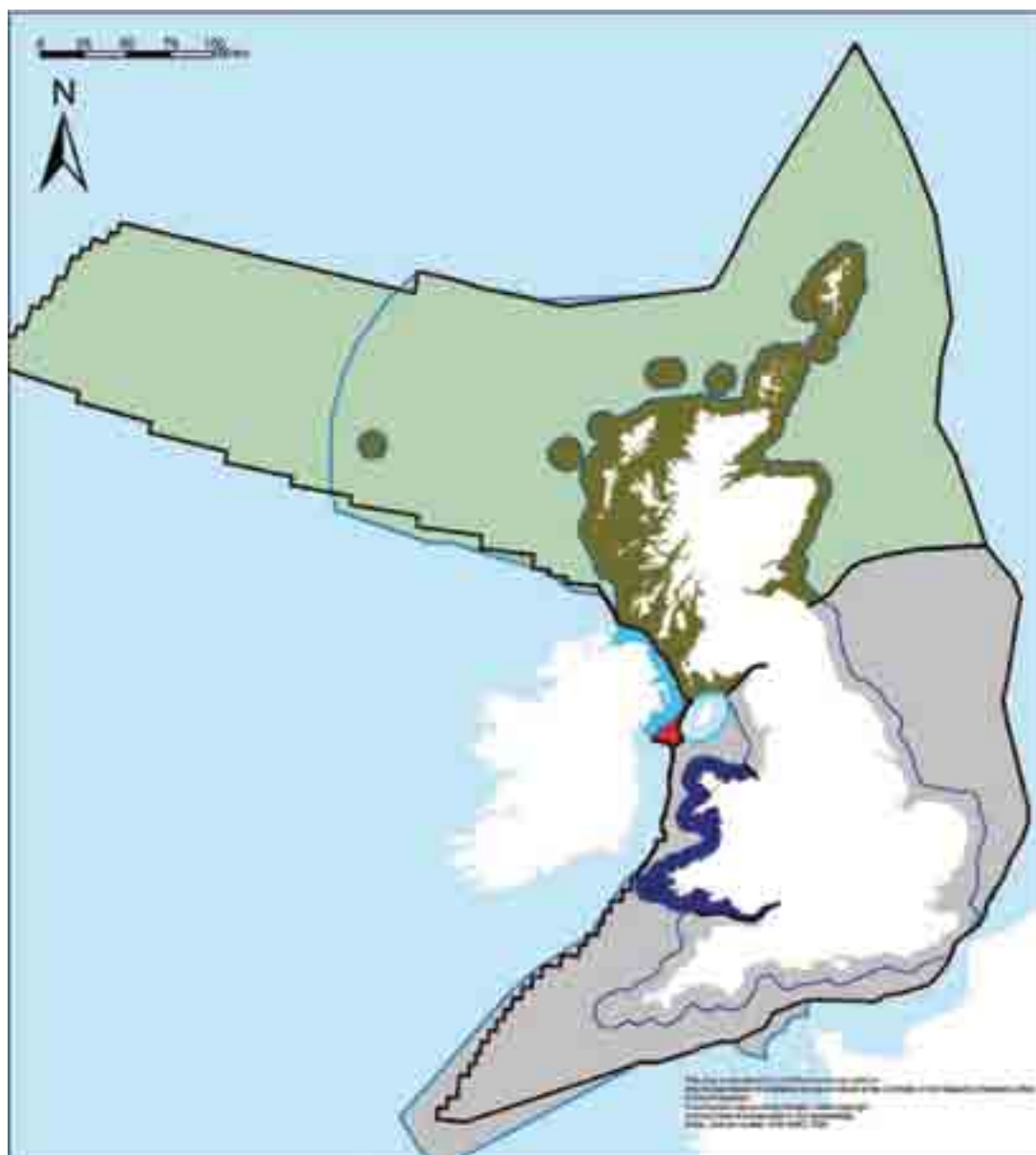
Marine Licensing


Part 4 of the UK Marine and Coastal Access Act 2009 introduced a new system of marine licensing which extended to Northern Ireland. The 2009 Act allowed for the use of special procedures in respect of certain electricity works in parts of the UK. The Marine Bill contains a provision to amend the 2009 Act to provide for the application of equivalent special procedures for applications relating to certain electricity works in the Northern Ireland inshore region.

It will apply in situations where both a marine licence (from DOE) and a generating consent (from DETI) are required, and will allow for parallel consideration of applications for both types of consent.

UK Marine Area Map

UK Marine Area – Northern Ireland Inshore and Offshore Region



Key to Northern Ireland Marine Area	
	Northern Ireland inshore region
	Northern Ireland offshore region

Newtownards Wildfowlers Association Email

From: Paul Rollo <sprteal22@aol.com>
Sent: 24 April 2012 22:23
To: McCarthy, Kieran
Subject: Letter from your constituent Paul Rollo

This message was also sent to: Jonathan Bell MLA, David McNarry MLA, Simon Hamilton MLA, Michelle McIlveen MLA, Mike Nesbitt MLA

Paul Rollo
11 Regency Manor
Newtownards
Down
BT23 8ZD

Phone: 07970605164

Email: sprteal22@aol.com

Tuesday 24 April 2012

Dear Kieran McCarthy, Michelle McIlveen, Jonathan Bell, David McNarry, Simon Hamilton and Mike Nesbitt

I am writing to you all to voice my concerns about the draft marine bill going through Stormont at the moment. My main concern is about clause 24 as it does not take into consideration the wildfowling community. I feel that wildfowling on Strangford Lough is already under enough restrictions as agreed with National Trust and BASC. Clause 24 could have a detrimental effect on the conservation work that is carried out by the wildfowlers. I have been a wildfowler on Strangford Lough since 1977 and have seen a lot of changes, some good and some not so good. I am also a warden for the N.T. since 1988. I do see both sides of the coin, not just the shooters side.

The marine bill is 90% good legislation, it is just the grey areas that need to be addressed. Surley BASC or CAI or both should have an input into the draft document not just environmentalists.

I hope you can raise my concerns with your colleagues that sit on the environment committee.

Yours sincerely,

Paul Rollo
Newtownards Wildfowlers Association

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(Signed with an electronic signature in accordance with subsection 7(3) of the Electronic Communications Act 2000.)

[This message was sent by WriteToThem.com. If you have had any problems receiving this message, please email help@writetothem.com and we'll get back to you. See www.writetothem.com for more details about the service. We have sent this email to kieran.mccarthy@mla.assembly.gov.uk; if this address is out of date please email us so that we can update our records.]

Northern Ireland Marine Task Force - Questions to Committee

The Northern Ireland Marine Task Force (NIMTF) has identified numerous areas within the Northern Ireland Marine Bill which are legislatively weak; use ambiguous terminology; and which produce uncertainties in departmental responsibility and proper guidance. The Northern Ireland Marine Bill concerns itself with the marine spatial plan, designation of marine conservation zones and the streamlining of marine licensing for the energy sector. The UK Government and devolved administrations have committed under the Oslo-Paris Convention for the protection of the marine environment of the North-East Atlantic (OSPAR) to create an ecologically coherent network of marine protected areas. Under EU legislation, the Marine Strategy Framework (MSFD) Directive requires the UK to achieve good environmental status by 2020 and implement marine protected areas. The NI Marine Bill is our major contribution in meeting the requirements laid out by these drivers. It is therefore essential that it enables Northern Ireland as part of the UK to fulfil its requirements under EU and International law whilst, at the same time addressing local needs. It is imperative that marine protected areas are properly designated, that ecological coherence is achieved across a network of sites at local, regional and national scales, and that areas, once designated, are provided with the funding, capacity and legislative and regulatory enforcement required for proper protection. The following questions indicate some of the issues which require additional clarification.

Background information Question 1: Northern Ireland will be required to establish a network of marine conservation sites, with Marine Conservation Zones and existing European sites. The UK requires (through international agreements) that this network is ecologically coherent, a term which requires definition and precise guidance. **It is also important that ecological coherence occurs across local to regional scales across the UK and throughout the OSPAR region.**

1. What guidelines and principles will Northern Ireland be following/using to achieve an ecologically coherent network of marine protected areas at the **local** scale of the Northern Ireland inshore region?

Background information Question 2: Highly protected marine protected areas have been shown around the world to be beneficial to depleted fish stocks, damaged habitat and species affected by intense human use.

2. Given the importance around the world of highly protected marine protected areas in effectively conserving species and habitats, should the bill not explicitly include the designation of highly protected MCZs?

Background information Question 3: In other countries around the world that have carried out marine spatial planning (such as in the Great Barrier Reef, Australia), the designation of marine conservation areas has occurred at the same time as the planning process and by scientific experts within the broader planning team.

3. Will the MCZ designation team be an active and nested part of the marine spatial planning team, and can you provide a **detailed** timeline and give assurances for how the MCZ designation process and the development of the MSP will occur together.

Background information Question 4: Currently, within the UK Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010, and the NI Marine Bill, a person is exempt from being guilty of an offence of damaging protected features of a Marine Conservation Zone if the damaging act occurred whilst sea fishing. This clause is currently in place due to European Common Fisheries Policy, which gives equal access to the inshore waters (6-12nm) to Member States which have historical fishing rights. Between 0-6nm there is no historical fishing rights, however the clause does not differentiate across the inshore waters.

4. What would the legal implications be if Section 32 (exceptions to offences of damaging protected features of MCZ) was amended to remove seafishing as a defence within the 0-6nm area and in areas (6-12nm) where historical foreign fishing rights did not exist?

Background information Question 5: The Northern Ireland Marine Bill introduces functions which cross multiple public authorities and Government departments. As yet, issues relating to practical governance, including decision making, departmental compliance, enforcement of byelaws, have not been adequately addressed. In particular, Section 23 of the bill deals with the failure of public authorities to comply with their duties or to act in accordance with DoE advice. If a public authority fails to comply then the only penalty within the legislation is to provide DoE with a written explanation.

5. In the absence of an MMO, and within the current context of Northern Ireland's departmental structure and the past damage to Strangford Lough, how will Section 23 act as an effective sanction against a public authority when such authority fails to comply with their duties?

For further details please contact the NIMTF:

Richard Devlin, Marine Campaign Co-ordinator: 0772 557 3692

Marguerite Tarzia, Marine Technical Officer: 0773 069 1391

DRD Letter re Marine Bill Submission



Alex McGarel
Clerk to the Committee for the Environment
Environment Committee Office
Room 245
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Friday 4 May 2012

Your Ref: ENV162
Our Ref: DALO 8b/3/2012

INVITATION TO SUBMIT WRITTEN EVIDENCE ON THE MARINE BILL

Dear Alex

You wrote to me on 12 March seeking the Department for Regional Development's comments on the Marine Bill.

I apologise for not replying by now, but our Officials have had to seek input from third parties.

I hope to have our formal response with you before the end of next week, or the beginning of the following week at the latest.

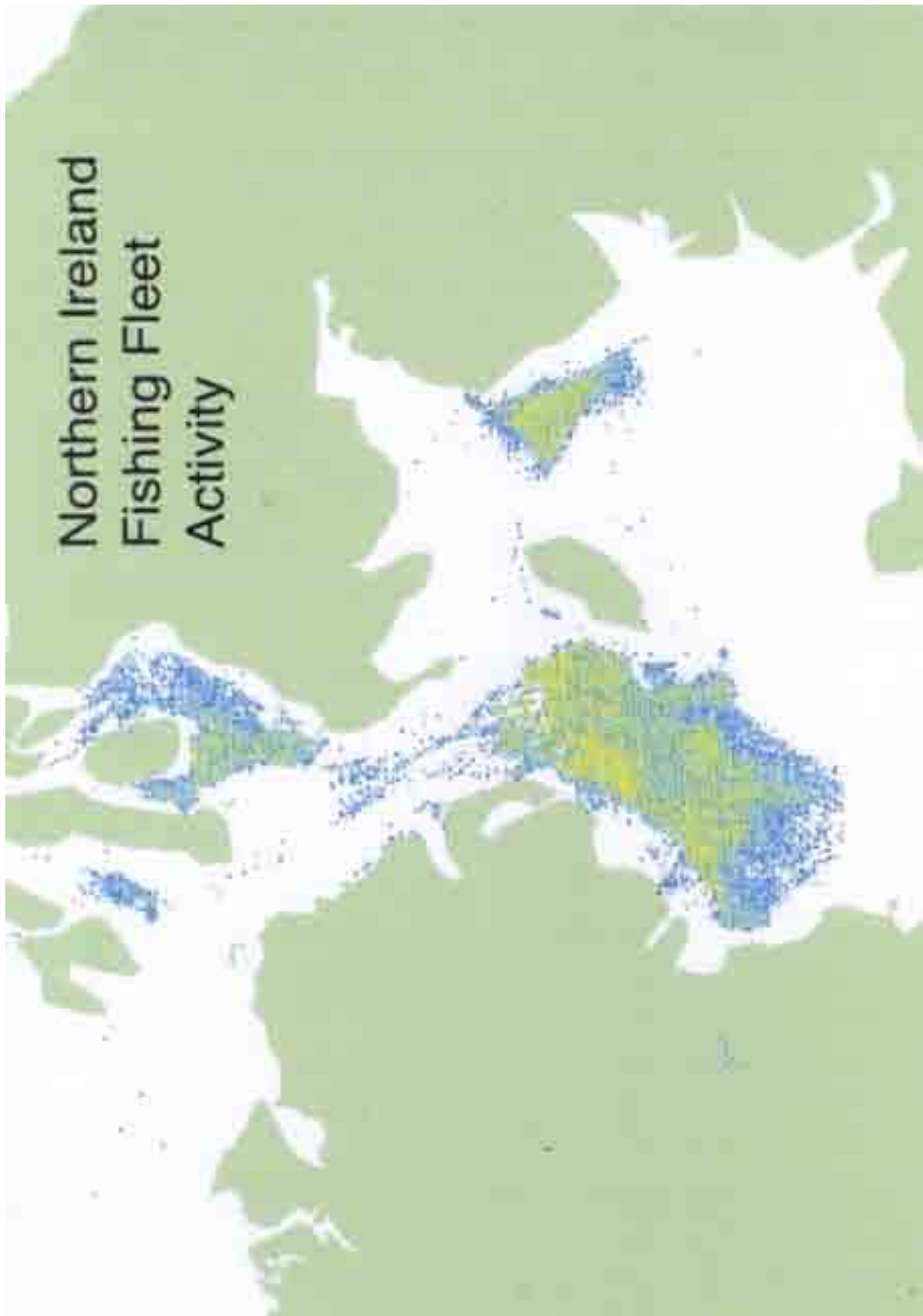
Yours sincerely

A handwritten signature in black ink that reads "Alan".

Alan Doherty
DALO



Northern Ireland Fishing Fleet Activity



CNCC Letter re Coastal Planning

COUNCIL FOR NATURE CONSERVATION AND THE COUNTRYSIDE

An Advisory Council to the Department of the Environment

Room G-07, Waterman House, 5-33 Hill Street, Belfast, BT1 2LA

Tel: 028 9054 3184

secretariat-hillst@doeni.gov.uk

16 May 2012

Sean McCann
Assistant Clerk
Environment Committee
Room 247, Parliament Buildings
Stormont Estate
BELFAST, BT4 3XX

Dear Sean,

Marine Bill Consideration

Following our presentation of CNCC's evidence to the Committee last Thursday, we thought it might be helpful if we elaborated on one area about which we raised concerns; namely the complications of coastal planning due to the dynamic nature of coastal processes.

As we mentioned, management of the coastline is complicated by the dynamic nature of the processes involved and because action in one area can result in impact at some distance away. To make decisions on managing shorelines and planning how land is used, predictions (or estimates) of long-term changes to the coastline need to be made. This is difficult due to the complexity of the natural coast and because changes may take place at different timescales and over different distances.

In recognition of the complications involved, England and Wales introduced **Shoreline Management Plans** (SMP) in 1995, with revisions in 2006. These SMPs represent a large-scale assessment of the risks associated with coastal processes and help to reduce these risks to people and to the developed, historic and natural environments. Such plans employ a range of methods which reflect both national and local priorities to reduce the threat of flooding and erosion to people and their property and to benefit the environment, society and the economy as far as possible, in line with the Government's 'sustainable development principles'

We feel that, without an SMP, both the terrestrial and marine planning teams will not be able to have full regard for their responsibilities to sustainable development, in that they will not be in a position to assess the risks arising from their decisions. We believe that Schedule 1.9 (*Matters to which the Department is to have regard in preparing a marine plan*), although intended to be catch-all in nature, misses the

point that actions in one place may have an impact at some distance away. Explicit reference to a Shoreline Management Plan would remedy this shortfall.

We would be delighted to give further detail about SMPs if required. Information about the Defra SMPs is available at www.defra.gov.uk/publications/files/pb11726-smpg-vol1-060308.pdf and Scottish SMPs at www.snh.org.uk/publications/online/heritagemanagement/erosion/index.shtml

Yours sincerely,



**PATRICK CASEMENT
CHAIRMAN**

Departmental Reply re 10 May Briefings



Department of the
Environment
www.doeni.gov.uk

DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference: CQ/155/12
Our reference:

Date: 18 May 2012

Dear Alex,

Following its meeting on the 10th May 2012 the Committee has requested clarification from the Department on a number of legislative provisions.

For convenience, I shall deal with the issues in the order raised.

1. What extent will the byelaws for the protection of Marine Conservation Zones (MCZ), proposed under Clause 24 of the Bill, restrict the activities of sporting, wildfowling and sea angling interests.

Clause 24 gives the Department the power to make byelaws for the protection of features of an MCZ. Byelaws will be site specific and made on a case-by-case basis.

Draft Byelaws will be subject to full public consultation and stakeholder engagement which is specific to the site and activity under consideration.

It is envisaged that most MCZs will be designated primarily for the protection of seabed features and as such any related byelaws will have little impact on the sporting, wildfowling and sea angling interests.

2. In relation to Clause 24(2), the Committee would like clarification of the reference to the potential for byelaws to apply to “any other part of Northern Ireland”.

The reference to ‘any other part of Northern Ireland’ is to cover the situation where an MCZ might include sandbanks, rocks and islands whether or not these are ever covered by the sea at any time. These features would therefore be considered an ‘area of Northern Ireland’ and not part of the ‘inshore region’. Islands excluded from an MCZ would be identified in the designation order.

3. Will protection for a habitat or species provided under an MCZ take precedence over protection already provided by the Wildlife and Natural Environment Act (WANE).

No. It is envisaged that both pieces of primary legislation will complement each other, but will not duplicate or have preference status. It is anticipated that MCZs will primarily be

designated for seabed features i.e. habitats, as opposed to mobile marine species such as Seahorses and Seals which are fully protected under the WANE Act.

4. Will the designation of MCZs be evidence based particularly in relation to Clause 12(5) specifying that an MCZ can be designated on the grounds of conserving flora, fauna or habitat “whether or not all of them are rare or threatened”.

The Department's policy on the designation of MCZS in the Northern Ireland Inshore Region will be based upon the use of the best available science. All site boundaries and conservation objectives will be flexible to allow for changing circumstances or additional scientific or other information.

5. In relation to Clause 39(b), members would like to know the extent of this clause.

In general MCZs will be designated below Mean High Water Spring Tide (MHWST). However there may be occasions where an MCZ may extend landward of this line if the designated feature continued or was required to protect the feature(s). This would include, but not be exclusive to, geological features and coastal process (i.e. Sandbanks/ dunes). All proposed MCZ designations will be subject to full consultation and take account of other activities or interests.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,
Helen Richmond
DALO

[by e-mail]

Departmental reply re Inter Dept Marine Coordination Group



DOE Private Office
8th Floor
Goodwood House
44-58 May Street
Town Parks
Belfast
BT1 4NN

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: 028 9025 6022
Email: privateoffice.assemblyunit@doeni.gov.uk
Your reference:
Our reference: CQ 144/12

Date: 14 May 2012

Dear Alex,

Marine Bill

Following its meeting on 3 May 2012, the Committee requested additional information from the Department on the composition of the Inter-Departmental Marine Co-ordination Group, specifically its terms of reference, authority and legal status. It would also like more information on common law rights on navigation and fishing activities.

For convenience, I shall deal with the issues in the order raised.

1. Composition of Inter-Departmental Marine Co-ordination Group

The Inter-Departmental Marine Co-Ordination Group (IMCG), which evolved from a steering group established in 2005, has been meeting since 2008 in order to develop and deliver agreed policy on the Marine Bill. The Group also serves as a forum at which marine policies from across the departments are discussed, and provides a mechanism for co-ordinating responses to consultations by UK Departments, for example, on input to European marine issues.

All departments with marine functions are represented on IMCG and officials from other bodies, for example the Loughs Agency and AFBI, also attend meetings when required. The terms of reference for the Group are provided at Annex A. The range of issues considered by the IMCG has expanded over the last four years. As we move towards the development of marine plans, implementation of the Marine Strategy Framework Directive (MSFD), designation of Marine Conservation Zones etc., consideration will be given to amending the Group's terms of reference.

It should be noted that the IMCG has no legal status, and policy and legislative control remains the responsibility of respective Ministers.

2. Common law rights on navigation and fishing activities

The Marine Bill does not include specific provisions for either fishing, which is the responsibility of DARD and DCAL, or navigation, which is a reserved matter.

The Marine Bill enables the Department to make byelaws to protect Marine Conservation Zones (MCZs) in the Northern Ireland inshore region. Byelaws will be used to prohibit or restrict otherwise unregulated activities which may be detrimental to the MCZ and will be site specific. The level of restriction will depend on the feature(s) requiring protection and the conservation objectives of the MCZ.

The Department recognises that aspects of the Marine Bill, for example the designation of MCZs, could have an impact on common law rights in relation to navigation and fishing activities. However, these activities will be taken into consideration when selecting and assessing conservation objectives for MCZs. The development of MCZs, and any restriction on common law activities, will be undertaken in full collaboration with key stakeholders.

The development of the Marine Plan will also be undertaken in full consultation with all those who have an interest in the marine environment. To that end the Department intends to publish a Statement of Public Participation towards the end of June 2012 which will set out how and when this engagement will be undertaken.

Nothing in either the marine plan or MCZ designation process will affect the international right of innocent passage.

I trust this information is of assistance, but should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO

[by e-mail]

Annex A

Inter-departmental Marine Co-ordination Group Terms of Reference

1. **Objective**

The objective of the group is to provide advice on policy development to the Senior Responsible Owner (SRO) for the Northern Ireland Marine Bill (policy development) project.

2. **Role of the Group**

The group is to advise on the scope and objectives of new marine policy proposals. It will also ensure that the project is aligned both with the Northern Ireland Assembly's and UK Government's strategic goals.

3. **Members' Responsibilities**

- a) Provide strategic guidance and direction on the development of new marine policy proposals;
- b) Ensure outcomes and objectives of the policy process are aligned both with the Northern Ireland Assembly's and UK Government's strategic goals;
- c) Advise on the scope of the project; and
- d) Communicate issues related to the development of new policy proposals within members' departments.

4. **The Group will not:**

Deal with issues other than those relating to the development of new policy proposals. The exceptions to this are that it will lead discussions on the Maritime Green Paper and the NI response to the UK Government's Marine Bill.

5. **Secretariat**

DOE will provide the secretariat to the group.

6. **Membership**

Officials from DARD, DCAL, DRD, DETI and DOE (including NIEA, EPD, PPD, SPD). Other attendees (for example DSD and Loughs Agency) may be invited to meetings of the group to discuss specific issues where appropriate. Members may nominate deputies when they are unable to attend.

7. **Frequency of Meetings**

Quarterly or more frequently as required, from April 2008.

8. **Values and Principles**

In taking forward its work, the steering group will:

- seek to ensure that good relationships are maintained;
- focus on outcomes;
- ensure responsibility is clear; and
- communicate appropriately.

NIRIG Further Information - Economic Benefits of Renewable Energy to NI



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Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

Economic benefits of renewable energy to Northern Ireland

Further evidence to Environment Committee

12th June 2012

The Northern Ireland Renewables Industry Group (NIRIG) is a joint collaboration between the Irish Wind Energy Association (IWEA) and RenewableUK. NIRIG represents the views of the large scale and small scale renewable energy industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy.

Through the Strategic Energy Framework, the Northern Ireland Executive has committed to delivering 40% of electricity consumption from renewable sources by 2020. NIRIG is committed to contributing to reaching these targets and believes that there are considerable benefits to doing so, including increased security of energy supply, broadening our energy mix, reducing our reliance on imported fossil fuels and reducing carbon emissions. In addition, we believe that this growing industry will bring considerable economic benefits to Northern Ireland.

NIRIG'S contribution

NIRIG represents the wind, wave and tidal sector in Northern Ireland. Currently, NIRIG has 31 member companies comprising onshore large- and small-scale wind developers; manufacturers, offshore and marine developers; environmental, legal and planning consultants; training providers; and construction companies. NIRIG members have developed, own or operate 95% of Northern Ireland's installed wind energy capacity.





Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

Onshore wind and investment

Wind generation is expected to supply the majority of the renewable electricity to meet the SEF target. Wind supplied 11.13% of electricity demand in Northern Ireland in 2011¹

- A Deloitte report from 2009 indicates that between 25 and 30% of capital investment in wind generation projects is retained in the local economy²
- In the past 18 months, the wind development community estimates that £150m has been spent on development of wind farms in Northern Ireland, of which approximately £45m was spent directly in Northern Ireland.
- Additional economic benefit flows to the community through land lease payments, local road upgrades and community funding; to the local District Council through business rates; and to local companies through construction, legal, finance and other professional services

NI Wind Deployment and job creation

A recent Redpoint assessed the impacts of NI reaching its 2020 target of 40% electricity from renewable energy sources.

- At its peak in 2017, it is estimated that close to **2,000** additional jobs will be created in NI – mostly in planning and construction
- Once all capacity is installed in 2020, an estimated **584 ongoing** jobs will have been created in the sector
- Should renewables deployment continue past 2020, as expected, there would also be ongoing planning and construction jobs maintained in the sector³

¹ www.soni.ltd.uk/upload/2011%20NI%20Electricity%20Statistics%20-%20Overall%202011%20Summary.pdf

² "Jobs and Investment in Irish Wind Energy – Powering Ireland's Economy" Deloitte/IWEA 2009

³ There may be other benefits, for example, development of a significant NI wind sector may provide opportunities for NI industry to develop new technologies for export.





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Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

- Using avoided welfare, with a total of **15,505 'job-years'** created, the estimated potential benefit to the NI economy over the 2011-20 period will be around **£100m** in 2011 terms
- With 584 ongoing jobs created by 2020, enduring benefits of up to **£2.3m per annum** (NPV, in 2011 terms) are estimated⁴

Recent investment figures

The potential for growth in the renewables sector is significant. Between 1st April and 7th October 2011 Northern Ireland announced £46m investment⁵ and the creation of 450 jobs in the renewable sector including:

- Belfast Harbour: DONG Energy £51m tailor-made installation harbour for all wind farms in the Irish Sea. Up to 450 jobs
- Harland and Wolff: contract for Gwynt y Mor wind farm; assembly for Ormonde and Robin Rigg wind farms; won work for tidal turbines. Active in the renewables sector since 2004 and with 8 notable projects completed in excess of £50m, this sector is now 80% of annual turnover
- Powerteam: £3.7m contract from SSE Renewables
- Hutchinson Engineering: £1.2m contract from Xeres Wind Europe
- Creagh Concrete: £1.1m contract from Renewable Energy Generation
- Lagan Construction: contract from Land Energy

Contribution to the UK

To the extent that Northern Ireland renewables can displace the marginal UK renewable technology, greater deployment in NI can create significant UK-wide

⁴ This is likely to provide a conservative estimate, as it does not take account of the higher income achievable in wind sector employment relative to that provided by welfare payments.

⁵ <http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/renewable-energy/3301-uk-renewables-investment-and-jobs-map.pdf>





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Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

savings. For example, if NI meets its 40% target predominantly through onshore wind, and this onshore wind displaces GB offshore wind, there are potential annual UK-wide savings of up to £165m in 2020.

If there are any queries on the above or further information is required, please contact:

Meabh Cormacain

Northern Ireland Renewables Industry Group

Forsyth House

Cromac Square

Belfast

BT2 8LA

+44 (0) 7837 291 699

+44 (0) 2890 511 220



NIRIG Further Information - Marine Bill



Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

NIRIG further written evidence on draft Northern Ireland Marine Bill

12th June 2012

The Northern Ireland Renewables Industry Group (NIRIG) is a joint collaboration between the Irish Wind Energy Association (IWEA) and RenewableUK. NIRIG represents the views of the large scale and small scale renewable energy industry in Northern Ireland, providing a conduit for knowledge exchange, policy development support and consensus on best practice between all stakeholders in renewable energy.

Through the Strategic Energy Framework, the Northern Ireland Executive has committed to delivering 40% of electricity consumption from renewable sources by 2020. NIRIG is committed to contributing to reaching these targets and believes that are considerable benefits to doing so, including increased security of energy supply, broadening our energy mix, reducing our reliance on imported fossil fuels and reducing carbon emissions.

NIRIG welcomes the opportunity to provide further information to the Committee for the Environment on the draft NI Marine Bill. As mentioned during the oral evidence session on 3rd May 2012 we would like to draw your attention to the common law right of navigation and fishing, and reiterate our concerns on the consenting and licensing process for offshore renewable energy installations.

1. Common law right of navigation and fishing

It has come to NIRIG's attention that there is a need to address the issue of the common law right of navigation and fishing in legislation. In Great Britain this has been addressed through the Energy Act 2004 and the Planning Act 2008 for





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Belfast BT2 8LA
Tel 028 9051 1220

development consent orders (DCOs). We believe that this important topic has not been adequately addressed in Northern Ireland waters and there is now an opportunity to do so through the Marine Bill.

The common law right of navigation and fishing applies in the 'inshore region' of Northern Ireland as this is defined in clause 1 of the Bill. A consent for development (such as that under Article 39 of the Electricity (Northern Ireland) Order 1992 or Section 65 of the Marine and Coastal Access Act 2009) is insufficient to authorise any interference with this common law right. What is required is specific statutory authorisation, as is found in Section 36A Electricity Act 1989 and Section 95 Energy Act 2004 within Great Britain.

For the purposes of this topic the Electricity Act 1989 does not apply within Northern Ireland and its inshore region. Sections 12 and 13 of the Marine and Coastal Access Act 2009, provide for the exercise by the Marine Management Organisation of various functions of the Secretary of State under the Electricity Act 1989, including the power to extinguish the common law right of navigation and the power to create Safety Zones. However, Sections 12 and 13 only apply to waters defined within Section 95(10) Energy Act 2004. These waters are those within a Renewable Energy Zone (therefore necessarily outside any UK territorial seas) and to waters 'in or adjacent to Great Britain'. Therefore these provisions do not apply to the Northern Ireland inshore region.

Indeed, even if Section 12 and 13 of the 2009 Act did apply to the Northern Ireland inshore region, they would only benefit projects with a generation capacity of 100MW or less (this is specifically provided for within Sections 12 and 13).





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Tel 028 9051 1220

As there is no current power to extinguish the common law right of navigation and fishing or to create Safety Zones the position within the Northern Ireland region must be addressed. To interfere with a common law right without specific authorisation can be an offence (of public nuisance). In any event those funding offshore development would expect to see the issue properly covered. We refer to the need to extinguish the common law right of navigation and fishing on the site of renewable energy installations and to the need to create safety zones during the construction of offshore wind farms.

The position can be cured through an amendment to the Marine Bill so as to provide for the Northern Ireland inshore region in the terms of Sections 12 and 13 of the 2009 Act, but ensuring that those provisions apply to projects of all electrical capacities.

2. Licensing and consenting

As NIRIG has already noted, the NI Marine Bill indicates that dual applications (for both marine licences and consent under Article 39) will follow the procedures of the Electricity Order (Clause 7 of Part 4). This seems a departure from the original intention (as noted in the SEA/RLG) to place the emphasis on the marine licence application process (whence the target date for determination by NIEA of four months arose). As a result of the proposals in the NI Marine Bill, however, it seems that the applications will follow the Article 39 application process. Whilst this is welcome the following issues arise:

Decision-making on consent applications - Licensing/consenting should be adequately resourced to manage caseload with appropriate marine expertise to support robust decision making. There is value in streamlining the consents process





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Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

so that a lead agency can provide a one-stop-shop for all consents and licenses required for a project. This includes DoE (the FEPA and CPA marine license), DETI (Article 39) and the Planning Service (onshore elements). With any existing department as a lead agency, there is a real challenge in ensuring balance due to the core perspectives and objectives of that department. With DETI as a lead, it would need to be very transparent that conservation considerations were being given proper consideration. Equally with DoE/NIEA as leads, it would need to be transparent that economic development was being given adequate weight. Joint-working between departments is a political ideal, but it must be recognised that this is not always easy. Therefore effective management processes must be put in place to deliver balanced outcomes irrespective of the selected front-door department.

Timetables - Whilst the Electricity Order itself provides no clear set of procedures for the Article 39 consent application, the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 does set down some procedures for Article 39 applications that require EIAs. This defines deadlines for consultation responses (excluding transboundary consultations) where consultees have 4 weeks to respond either to the application or any further information. There is no time limit, however, after the expiry of the consultation period within which the Department must make its decision and there is always the scope for the Department to conclude that a public inquiry is necessary under Article 66 of the Electricity Order before it can reach a decision, for which, again, there is no timetable. We believe that for strategically significant projects there should be timetables for a decision. In fact, the Directive underpinning the regulations (EIA Directive for Offshore Electricity Developments) as amended requires the Department to “fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period”.





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Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

Pre-application discussions - The Offshore EIA Regulations do not contain any guidance on pre-application discussions that will need to be undertaken to ensure a streamlined application to cover all matters that might subsequently lead to delays in addition to the standard matters relating to environmental scoping and project definition. This would include overlap with onshore planning; the equivalent of Article 40 agreements of the Planning Order; scope, timing and workings of potential inquiry; milestone meetings and decision timetable; consultee lists; Rochdale envelope; conditioning discussions; decision making body or bodies; process for varying consent; compulsory purchase powers amongst others.

Stream-lining - Projects will require consent for all on-shore aspects under Planning (Northern Ireland) Order 1991. It would be useful if streamlining addresses how the Article 39 and the marine licence applications would dove-tail with the Planning Order consents. Under the same principles, it would be good practice if only one EIA were to be conducted for the entire project (offshore generating station and on-shore connection assets). There is a risk that streamlining of one part of the process is rendered irrelevant if it does not capture all aspects of the process including on-shore grid connection. In the absence of a full one-stop shop, it is critical that consistent principles are adopted for both on-shore and off-shore regulatory bodies such that all aspects of a major offshore infrastructure project can progress in parallel through the consenting systems. This can best be achieved by efficient pre-application co-ordination between DETI, DOE and NIEA as the three consenting/licensing bodies with the intention of being to produce a definitive decision within a fixed timescale (subject to a window for any legal challenge). Given the need for coordination it would be beneficial to develop a “one stop shop” as we have seen in other regions.





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Forsyth House
Cromac Square
Belfast BT2 8LA
Tel 028 9051 1220

The intent in the Offshore Renewable Electricity Action Plan (ORESAP) to establish a working protocol between DETI, NIEA and Planning Service is very welcome, but it will be important to complete this guidance by the end of 2012. Industry will need to commence pre-application work immediately the Crown Estate leasing round completes. To wait for the timeline of 'during 2012-2013' to establish streamlined administrative guidance as outlined in the ORESAP could mean significant delays. This guidance should be prepared with industry input and should provide information on both the format and scope of pre-application discussions and the timescales for consultation and decision-making post application.

NIRIG would again like to thank the Committee for the opportunity to provide this additional information on both the draft Marine Bill. If there are any queries on the above, please contact:

Meabh Cormacain

Northern Ireland Renewables Industry Group

Forsyth House

Cromac Square

Belfast

BT2 8LA

+44 (0) 7837 291 699

+44 (0) 2890 511 220





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