

COMMITTEE FOR THE ENVIRONMENT

MARINE BILL

POST COMMITTEE STAGE UPDATE 2

Committee Amendment to Marine Bill

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Our Ref: ENV372

5 December 2012

Dear Member

**Committee Amendment to the Marine Bill
post Committee Stage update**

On 13 September 2012 the Committee for the Environment considered concerns raised by the fishing industry about the potential for activities restricted or prohibited in a Marine Conservation Zone (MCZ) to be displaced and have detrimental ecological consequences on the marine area outside the MCZ.

The Department reiterated the response it gave during Committee Stage; that it did not intend to disrupt fishing or other interests when designating MCZs. This approach concerned representatives of both the fishing and environmental sectors as both believed it would be hard to achieve the objectives of a MCZ without some degree of displacement. The Department was unable to assure the Committee that there would never be displacement of an activity as a result of a MCZ designation.

On 29 November 2012 the Committee agreed to table an amendment to address the concerns of both interests. The proposed amendment would require the Department:

- (i) to consider the likelihood of a MCZ designation requiring any licensable marine activity or fishing for or taking plants or animals from the sea being restricted or prohibited
- (ii) to consider the environment within the MCZ if the activity is not restricted or prohibited
- (iii) to consider the environmental impact of the activity in the Northern Ireland marine area outside the MCZ should it be displaced

The details of the Committee amendment have been provided in the attached annex. The wording reflects other amendments to Clause 12 that were recommended by the Committee and accepted by the Department during Committee Stage.

Unless the Department subsequently decides to table its own alternative amendment to address displacement the Committee will table this amendment at Consideration Stage of the Marine Bill.

Copies of this and my previous correspondence on amendments to the Marine Bill post Committee Stage, along with supporting information and minutes of evidence, will shortly be available on the Assembly website:

<http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Marine-Bill/> .

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Anna Lo', written in a cursive style.

Anna Lo
Chairperson to the Committee for the Environment

Cc
Éilis Haughey, Roisin Kelly, Assembly Bill Office
Helen Richmond, DOE DALO

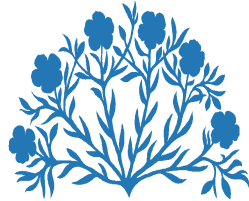
Marine Bill

Proposed Committee amendment to be moved at Consideration Stage
by the Chairperson of the Committee for the Environment

Clause 12, Page 9, Line 15

Leave out ‘may have regard to any economic or social consequences of doing so’ and insert ‘must have regard to–

- (a) any economic, cultural or social consequences of doing so;
- (b) the extent to which any of the following activities are likely to be prohibited or significantly restricted within the proposed MCZ–
 - (i) any licensable marine activity;
 - (ii) fishing for or taking animals or plants from the sea; and
- (c) to the extent that subsection 7(b) applies, the impacts on–
 - (i) the environment within the protected area if the relevant activity is not prohibited;
 - (ii) the environment elsewhere in the Northern Ireland marine area as a result of the activity being displaced.’



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 13 SEPTEMBER 2012,
SENATE CHAMBER, PARLIAMENT BUILDINGS**

Present: Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
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: Ms Anna Lo (Chairperson)
Mr Gregory Campbell

The meeting began in public session at 10:09am with the Deputy Chairperson in the Chair.

3. Chairperson's business

Members noted a paper on Member attendance at Committee for the Environment meetings held between 16 May 2011 and 31 August 2012.

The Chairperson informed members that they had been provided with a copy of a note of the meeting the Committee held with ANIFPO on 3 September in relation to the Marine Bill.

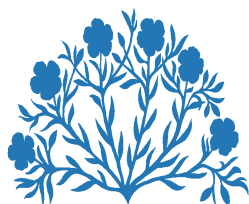
Agreed: That a letter is sent to the Department asking for a more detailed explanation of why it does not intend to include a requirement to consider the displacement effects of an MCZ designation.

The Chairperson informed members that they had been provided with comments from the Northern Ireland Marine Taskforce on the Committee's report on the Marine Bill.

Agreed: That a draft response is prepared for agreement at the Committee meeting on 20 September.

Anna Lo, MLA
Chairperson, Committee for the Environment
20 September 2012

[EXTRACT]



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 11 OCTOBER 2012,
ROOM 30, PARLIAMENT BUILDINGS**

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mrs Dolores Kelly
Lord Morrow
Mr Alastair Ross
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
Mr Barry McElduff

The meeting began in public session at 10:18am

7. Marine Bill

The Chairperson informed members that they had been provided with a Departmental reply to Committee queries on displacement, a note of Anglo- North Irish Fish Producers Organisation comments on amendments and NI Marine Taskforce comments on the Committee report.

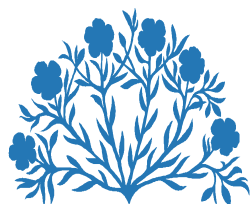
Agreed: That a copy of the reply is forwarded to ANIFPO and NIMTF asking, in light of the new information, if they feel an amendment to cover displacement is necessary.

The Chairperson informed members that they had been provided with three proposed Departmental amendments which, subject to Executive clearance, will come forward at Consideration Stage. The third amendment is in relation to the Committee's own amendment to promote the coordination of marine functions. The Department proposes to bring forward an amended version for technical reasons.

Agreed: That a copy of the proposed Departmental amendments is forwarded to those stakeholders who responded to the original Committee consultation on the Bill, asking for their comments.

Anna Lo, MLA
Chairperson, Committee for the Environment
18 October 2012

[EXTRACT]



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 25 OCTOBER 2012,
SENATE CHAMBER, PARLIAMENT BUILDINGS**

Present: Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Francie Molloy
Mr Alastair Ross
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: Ms Anna Lo (Chairperson)
Lord Morrow

The meeting began in public session at 10:02am with the Deputy Chairperson in the Chair.

5. Marine Bill

The Chairperson informed members that they had been provided with replies from both the Anglo North Irish Fish Producers Organisation and the Northern Ireland Marine Task Force on displacement. Members have also been provided with an extract from ANIFPO's response to the Committee's call for evidence on the Marine Bill.

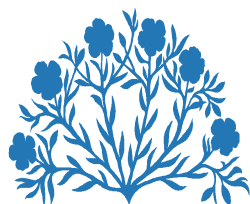
Agreed: That a draft amendment to cover displacement is prepared by the Bill Clerk for consideration at the next meeting.

Agreed: That a letter is sent to the Department requesting a briefing from officials at the meeting on 8 November 2012. Also ask the Department if it has any areas in mind for MCZ designation at this stage.

The Chairperson informed members that they had been provided with replies from stakeholders on the three proposed Departmental amendments.

Agreed: That a letter is sent to all MLAs informing them that the Department has proposed three new amendments for the Marine Bill and that the Committee will not be tabling their amendment at Consideration Stage of the Bill.

Anna Lo, MLA
Chairperson, Committee for the Environment
8 November 2012
[EXTRACT]



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 8 NOVEMBER 2012,
ROOM 30, PARLIAMENT BUILDINGS**

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Alastair Ross
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 Barry McElduff
Mr Francie Molloy
Lord Morrow

The meeting began in public session at 10:11am.

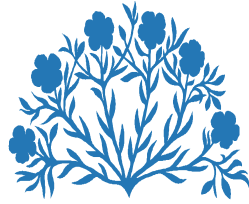
10. Departmental briefing on Marine Bill – Displacement

The Chairperson informed members that they had been provided with a Departmental reply on displacement, replies from ANIFPO and the Marine Taskforce and a draft Committee amendment.

Departmental Officials briefed the Committee and answered members' questions on the Marine Bill, specifically on the issue of displacement.

The main areas of discussion were the potential displacement impacts of individual and cumulative MCZs and how and when such impacts will be assessed in the MCZ designation process.

Anna Lo, MLA
Chairperson, Committee for the Environment
15 November 2012
[EXTRACT]



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 15 NOVEMBER 2012,
MASSERENE ROOM, CLOTWORTHY HOUSE, ANTRIM**

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Cathal Boylan
Mr Tom Elliott
Mrs Dolores Kelly
Mr Francie Molloy
Lord Morrow
Mr Alastair Ross
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)

The meeting began in public session at 10:06am.

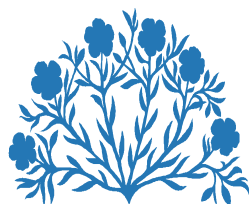
4. Marine Bill

The Chairperson informed members that they had been provided with a draft Committee amendment, a Departmental reply to Committee queries on displacement, NI Marine Taskforce and ANIFPO replies on displacement and the Hansard transcript of the Marine Bill briefing on 8 November 2012.

Agreed: That a decision on this amendment is deferred until further advice is received from the Bill Office.

Anna Lo, MLA
Chairperson, Committee for the Environment
22 November 2012

[EXTRACT]



**Northern Ireland
Assembly**

COMMITTEE FOR THE ENVIRONMENT

MINUTES OF PROCEEDINGS

**THURSDAY 29 NOVEMBER 2012,
SENATE CHAMBER, PARLIAMENT BUILDINGS**

Present: Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Tom Elliott
Lord Morrow
Mr Alastair Ross
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
Mr Francie Molloy
Mrs Dolores Kelly

The meeting began in public session at 10:07am.

9. Marine Bill

The Chairperson informed members that they had been provided with a draft Committee amendment on displacement, a Departmental reply to Committee queries on displacement, emails from NI Marine Taskforce on possible Committee amendment, NI Marine Taskforce and ANIFPO replies on displacement and Hansard transcripts of the Marine Bill briefing on 8 and 15 November 2012.

Members were also provided with a previous Departmental letter on sustainable development, a Departmental letter on sustainable development and draft Departmental

amendment, an extract from the Committee report on sustainable development and an extract from Minutes of Evidence of discussion on sustainable development.

Agreed: That a Committee amendment, taking account of NI Marine Taskforce input, is tabled requiring the Department to take into consideration the impact on the wider marine environment of restricting or banning certain activities within a marine conservation zone.

Agreed: That a letter is sent to all MLAs informing them that the Committee will be tabling an amendment on displacement at Consideration Stage of the Bill.

Agreed: That a letter is sent to the Department asking for further details on the Department's decision making in relation to an amendment on Sustainable Development.

Anna Lo, MLA
Chairperson, Committee for the Environment
6 December 2012
[EXTRACT]

**Committee for the Environment visit to Kilkeel and meeting with
Anglo-North Irish Fish Producers Organisation (ANIFPO)
Monday 3 September 2012**

Attendance:

Committee for the Environment

Ms Anna Lo
Mr Simon Hamilton
Mr Gregory Campbell
Mr Tom Elliott
Ms Dolores Kelly
Lord Morrow

ANIFPO

Mr Alan McCulla (ANIFPO)
Mr Dale Rodmell (Vice CEO NFFO)
Mr David Hill (Trawler owner)
Mr John Cassidy

Alex McGarel (Clerk)
Sean McCann (Assistant Clerk)
Gavin Ervine (Clerical Supervisor)
Antoinette Bowen (Clerical Officer)

Key points

ANIFPO stressed that the aim of the visit was not only to provide feedback to the Committee on its Marine Bill report but as part of an ongoing programme to educate people that the industry is thriving and sustainable. It recognises plenty of challenges, not least the predominant PR that tends to be associated with the industry, but also many opportunities.

1. The Northern Ireland fishing industry makes a significant contribution to the local economy. The value of the catch has gone up from £22m to £27m in the past year not including the value of the catch landed by the NI fleet in GB, Rol, Norway and Denmark
2. There is also significant revenue raised locally from associated industries based in the harbour such as boat repairers that attract visiting trawlers
3. All trawlers are locally owned and there is no public financial support or EU investment
4. The majority of the Northern Ireland catch, which is mainly prawns, is exported, largely to Spain and Italy
5. There are a number of schemes in place to ensure sustainable fishing in addition to decommissioning trawlers. E.g. Marine Stewardship Council accreditation, net modification and tail notching. Evidence from AFBI indicates that the nephrops population is stable if not increasing and this indicates that current fishing practices are sustainable
6. Marine renewable energy projects offer potential for trawlers to get alternative work and a number of trawlers are getting involved. However, ANIFPO does not see the need for additional measures to be put in place to restrict public

rights of navigation round developing sites, arguing that current restrictions on the grounds of safety are already adequate*

7. Concerns about evidence gathering. E.g. assuming cod stocks are decreasing because fewer cod are being caught as by-catch when there are a number of ongoing projects aimed at helping cod to escape from nets
8. Concerns that NIEA have already identified possible Marine Conservation Zones (MCZ) in Northern Ireland waters without any consultation with the industry and no indication of what management measures would be imposed
9. ANIFPO not saying 'no' to MCZs but want to be involved in the designation process from the outset
10. Concerns that the displacement impact of MCZs on surrounding waters and fish stocks is not being taken into account by NIEA

Enc: ANIFPO briefing on Northern Ireland Marine Bill Response to Committee Stage Amendments provided at visit

Additional ANIFPO publications are available to view in Room 247.

The Northern Ireland Marine Task Force's vision is to secure healthy, productive, resilient seas that can sustain coastal communities for the long-term

NIMTF Report on the Environment Committee's Clause by Clause scrutiny of the Northern Ireland Marine Bill

This report sets out our major areas of concern following publication of the Environment Committee's Report on the NI Marine Bill. In addition to this report, the NIMTF is also preparing detailed responses on each of these matters.

Summary

Whilst the Environment Committee discussed the NIMTF's key areas of concern in relation to the Marine Bill, we noted that there was a reluctance to suggest major changes to the Bill. Within this context, the NIMTF is concerned about the justification provided to the Committee by DOE Officials in relation to:

- Include general duties on sustainable development and climate change;
- MCZs: purpose
- MCZs consideration of socio-economic factors & implementation
- Removal of sea fishing defence between 0-6nm;
- The weakness of the Bill in relation to justification of actions by other public authorities.

Key issues

Include general duties on sustainable development and climate change

General duties need to be included in the Bill to ensure that all public authorities are required to act in a manner to further sustainable development and the mitigation and adaptation to climate change. There are high-level aims across the UK for both climate change and sustainable development, however the Bill does not make reference to either for duties on public authorities. It is critical for the future of our seas that all marine decision making is focused on ensuring that sustainable development and climate change mitigation and adaptation occurs. Including general duties would also assist marine governance by setting out clear, specific duties relating to the marine environment for all public authorities in NI.

The Department Officials have responded to this issue by stating that the provision on sustainable development in the Miscellaneous Provisions Act (2006) was sufficient legislation for ensuring public authorities consider the issue in its decision-making. This provoked concern in the Committee to avoid 'over-legislating'.

The Assembly's Research & Information Service report noted that there is no mention in the Bill to refer to the Miscellaneous Provisions Act 2006 to advise public authorities of this duty, nor to any

definition of sustainable development.¹ Furthermore, reference to climate change is absent from the Miscellaneous Provisions Act, whilst the UK Climate Change Act 2008 places a general duty on the Department of Environment rather than all NI public authorities. This paper indicates that the Marine Bill would be relying on assumptions of high-level objectives from the Marine Policy Statement, which is not sufficient when there are multiple departments and public authorities, which have a role to play in decision making about the marine environment.

We are also concerned by the interpretation of key provisions in the Bill and the weight to be given to socio-economic factors in decisions arising from the Bill. If the Department's intention is that environmental protection is at the heart of the Bill (and given the Department's comments to the Environment Committee, this seems far from clear), sustainable development and the impacts of climate change should be "front and centre" to the aims of the Bill. We consider that oblique references to sustainable development in other legislation and an absence of climate change considerations outside of broad policy objectives do not provide a clear purpose to the Bill.

We strongly suggest that following the Scottish Act's wording in relation to these general duties would strengthen the Bill significantly. This is not 'over-legislating'; it is providing vital clarity and guidance on how the Bill should be implemented in practice.

MCZs: purpose

We are concerned about the ambiguous description of MCZs and their purpose. Particular examples include discussions between Departmental officials and the Committee: *'I suppose that if we designate further zones ...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...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....' Marine conservation zones will be for seabed features, primarily.'*²

We are concerned that the role of MCZ's- ie conservation of marine fauna, flora and habitats- is not being clearly represented by these statements. **We would like clarity over the purpose of MCZs particularly in relation to the above comments, and a commitment that the legislation is about improving marine conservation.**

MCZs: socio-economic considerations

We are also concerned with specific re-wording of the Bill to include the word 'must' instead of 'may' in relation to consideration of social, economic (and now undefined cultural) activities.

¹ Cave, S. (2012) *Research and information services- Briefing Paper- Marine Bill: Sustainable Development and Climate Change General Duties.* at <<http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/environment/11112.pdf>>

² Committee for the Environment, Official Hansard Report, 31 May 2012, available at <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/May-2012/Marine-Bill--Informal-Clause-by-Clause-Consideration/>

Weighing socio-economic factors against the need for environmental protection is a complex balancing exercise. For effective conservation this process should be undertaken by first prioritising the need for environmental protection before introducing social economic or cultural factors for consideration.. Making the consideration of socio-economic factors an obligation rather than a discretion radically shifts that balance towards favouring socio-economic factors at the expense of environmental protection. In this context, the meaning of “cultural” (and therefore its relative importance) is also unclear. We believe that conservation outcomes would be severely compromised if socio-economic and cultural factors are given precedence during the designation process. **We believe that the wording should remain as ‘may consider’ and that the word ‘cultural’ needs to be defined as it is more ambiguous than both economic and social.**

MCZs: issues of implementation

In terms of the implementation of Part 3 of the Marine Bill, we are concerned with the lack of focus on creating a network of MCZs which will be environmentally relevant to Northern Ireland, and not just the broader UK waters. The Committee accepted the Department Officials’ response that the MCZ network was part of the wider UK context, and that Northern Ireland should not be looked at in isolation.³ In our view, this interpretation significantly dilutes any duty to designate MCZs specifically within NI waters. The NIMTF notes that all other UK administrations are working on achieving local coherence first before attempting regional coherence, and that International guidance also favours this approach – i.e. the complete reverse of NI’s approach.⁴

We are also concerned about the apparent lack of integration between the two teams involved in marine spatial planning and MCZ designation. **This process and the two teams- needs to be joined together, so that MCZs are not delivered after a marine plan is developed, and that all potential uses of the sea are examined by the plan team.**

Removal of Sea-fishing defence clause between 0-6nm

We have identified the ‘sea-fishing defence clause’ (clause 32) as an important issue for the Marine Bill. The Committee investigated it, but were content to accept the Departmental response that: *‘Fishing activity should be treated equally, irrespective of whether it is two miles out or eight miles out... 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.... For clarity and for ease of enforcement, it would be better to treat them all exactly the same.’*

³ Committee for the Environment- Official Hansard Report 7 June 2012, available at [http://www.njassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/June-2012/Marine-Bill-informal-Clause-by-Clause-Consideration/](http://www.njassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/June-2012/Marine-Bill-<u>informal-Clause-by-Clause-Consideration</u>/)

⁴ Natural England (2009) *Representativity and replication for a coherent network of Marine Protected Areas in England’s territorial waters* - at <<http://publications.naturalengland.org.uk/publication/40008>>

The NIMTF strongly disagrees with these arguments, as fishing activity is already treated differently according to area, and MCZs and their byelaws are supposed to be for protection measures which may restrict one or more types of fishing activity. In our view, "ease of enforcement" means no enforcement and this is extremely concerning, as without proper enforcement, MCZ byelaws will be ineffectual and pointless. Furthermore, in terms of creating disparity across the UK, the UK fishing industry works across numerous countries and jurisdictions with differing fisheries regulations and rules, it would therefore be unlikely to cause real disparity. We reiterate that the issue at hand is about the prevention of destruction of MCZs, and not the inherent right to fish. **It would be much more effective for Northern Ireland to remove this defence for the MCZs lying in the 0-6nm area,** so that at least in this zone the MCZs are given adequate legal protection without undue bias to fishery interests.

Legal weakness of the Bill in relation to NI public authorities.

Given the current governance structure for NI, the NIMTF is concerned about how the Bill will be implemented. In particular the lack of enforcement powers held by the Department over other NI Departments, as laid out in Clauses 21-23, reveal flaws in the future implementation of the Bill. Departmental officials' advice to the Committee was that: *'the Department cannot take court action against other public bodies; so, in that respect, there is really nothing that we can do.'* The Committee accepted this advice, although pushed for the wording to reflect a requirement on DoE to request a written explanation from the authority.

Whilst we accept that legal action by a Government department is not possible against Government Departments, other public bodies such as local councils are not immune from enforcement. However, since the majority of decision-making under the Bill would be by Government Departments, the lack of availability of any sanction – even a requirement to provide a written explanation in a fixed period of time – is a significant concern. The lack of a mandatory requirement for justification of a decision by a public authority under the Bill effectively leaves any substantive challenge solely in the hands of a private third party by way of judicial review. In the NIMTF's view, this simply highlights the broader structural failings of NI Government arising from the lack of independent scrutiny of Departmental decisions by an expert body and the need for an independent MMO to secure effective implementation of the Bill. **At the very least, the Department should be compelled to require that another public authority is accountable for its actions in writing, and that such an account must be provided within a fixed period of time.**

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

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Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
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Belfast
BT4 3XX

Telephone: 028 9025 6022

Email: privateoffice.assemblyunit@doeni.gov.uk

Your reference:

Our reference: CQ/214/12

Date: 21 September 2012

Dear Alex,

Marine Bill

Following its meeting on 13 September 2012 with the Anglo-North Irish Fish Producers Organisation (ANIFPO), the Committee has requested additional information from the Department on the potential displacement impacts of Marine Conservation Zones (MCZs).

The potential displacement impacts of individual and cumulative MCZs on fish stocks and quotas and the ecology of surrounding waters.

At this stage it is difficult to clearly define the number, location and management measures of possible MCZs in our waters.

MCZs will be designed to safeguard vulnerable or unique species and habitats of national importance in the Northern Ireland inshore region. The growing scientific knowledge of the seabed through ongoing monitoring and research work for marine European designations will help to identify national sites for designation when the Marine Bill comes into operation.

The Marine Bill is based on sustainable development principles, in that the economic and social activities will be taken into account as well as environmental considerations. The Department's aim is to find the right balance between the strength of the conservation advantages an MCZ offers, relative to the socio-economic implications of its likely management measures.

After the enactment of the Bill it is intended that Strangford Lough, Northern Ireland's only Marine Nature Reserve (MNR), will become the first MCZ. As the committee is aware, there are already fishing restrictions in place for Strangford Lough.

How and when in the MCZ designation process will such impact be assessed?

Identification of MCZs will be science-based, but socio-economic data will also be considered when identifying areas likely to be impacted.

Stakeholder participation will be an important element of the designation process relating to MCZs, which will assist in providing information for social, economic and environmental considerations. It is the Department's policy to fully consult on each MCZ and take account of other activities and functions as part of the decision making process.

It will be necessary to demonstrate what impact the proposed MCZs may have on stakeholders' activities; the estimated economic, environmental and social costs and benefits of the recommended MCZ. The assessment will, initially, provide a broad overview of the potential impacts on an individual site basis. It will develop as further information is gathered, reflecting the iterative nature of the consultation process and the importance of the stakeholder input.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond
DALO
[by e-mail]



Northern Ireland Marine Bill

Response to Committee Stage Amendments

We welcome the scrutiny that the Environment Committee has given to the draft Bill and stakeholders' responses to it. In particular we note and welcome the following:

- **The strengthening of the co-ordination of marine policy development and implementation**
- **Ensuring that the sea fisheries defence is applied consistently and not withdrawn due to convenience in the inshore region.** This helps to ensure that parity is achieved in the application of measures for both inshore and offshore fisheries.
- **Refrainment from the automatic inclusion of Highly Protected Sites.** We support this position and believe that the level of protection for any MCZ should be determined by the particular circumstances of the site and what is needed in order to protect it. Pre-determining high levels of protection at the outset for its own sake would not be consistent with an evidence based approach.

Fisheries Displacement

One of the key issues we have sought to address through amendments to the Bill is the provision for measures that effectively address fisheries displacement.

MCZ Selection Process

As a prelude to the issue, we first note and welcome the Committee's adopted proposal to ensure that socio-economic factors "**must**" be considered in the designation of sites. This is a more pragmatic position than is the case under the UK Act and places an evaluation of all of the evidence including socio-economic on more of a level playing field in order to inform designation, rather than enforcing an automatic conservation override.

It is also right from the standpoint that we often have very little information on the existence of conservation features, some of which turn out to be quite abundant as survey data improves e.g. *sabellaria* reef, ocean quahog. It would be questionable to provide special protection status to such features where ever they are found in cases where high socio-economic costs would result.

However, the test of whether our displacement concerns will be addressed will be in the selection process designed by DoE. The problem is that decisions are not just about two dimensional trade-offs between socio-economic factors and ecological ones. It is important to find the synergies between conservation and existing uses, optimising the use of marine space in order to generate the best win-win outcomes for both.

Crucially, decisions need to accommodate the risks of restricting activities in one area upon the conservation outcomes elsewhere if the stated intentions of the legislation are to be best realised.

These are second-order considerations, knock on-effects, or unintended consequences that result from a displacement of fisheries and we need to guard against them.

We regret that the DoE response to the Committee on this issue has not recognised this but has treated our concerns simply as straightforward socio-economic ones:

- It has given clarification that MCZ will not cover large areas.
- It has also stated its intention is not to disrupt fishing activity.

DoE has not explicitly stated that it will take into account the potential consequences of displacement which are social, economic but also ecological.

Its response has therefore not conveyed an understanding of the issue and consequently this gives us greater cause for concern that it will not be effectively addressed in the designation process.

We raise our concerns strongly here as we have experienced this problem once already in an English process that also sought an overly simplistic approach to avoid existing activities. The avoidance of existing activities only went as far as other considerations did not intervene.

Ultimately this has led to selections where fisheries displacement will likely lead to negative conservation outcomes when alternative locations may have been identified. This is no more evident than in the Irish Sea in the selection of MCZs upon prime prawn fishing grounds.

We see this as a failure of not explicitly taking account of fisheries displacement in the process and that is why we have proposed it in the Northern Ireland Marine Bill as a way of learning from past mistakes.

The risk is if it is not made explicit in the legislation it will not be addressed and the DoE response has not given any assurance that it will.

On the other hand, if we assume that DoE does appreciate the issue and agrees with it, then we ask why the proposed sub-clause should be rejected?

Post MCZ Selection

As well as proposing a sub-clause to integrate displacement consideration in designation, we also advocate a post MCZ selection displacement assessment – based upon a similar provision in the Scottish Act.

We think that even with the best selection process to avoid impacting existing users of the sea, it is quite possible that impacts could occur to parts of the fishing fleet. It might only be a few businesses let's say, but those individual businesses may be hit hard; they may go out of business.

We do not think it is right or fair that those businesses should be forced to bear such costs without sufficient redress through mitigation or compensatory measures. We would not expect a farmer simply to be evicted from the productive assets they depend on in order to make use of them for a different purpose and we therefore maintain that neither should marine resource users.

The specifics of this issue were not raised by the Committee, perhaps because the proposed clause is also associated with addressing displacement.

Renewables / Right of Navigation

We note that the renewable sector has requested that authority be given to allow for the common law rights of navigation to be extinguished in association with such development. Whilst a separate consideration from the Bill and the responsibility of DETINI, we raise the issue here in case

any Environment Committee MLAs become associated with the development of such potential regulations. We note that:

- Safety requirements, which we consider should form the only reasonable rationale for the exclusion of activities can be addressed through safety zones as provided for in other UK waters under the UK Energy Act (2004). There is no need, therefore, for additional provisions to extinguish navigational rights. We do not believe that the provision has ever been applied under this legislation.
- If this were to occur then it would place a greater onus upon effective mitigation and compensatory measures for any loss of access to fishing grounds or significant effects to operating costs.

MCZ Conservation Objectives

Our concerns remain that conservation objectives may be set at the designation stage for MCZs when there may be insufficient evidence in order to justify them. We think that there needs to be sufficient flexibility in the process to allow the setting of draft objectives in order to address this possibility.

Marine Planning: Primacy for Existing Activities

We welcome that DoE has given assurance that existing activities would be taken into account in marine planning. However, we consider that is not equivalent to giving primacy or a presumption in favour to existing activities through a clear policy steer from the legislation.

National Federation of Fishermen's Organisations and Anglo-Northern Irish Fish Producers' Organisation: September 2012



BY EMAIL:

Mr. Gavin Ervine
Committee for the Environment
Parliament Buildings
Ballymiscaw, Stormont
Belfast, BT4 3XX

18 October 2012

Dear Gavin,

Northern Ireland Marine Bill

Many thanks for your email of 12 October and for enclosing the correspondence from the DOE's private office.

At the outset I should say we had an encouraging meeting with Minister Attwood last week. Having said that and given the content of Helen Richmond's letter we remain firmly of the opinion that a sub-clause is still needed to deal with the displacement issue.

In reaching this conclusion we would make the following points, which draw upon the content of the letter.

- DoE has not effectively addressed the request for information on displacement effects on fish stocks and wider ecological impacts.
- Whilst we understand on the one hand that no one can make an assessment of those impacts when there is no proposed network, the letter does not offer any indication that such consideration would feature as part of the process of site selection.
- Specifically the issue is absent when it is stated that "The Department's aim is to find the right balance between the strength of the conservation advantages an MCZ offers, relative to the socio-economic implications[d1] of its likely management measures."
- In this it seems to us that the Department is continuing to treat the selection process as a two dimensional trade-off between social and economic factors and MCZ site conservation benefits, rather than considering the net ecological outcomes at a wider regional scale which would need to factor in a consideration of human pressures displacement alongside other scientific considerations driving site selection.

We believe this can be achieved in practice through the appropriate development of planning decision making tools that would supplement an engagement process with stakeholders, but given the apparent lack of appreciation of the issue by DoE to date, the prospects of achieving such would be much strengthened by the inclusion of specific amendment/s to the Bill as outlined in our evidence to the Committee.

We hope these comments are of help. As we told the Minister last week, we support the creation of a Northern Ireland Marine Act, which is at the cutting edge of global marine legislation. In dealing with the issue of displacement we believe this can be achieved.

Finally please pass on our sincere thanks to the Committee Chair and members for their continuing interest in this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan McCulla', with a long horizontal flourish underneath.

Alan McCulla OBE (Chief Executive)



Displacement

On this issue, the NIMTF would like to make the following general comments.

Dependent upon what feature a particular MCZ may be intended for it will not automatically follow that this will require any action that would, in turn, lead to a ban on fishing and therefore the question of displacement arising may not arise. Each proposed site would need to be considered on a site by site basis whilst feeding into a locally coherent network of Marine Conservation Zones.

Where fishing activity is regulated within a proposed MCZ there is the potential of positive benefits. This is evidenced by the experience a number of sites within UK waters and many others elsewhere. Within the Irish Sea we have the experience of the Isle of Man in respect to scallops and around the island of Lundy the lobster population has increased to the benefit of both the lobster population and local fishermen.

Overall, fishing will have to be incorporated into the general marine plan and it is already clear that in the determination of MCZ socio-economic factors will be taken into consideration.

Dear Anna

In advance of the Committee discussing the suggested “displacement” amendment.

It is currently the position of the NIMTF that we would not be supportive of any additional change to the existing clause. In short, we believe that the issue of displacement would be sufficiently covered under the socio-economic and “cultural” part of the clause.

Whilst we recognise that the question of displacement is an important issue for certain stakeholders, we do not believe that this suggested amendment is necessary, and could unfairly bias the MCZ designation process towards human activities rather than environmental concerns.

We would welcome an opportunity to discuss the detail of the NIMTF position on this matter with the Committee as soon as possible and we will be preparing a written brief on the matter in the interim.

We are concerned that the amendment may have been drawn up with the understanding that the NIMTF as an environmental NGO was supportive of such a clause– when in fact this is not the case.

Yours

Ricky Devlin
Marine Campaign Co-ordinator
Northern Ireland Marine Task Force (NIMTF)

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7QT<<http://maps.google.co.uk/maps?q=bt87qt>>

Good afternoon,

We are writing in relation to the Committee's suggestion to include an amendment to Clause 12 of the NI Marine Bill on displacement caused by MCZs. The NIMTF does not believe that it is necessary to make any further amendment to this Clause.

Our primary reason for this is that Clause 12 already provides a requirement for the Department to consider both social and economic consequences of designating. Displacement of fishing activity and other licensable activities would fall easily within both these categories, and so will already be considered with the existing wording in the Bill. We would therefore be concerned that including an additional sub-set of economic/social activity would create unnecessary hurdles for protection of our seas and the creation of a network of sites. We are required under both UK and European law to designate protected areas, so that our seas can be healthy and resilient.

We understand that Scotland chose to consider 'displacement' in addition to social and economic considerations. However we would like to point out that this is in relation to the level of restriction of activity, and not to the choice of site for designation. Furthermore, Scotland included a balanced list of factors to consider, which includes the (most likely positive) environmental impact of restricting the activity within the protected site. This is important, as the decision making process should also consider the positive impacts on the site when weighing up designation, and the negative impacts on the environment should adequate protection not be offered.

Whilst the NIMTF feels strongly that this amendment is not necessary, and could hamper the designation process, we realise that the Committee members may wish to see such an amendment in the legislation. We would therefore like to offer a suggested wording for the Committee's consideration, which goes some way to balancing environmental and social/economic impacts of protection measures.

Please see the proposed amendment below:

"(7) In considering whether it is desirable to designate an area as an MCZ, the Department [may] have regard to

- (a) any economic [cultural] or social consequences of doing so;
- (b) the extent to which any of the following activities are to be prohibited within the proposed MCZ-
 - (i) any licensable marine activity; or
 - (ii) fishing for or taking animals or plants from the sea; and
- (c) to the extent that subsection 7(b) applies, the impacts on;
 - (i) the environment within the protected area if the relevant activity is not prohibited,
 - (ii) the environment elsewhere in the Northern Ireland marine area as a result of the activity being displaced."

Please contact either myself or Ricky Devlin if you would like to discuss this issue further.

Kind Regards,

Marguerite

Marguerite Tarzia

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The Northern Ireland Marine Task Force (NIMTF) is a coalition of eight environmental non-government organisations campaigning for new, integrated and comprehensive marine legislation for Northern Ireland through a Northern Ireland Marine Bill.

