



Northern Ireland
Assembly

Committee for the Environment

**OFFICIAL REPORT
(Hansard)**

**Marine Bill: Council for Nature
Conservation and the Countryside**

3 May 2012

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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

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.

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.

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.

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.

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.

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.

That is a setting statement or comment from me.

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.

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.

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.

Peter has touched on the lack of adequate resourcing and the organisational structure inadequacies.

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.

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?

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.

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.

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.

The Chairperson: Thank you very much, Patrick and Peter. As usual, that was a very informative presentation.

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?

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.

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.

The Chairperson: I think that an independent MMO would be able to attract more of that expertise more easily than the Department.

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.

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.

The Chairperson: Would that create the potential for infraction cases being brought against us in the future?

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.

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.

Mr Casement: I think that that is absolutely right.

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.

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?

Mr Archdale: It is difficult.

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.

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.

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.

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.

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 —*

The Chairperson: Thank you for bearing with us.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

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.

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.

The Chairperson: There is also the problem of inconsistency in planning approvals.

Mr Casement: Yes, indeed. There is all that.

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.

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?

The Committee Clerk: The intention is to bring functions together, so that makes sense.

The Chairperson: Are they not going to give it to local councils?

Mr Archdale: If you would like to hear more on coastal processes, Professor Alford, one of our members is an expert on that.

Mrs D Kelly: We could look at that at a later date, perhaps.

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.

The Chairperson: From memory, I think that there is a definition.

Mr Casement: At the moment, it is the high water mark, but that will change. Obviously, it is not a fixed point.

The Chairperson: Is it not?

Mr Casement: As the sea rises, it will extend further inland.

The Chairperson: Yes, through climate change.

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.

The Chairperson: That is why we need to take adaptation to climate change into consideration and put it into the Bill.

Mr Archdale: Very much so. It is crucial.

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."

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, uncharted water. *[Laughter.]* You flag that up in your submission, and I suspect that you did not put that in lightly.

Mr Casement: No, indeed. The definition of these terms is very important.

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."

"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?

Mr Casement: It does.

Lord Morrow: Are we going to go down this road?

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.

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.

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.

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.

Lord Morrow: With great care. *[Laughter.]*

Mr Casement: I am sorry, I should qualify "everybody".

The Chairperson: Thank you very much, Peter and Patrick. I am sure that we will see you again.

Mr Casement: We have another appointment quite soon.

Mr Archdale: Thank you very much.