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Northern Ireland Marine Bill

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.

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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 licensing; 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.

¹ MOU between UK Government and ROI Government http://www.detini.gov.uk/memorandum_of_understanding.pdf

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.

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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.

² Department of Environment, UK Government's Marine Bill
http://www.doeni.gov.uk/index/protect_the_environment/water/marine_bill_.htm

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.

- 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:

³ Northern Ireland Assembly, Marine Bill <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation---Current-Bills/Marine-Bill/>

- 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.

⁴ Northern Ireland Assembly, Marine Bill Introduced Explanatory and Financial Memorandum

<http://www.niassembly.gov.uk/Assembly-Business/Legislation/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

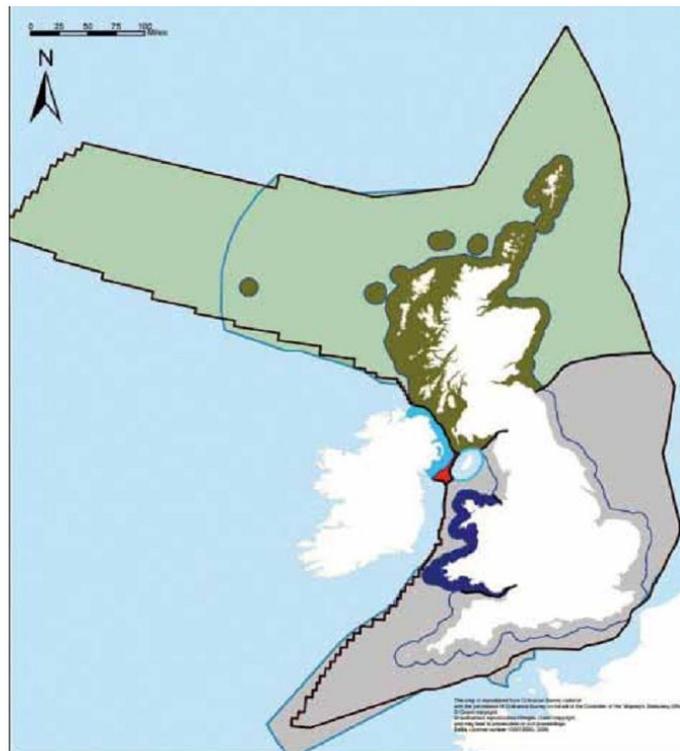
Adjacent Waters Boundaries (Northern Ireland) Order 2002 - chart to show "the Northern Ireland Zone" as defined in Order - for information purposes only.



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

UK Marine Plan Area – Inshore And Offshore Regions



Key to Northern Ireland Marine Area	
	Northern Ireland inshore region
	Northern Ireland offshore region

(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.

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

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 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

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

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.

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.

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.

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.

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.

¹⁵ Synopsis of responses to DoE consultation on NI Marine Bill Policy Proposals

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

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>

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 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

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>

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]

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 consideration ²⁵.

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.

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

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)

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 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.

²⁸To access this view [Nature Conservation and Amenity Lands \(Northern Ireland\) Order 1985](#)

²⁹ Consultation on Draft Marine Position Paper http://www.doeni.gov.uk/consultation_on_draft_marine_position_paper.pdf

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

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

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.

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

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 makes brief reference in article 38 to the sea bed, but not the intertidal zone and does not offer the same level of management provided for in MCZs. 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 (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.

³⁴ Synopsis of responses to NI Marine consultation, 2010

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

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'.

⁴⁰ Kenyon, W, Rehfish, A & Wright, K. 2009. *The Marine (Scotland) Bill*. SPICe Briefing 09/41: p24.

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

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.

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

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]

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'.

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 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

⁴⁴ Synopsis of responses to NI Marine consultation, 2010

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

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

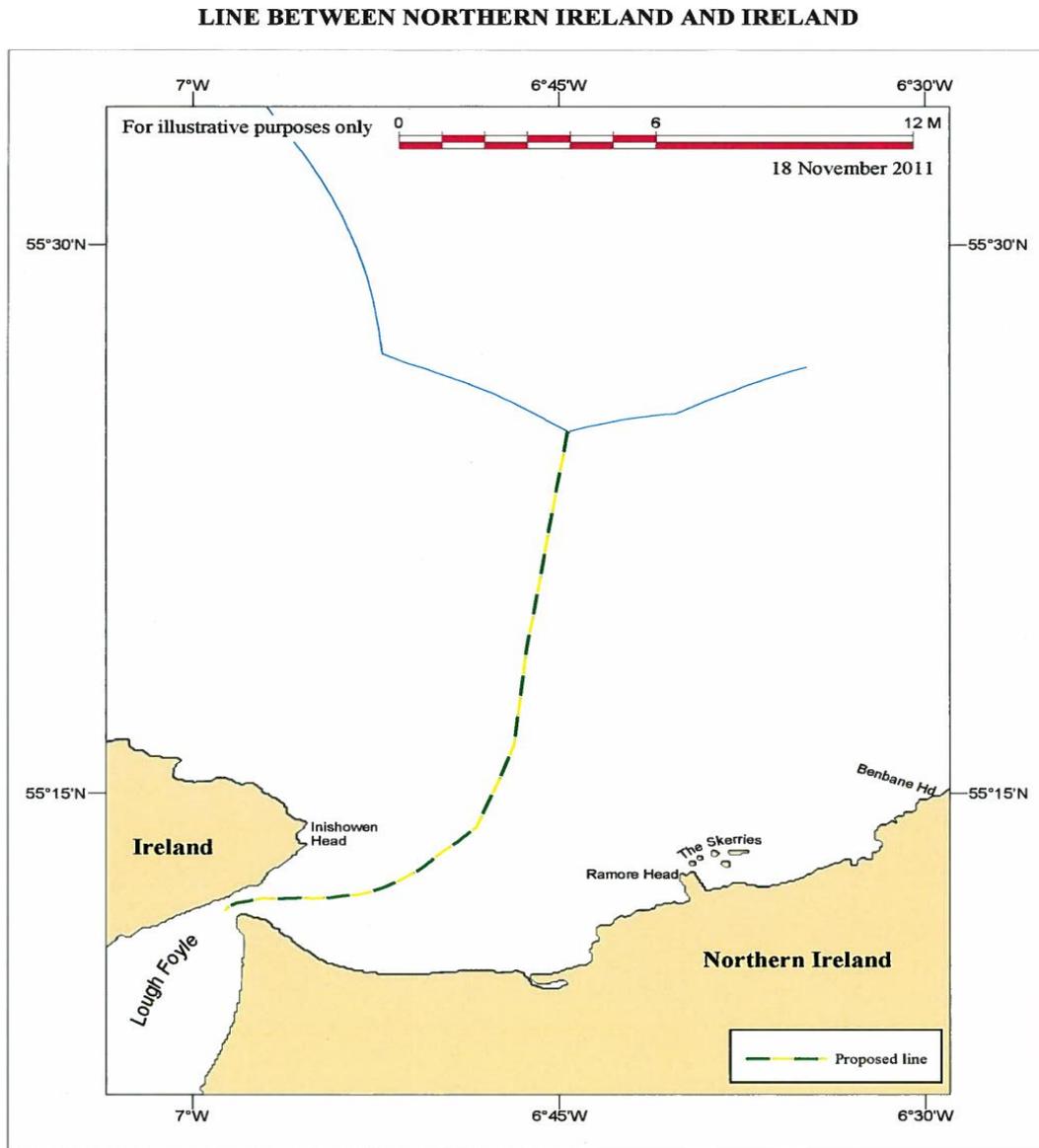
There do not appear to be any provisions in the Bill in relation to climate change. Understanding that climate change is a difficult topic to integrate into a piece of legislation, during consideration of the Scottish Marine Bill, a general concern was expressed by the Rural Affairs and Environmental 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

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

