

**Corporate and European Services Division
Central Management Branch**

Alex McGarel
Clerk to the Committee for the
Environment
Room 245
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX



Dundonald House
Ballymiscaw
Upper Newtownards Road
Belfast BT4 3SB



Our Ref:
Your Ref:
Date: 3 April 2012

Dear Alex

Your letter of 12 March refers.

NI Marine Bill – Impact on DARD Responsibilities

General

In principle DARD welcomes the Marine Bill as it should provide a framework in which sustainable development of the Marine environment can take place in a coherent manner that respects the interests of all those who undertake activities within it.

Fishing is a major activity in our seas and hence this response has been prepared by the Department's Fisheries and Environment Division. However our Rivers Agency has responsibility for coastal flood risk management, and therefore it also has an interest in the Bill

Both Fisheries and Environment Division and the Rivers Agency have made contributions to the Departments responses to the Department of the Environment (DOE) during the course of the development of the Bill. Both are also represented on the DOE's Inter - Departmental Marine Co-ordination Group where there is opportunity for all Departments to exchange views with the DOE on Marine Bill policy. The Department has therefore been working closely with the DOE and other Departments in the development of the Bill to this stage.

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



The Environment Committee has asked DARD for specific comments on clauses relating to Marine Planning and Marine Conservation within the Marine Bill. These specific points, and others, are discussed in the following sections and the Department's position on these matters has been made known to the DOE during the development of the Bill.

Marine Planning

Clause 2: Marine plans for Northern Ireland inshore region

Subsection (3) (a) defines a marine plan and requires that a marine plan must be prepared in accordance with the process set out in Schedule 1. Schedule 1 Paragraph 4 specifically states that DOE must consult the other relevant Northern Ireland departments at key stages during the plan preparation.

The Department believes that this is a highly important requirement and vital to the development of an integrated and coherent Marine Plan that respects all activities in the Marine Area.

The Department has stressed at various times the need for consultation with the fishing industry as it is likely to be significantly impacted by increases in other marine activities. Transparency is vital if marine users are to have confidence in decisions that are made downstream. It is important that where possible integration and synergies in marine activities need to be explored in order that displacement of existing activities, such as fishing, are minimised. Planning must be strategic rather than piecemeal in order to avoid unintended consequences.

The Department has been kept fully involved during the development of the Bill and along with the Rivers and Loughs Agencies is represented on a DOE led Inter-Departmental Co-ordination Group at which areas of concern can be raised and discussed.

The Department has stressed the need to include Marine Conservation Zone planning into the overall Marine Plan. For example, since offshore wind farm developments will lead to the exclusion of fishing activity it makes sense to try to consider these as Marine Conservation Zones as well if you are trying to meet some nominal amount of sea area conserved. Such an approach may reduce the total area lost to fishing and other activities.

In relation to the Flood Management Policy Review it has been accepted that there is a need for a strategic overview of coastal flood risk and erosion. Rivers Agency's work under the EU Floods Directive will ensure that coastal flood risk will be managed going forward. However, this leaves the matter of coastal erosion to be addressed and the Agency continues to seek assurance that this requirement will be realised through the 'Marine Planning' process.

Subsection (3) (b) defines a marine plan and requires that a marine plan must state the policies of the relevant Northern Ireland departments.

This clause is important and will help the public to understand the role and functions of various departments and agencies. DARD policies are outlined in the DOEs recent

If you have a hearing difficulty you can contact the Department via the textphone on 028 9052 4420



consultation entitled “Draft Northern Ireland Marine Position Paper”. This can be sourced at the following link.

http://www.doeni.gov.uk/index/protect_the_environment/natural_environment/marine_and_coast/marine_policy.htm

Clause 4: Withdrawal of marine plans

This clause enables DOE to withdraw a marine plan after consultation with the relevant Northern Ireland departments.

We have no objection to this Clause. Whilst there is provision to amend a Marine Plan it may be appropriate to withdraw a Plan completely and replace it and this Clause will provide for that. Departments will have the opportunity when consulted to explore the rationale for complete withdrawal of a Plan.

Clause 6: Decisions affected by a marine plan

This clause makes provision about the effect which any appropriate marine plans are to have on the taking of certain decisions by a public authority.

Subsection (2) requires that a public authority give its reasons if making decisions which do not follow the marine plan.

Subsection (3) requires a public authority to have regard to any appropriate marine plan when taking any decision which relates to a function capable of affecting the Northern Ireland inshore region that is not an authorisation or enforcement decision.

Clause 6 appears reasonable and necessary for the delivery of a Marine Plan and its objectives and ensures that Departments cannot lightly disregard the requirements of a Plan. However it is vitally important that during the development of a Plan that the implications of the Plan on Departmental decisions and authorisations are fully understood and explained. As with so much in this Bill it is not the framework set by the provisions of the Bill that may lead to difficulties but the detailed implementation thereafter.

Part 3: MARINE CONSERVATION ZONES (MCZs)

Clauses 11 to 13: Designation of MCZs

The Department acknowledges that the process for designation follows closely that contained in the UK Marine and Coastal Access Act 2009 and DARD is broadly content with this.

It should be noted that should management measures adopted within an MCZ affect fishing opportunities enjoyed by other UK Fisheries Administrations and/or other Member States, consultation will be required with these Administrations and, in the case of the latter, with the

If you have a hearing difficulty you can contact the Department via the textphone on 028 9052 4420



European Commission. It is therefore especially important that DARD is involved at an early stage in the designation process in case such impacts are likely.

Clause 14 Consultation before designation

We have previously expressed our reservations that a requirement to consult with other Departments at key stages, similar to that provided for in relation to Marine Plans under Schedule 1 Paragraph 4, is not provided for MCZ designation. The DOE maintained that the consultation arrangements set out in Clause 14 are adequate. However we gained assurances from the DOE that final decisions on MCZ designations must come before the Executive due to the cross cutting nature of their effects. We are content with the designation process and consultation arrangements outlined in the Bill on the basis of this understanding.

As with Marine Planning the general provisions in the Bill with regard to designation are acceptable but difficulties may emerge once implementation begins. We would like to highlight one example. It is the Departments view that designation of MCZs by the DOE in the NI inshore region and designation of MCZs by the Secretary of State in the NI offshore region should be integrated and considered as part of one process. We have responded to DEFRA on the matter of proposed MCZs in the NI offshore region and stressed this need for integration. This submission is enclosed for your information as it gives a useful background about the potential issues in relation to sea fishing. DARD has devolved responsibility for sea fisheries in the inshore and offshore part of the NI zone, whereas DOE has delegated responsibility for marine nature conservation only in the inshore area.

There is a danger that by not integrating these designation processes and not considering other developments such as offshore renewable energy within a single local planning process, activities such as fishing may be excluded from areas inappropriately and may be excluded from a larger area than is necessary. The NI fishing industry holds approximately 80% of the fishing opportunities in the Irish Sea and is therefore likely to be more affected than most by lack of integration of Irish Sea marine plans.

Our understanding is that marine nature conservation is ultimately a reserved function and any MCZ designations require the confirmation of the Secretary of State. For example, Clause 14.6 of the Bill allows the DOE to introduce MCZs where it thinks there is an urgent need to protect an area, without consultation with others apart from the Secretary of State. Furthermore Clause 26(1) provides DOE with powers to introduce emergency byelaws without confirmation by the Secretary of State.

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

This clause places a general duty on public authorities to carry out their functions in the manner that they consider best furthers – or least hinders – the conservation objectives set for MCZs. The duty only applies so far as is consistent with the proper exercise of a public authority’s functions and only where such functions may have a more than insignificant effect on the MCZ. If a public authority thinks that the exercise of its functions will or might significantly hinder the conservation objectives of an MCZ, it has to notify the DOE.

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



Subsections (4) to (8) provide that a public authority must inform DOE if it intends to carry out an activity which might significantly hinder the conservation objectives of the MCZ. Where a public authority has notified DOE the authority must wait 28 days before deciding whether to go ahead as planned.

The Department is content with the arrangements set out in subsections (4) to (8). They are reasonable and are similar to the arrangements in the UK Marine and Coastal access Act 2009.

It is however important that the DOE takes due consideration of the responses it receives when consulting public authorities and works with them to address particular concerns where a proposed designation is likely to cause an authority particular difficulty in exercising its functions.

Subsections (9) to (10) require a public authority to inform DOE when it considers that an offence (in relation to which it has functions) has occurred that will or may significantly hinder the achievement of an MCZ's conservation objectives.

We agree with the necessity of having a requirement to notify the DOE of "relevant events" (as worded in the Bill) that may hinder the achievement of conservation objectives.

However the Bill also expects authorities to be able to judge the risk of such relevant events hindering the achievement of a MCZ's conservation objectives. These would need to be explored with the DOE during the designation process and some form of guidance agreed for each site.

Subsection (11) requires public authorities to have regard to any advice issued by DOE.

The Department notes that in the UK Marine Act public authorities are required have regard to advice or guidance given by, an "appropriate statutory conservation body" rather than the a Government Department (the DOE). In England these bodies would include the Joint Nature Conservation Council and Natural England. We understand that in NI there is no equivalent to these expert independent bodies and that is the reason why guidance falls to the DOE.

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

This clause applies to all public authorities with responsibility for authorising applications for certain activities capable of affecting a protected feature of an MCZ or any geological or geomorphological processes on which the conservation of a feature is partially or wholly dependent. It does not apply where the effect is insignificant, in order to avoid capturing very minor matters.

Subsection (2) requires a public authority to inform DOE if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ.

Subsection (3) states that no authorisation may be granted until 28 days have passed since notice was given.

Subsections (5), (6) and (7) impose a duty on an authority not to grant authorisation unless it is satisfied that there is no significant risk that the activity will hinder the achievement of the conservation objectives or if certain conditions are met. These conditions are: there is no other way to carry out the act which is less likely to hinder the objectives; the benefit of the act to the public clearly outweighs the risk of environmental damage; and the person seeking authorisation will take measures of equivalent environmental benefit to the damage that will be, or is likely to be, caused.

Subsection (10) requires public authorities to have regard to any advice or guidance given by DOE.

The Department notes that Clause 21 places broadly similar duties on public authorities here as apply to authorities under Section 126 of the UK Marine and Coastal Act.

The Department notes as previously that in the UK Marine Act public authorities are required to notify acts that might affect conservation objectives, to an “appropriate statutory conservation body” rather than a Government Department (i.e. the DOE).

Clause 22: Advice and guidance by DOE

This clause confers powers and duties on DOE to give advice or guidance to public authorities in respect of MCZs. Public authorities are required to have regard to this advice or guidance when carrying out their duties.

Subsections (1) and (2) specify the issues on which advice or guidance may be given and allows it to be issued in respect of one or more MCZs and to one or more authorities. Advice and guidance may be issued more generally on MCZs.

The Department again notes that in the NI Bill advice and guidance will be given by the DOE whereas in the UK Marine and Coastal Access Act such advice will be given by the “appropriate statutory conservation bodies”.

Clause 23: Failure to comply with duties, etc.

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

This is a reasonable requirement and should allow the Department to justify its actions and how it might come to a different conclusion than the DOE. Once again, there is a difference from the UK Marine and Coastal Access Act because there are no statutory conservation bodies in NI and the DOE must seek this explanation.

There does not appear to be any indication on the face of the Bill of what happens to the explanation received. There may be merit in the interests of transparency for requiring this information to be published.

Yours sincerely



Departmental Assembly Liaison Officer

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



INVESTOR IN PEOPLE