



24 April 2012

FAO Alex McGarel
Room 245
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sirs

BASC RESPONSE TO ENVIRONMENT COMMITTEE CALL FOR EVIDENCE ON NI MARINE BILL

The British Association for Shooting and Conservation (BASC) is grateful for the opportunity to respond to Environment Committee's call for evidence in relation to the Marine Bill and we look forward to working with the Department of the Environment and other stakeholders as the process moves forward.

BASC was founded in 1908 as the Wildfowlers Association of Great Britain and Ireland and is the UK's largest shooting association. BASC is constituted as an Industrial and Provident Society and has a membership in excess of 129,000. BASC is the representative body for sporting shooting in the UK. It aims to promote and protect sporting shooting and the well being of the countryside throughout the UK and overseas. It actively promotes good firearms licensing practice, training, education, scientific research and practical habitat conservation.

BASC believes that all who shoot should conduct themselves according to the highest standards of safety, sportsmanship and courtesy, with full respect for their quarry and a practical interest in wildlife conservation.

BASC's expertise in shooting matters is widely recognised and we are routinely consulted by a variety of government departments and agencies and other non-statutory bodies, for example the Northern Ireland Environment Agency, the Department of Agriculture and Rural Development, the NI Forest Service, Queens University Belfast, The National Trust, The Ulster Wildlife Trust and the Ulster Farmers Union.

While BASC welcomes aspects of the NI Marine Bill, which will undoubtedly benefit marine life and biodiversity, we have concerns in relation to parts of the Bill that are ambiguous and therefore open to misinterpretation and potential abuse.

Amendment 23 to the 2010 Wildlife and Natural Environment Bill was a pertinent example of how legislation may not have been tabled to specifically curtail country sports within, surrounding or adjoining ASSI's but, if it had been passed into law it would undoubtedly have affected many aspects of country sports. The draft Marine Bill contains clauses that have the potential to significantly and unnecessarily impact not only on wildfowling and access to wildfowling, but also other country sports.

There are 11 BASC-affiliated wildfowling clubs around the coast of NI, with a joint membership of approximately 500 wildfowlers. Additionally, BASC wildfowling clubs on Strangford Lough and Lough Foyle administer a permit scheme that facilitates wildfowling by non-club members and an increasing number of 'shooting tourists'. The very successful permit scheme on Strangford Lough is run in conjunction with The National Trust and has been in operation since 1965. Some members of the Lough Foyle club are disabled shooters who have special access requirements. Many of these clubs lease shooting rights from landowners and estates including the Crown Estate and The Honourable The Irish Society. Some clubs own the land that they manage for shooting and the encouragement of quarry and other wildlife species.

BASC is concerned that the legitimate rights and the cultural, social and economic worth of the NI wildfowling community has not been considered in the drafting of the Marine Bill. BASC is also concerned that NI wildfowlers have no representation on the current NI Marine Task Force.

Regarding the draft Bill, BASC would draw particular attention to Clauses that contain specific areas of concern for the interests of the wildfowling community:

Clause 2 – Marine Plans for NI Inshore Region

2(9) - A marine plan comes into effect when it has been published by the Department in accordance with Schedule 1.

BASC recommends that a marine plan should come into effect **21 days** after it has been published by the Department in accordance with Schedule 1. A marine plan should come into effect only after an agreed period of time has elapsed and not on publication, as is currently proposed. This would allow adequate time for objections to be lodged, and further consultation to be undertaken if needed. It is easier and much less disruptive to amend a marine plan before it has been implemented. In addition, if any challenges are received, the implementation of the plan could be postponed.

Clause 8 – Validity of Marine Plans subsections 4 and 5

8(4-5) - A person aggrieved by a relevant document may make an application to the High Court.....

BASC recommends that an alternative means of challenging a marine plan is provided, e.g. a path of communication with the Department should be the first step in any challenge. It should also be possible for an aggrieved person to make an application to either the NI Environment Minister or the Secretary of State for NI.

BASC feels it is not acceptable for anyone challenging a plan to be forced to prove the plan's faults to the High Court in the first instance. An individual wishing to challenge a plan could be prevented from doing so due to the potential cost implications incurred from High Court action.

Clause 11 & 12 – Designation of MCZ's

With the agreement of the Secretary of State Clause 11(1) allows the Department to designate any area of sea, or any island in the sea, falling within the NI inshore region as an MCZ if it *"thinks that it is desirable to do so"*.

BASC recommends that clause 11(1) be reworded – inserting the words "after consultation with key stakeholders, registered with the department". If abused these Clauses could prohibit or seriously restrict wildfowling and access to wildfowling on or around the coast of NI.

Clause 12 – Grounds for Designating MCZ's

12(5) – *conserving marine flora, fauna or habitat **whether or not** any or all of them are rare or threatened.*

12(7) – *in considering whether to designate an area as an MCZ, the Department **may** have regard to any economic or social consequences of doing so.*

BASC recommends that the Department **must** have regard to **cultural, social and economic** consequences and that 'conservation of flora, fauna or habitat whether or not any or all of them are rare or threatened' disregards the principles of sustainable use of such features.

BASC seeks written assurance that any decision to designate an MCZ will be proportionate and based on good science and supported by evidence. Furthermore, BASC contends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ protective measure. For example where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict such activity.

Clause 14 – Consultation before Designation

14(4) – *The Department must consult (a) the Secretary of State; and (b) any other persons who the Department **thinks are likely** to be interested in, or affected by, the making of the order.*

14(6) - *In a case where the Department thinks that there is an urgent need to protect the area proposed to be designated as an MCZ, the Department need not comply with subsections (2), (3) and (4)(b)*

BASC recommends that the Department creates a register of interested stakeholders who must be consulted prior to any designation, even in urgent cases. BASC recommends that those with shooting interests are included in any consultation process.

Clause 15 – Publication of Orders

15(3) - ‘.....be published in such manner as the Department thinks is most likely to bring the order to the attention of any persons who are likely to be affected by the making of it.’

BASC recommends that the Department should be required to publicise their intention to designate an MCZ in both the national and local press and after notifying key stakeholders registered with the Department.

Clause 24 – Byelaws for Protection of MCZ’s

*24(2) - Byelaws under this section may be made so as to apply to any area in the Northern Ireland inshore region **or in any other part of Northern Ireland**.*

BASC requests a written explanation on why the words ‘any other part of Northern Ireland’ have been included under 24(2) as the introduction to the draft Bill and Part 1 of same categorically specifies and defines the area that this legislation is designed to protect, i.e. – the NI inshore region. BASC would ask what relevance a piece of legislation dealing with the NI inshore region has to any other part of Northern Ireland?

24(4) - The provision that may be made by byelaws under this section also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MCZ by persons, animals or vehicles.

BASC believes that this provision has the potential to restrictively impact on the cultural, social and economic activities of many people particularly when the definition of ‘seashore’ contained within clause 39 is applied: “seashore” means (a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide, and (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity. Clause 24(4) could potentially extend the MCZ into land that has no direct influence on the marine features that the MCZ has been designated to protect.

24(5) - Byelaws under this section may provide for the Department to issue permits authorising anything which would, apart from such a permit, be unlawful under the byelaws.

BASC has experience of administering permit schemes for various shooting activities. BASC requests a written explanation on how the Department envisage administering such a scheme and what the financial implications would be.

24(8) - Byelaws under this section may make different provision for different cases, including (in particular): (a) different parts of the MCZ; (b) different times of the year; (c) different means or methods of carrying out any activity.

BASC is concerned that this wording allows the creation of higher protected areas without there being any requirement to justify the designation of such areas. BASC requests a written explanation on why higher protected areas are needed, and where and how they will be created.

BASC recommends that Clause 24 should be reworded in its entirety to reflect the legitimate interests of wildfowlers

Clause 25 & 26 – Emergency Byelaws

Whilst Clause 25 sets out the consultation process prior to making byelaws, it also makes provision for consultation to be waived in cases of ‘urgent need’. The procedure for enacting emergency byelaws is contained within Clause 26.

Whilst BASC recognises that there could be necessity for emergency byelaws e.g. pollution incidents, BASC recommends that there must be a form of emergency consultation prior to implementation and that a fast track system similar to the procedures for severe weather Special Protection Orders be established.

Clause 27 – Interim Byelaws

27(1) - The Department may make byelaws for the purpose of protecting any feature in an area in Northern Ireland if the Department thinks: (a) that there are or may be reasons for the Department to consider whether to designate the area as an MCZ, and (b) that there is an urgent need to protect the feature.

BASC is concerned that the wording ‘an area in Northern Ireland’ could be misconstrued to include areas that do not fall within the NI inshore region and BASC recommends that this should be reworded to avoid confusion.

BASC seeks written assurance that proposals for interim byelaws will be proportionate and based on good science and evidence and subject to consultation with registered stakeholders. Furthermore, BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985 (as amended), this should take precedence over any MCZ byelaws.

Clause 31 – Offences

31(2)(a-d) refers to ‘protected features’ – given that specific flora and fauna are already afforded protection under the Wildlife (NI) Order 1985, the draft Bill seeks to introduce another layer of protection that will be confusing and difficult to administer and could lead to fewer successful prosecutions than would otherwise be the case.

BASC recommends that where the protection of flora and fauna is already served by legislation such as the Wildlife (NI) Order 1985, this should take precedence over any MCZ protective measure. For example, where quarry species of waterfowl are allowed to be killed or taken outside the close season under Schedule 2 of the Wildlife (NI) Order 1985, there must be no facility under any new legislation to prohibit or restrict legitimate activities.

Clause 32 – Exceptions

32(1)(c) – *A person is not guilty of an offence under section 30 or 31 if the act which is alleged to constitute the offence was done in accordance with a permit issued by the Department (whether under section 24(5) or otherwise)*

BASC has experience of administering permit schemes and seeks a written explanation of how the Department envisages administering such a scheme and what the financial implications might be.

Clause 39 – Interpretation

‘Seashore’ - (b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity.

BASC proposes that this part of the definition of seashore should be removed as this wording could allow inclusion of large expanses of land that have little or no impact on the marine features that this draft Bill seeks to protect.

BASC is particularly concerned with the application of this definition to Clause 24(4) and the potential to exclude or restrict any entry or activity on any part of the seashore adjoining an MCZ by persons, animals or vehicles. The present wording of this interpretation implies that an MCZ could in effect be extended through restriction/prohibition into any land adjoining the seashore; this raises the question - where would the MCZ stop?

The proposed interpretation of seashore could lead to severe negative impacts on landowners, user groups and other local businesses

Clause 45 – Crown Application

This Clause ensures that there will be no exemptions for holders of Crown Estate leases. BASC members who are holders of such leases have asked for confirmation that the Department have consulted with Crown Estate on this matter. BASC asks that the Department write to BASC to confirm that Crown Estate have been consulted in relation to the draft Bill.

Schedule 1

Statement of Public Participation

Sch1 5(8)(a) - Definition of ‘interested persons’ – ‘any person **appearing** to the Department to be **likely** to be interested in.....’

BASC proposes that the Department retain a register of interested persons who must be consulted. The current definition is too loose and runs the risk of genuinely interested persons being excluded or overlooked.

In conclusion, the foregoing concerns have been raised in a genuine bid to ensure that any future marine legislation is fit for purpose and inclusive of the cultural, social and economic aspirations of the community, especially wildfowlers, who depend upon and engage in sustainable management of the rich marine resources of Northern Ireland.

BASC NI would welcome the opportunity to deliver a presentation to the Committee on the basis of all or parts of this consultation response..

Yours faithfully

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BASC Northern Ireland