



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Marine Bill: Institute for
Archaeologists/Centre for Maritime
Archaeology

10 May 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Simon Hamilton (Deputy Chairperson)
Mr Gregory Campbell
Mr Tom Elliott
Lord Morrow
Mr Peter Weir

Witnesses:

Mr Thomas McErlean	Centre for Marine Archaeology
Mr Tim Howard	Institute for Archaeologists

The Chairperson: I welcome Tim Howard from the Institute for Archaeologists and Thomas McErlean from the Centre for Maritime Archaeology. You are very welcome, gentlemen. Please give us a five-to-10-minute presentation. After that, we will ask questions.

Mr Tim Howard (Institute for Archaeologists): Thank you, madam. Mr McErlean and I have agreed that I will start the ball the rolling, and Mr McErlean will follow up. First of all, I thank you very much indeed for the opportunity to address the Committee. The Committee's engagement with the archeological sector is, if I may say so, most refreshing. If I may, I will make three general points before moving to the crux of both our cases relating to historic marine conservation zones (MCZ).

Although we raise specific concerns, we generally welcome the Marine Bill. That should not be forgotten. We recognise the importance of Northern Ireland's seas to its prosperity. Whatever may have been felt in the past about archaeologists, we do not come here seeking unnecessary constraints or fetters on legitimate development or activity. We are trying to place the marine historic environment centrally in sustainable development and marine activity.

As you will have noted from both our submissions, we are supportive of the marine spatial planning system. In a way, it is the final piece in the jigsaw for Northern Ireland. We have high-level marine policy objectives that are very good for archaeology, and archaeology is embedded in them. The Northern Ireland Executive are signed up to the marine policy statement, as are the other Administrations, with strong support for the marine historic environment. There is a coherent, consistent, and, as your colleague said, evidence-based approach to development and activity in the marine zone. It is a key mechanism to ensure that the marine historic environment and other interests are considered early, strategically and comprehensively, and, ideally, that activity is directed to areas that will do little or no harm to those interests.

We are strongly supportive of marine conservation zones as a mechanism to manage and protect the marine environment. I emphasise the word "management", which will crop up. It is not just about protection; it is about a more responsive management role. That is very important. That brings us to the crux of both our cases, which is our concern that the Bill has not taken the opportunity to allow for the designation of historic marine conservation zones, or, as Scotland has done, historic marine protected areas. I add immediately that I would not stand or fall over the terminology; the issue is that we should have a ground for designation on historic or archaeological grounds.

I understand that the Committee was briefed on 19 April by Mr Ken Bradley from the Department of the Environment (DOE). I will pick up on two points from the note that I saw of that briefing. First, Mr Bradley accepted that it would be possible to allow for designation in the Bill. It is possible, but, as a matter of judgement, it has been decided not to pursue historic marine protected areas at this time. Secondly, it seems that the Department's view is that that is not necessary, because, in the light of the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995, there is already sufficient protection for the marine historic environment. The crux of our case is that those two provisions — the 1973 Act and the 1995 Order — are not adequate and that this is an opportunity to significantly better manage and protect the marine historic environment.

In the next couple of minutes, I will pick up on some points on where we feel — I am sure that Mr McErlean will reinforce these — that those two provisions are lacking. I will start with the 1973 Act. I am probably telling you things that you already know, but it was a private Member's Bill in Westminster, so it had no departmental budget. That is key, because I will come back to my point that management is important. We developed a system in which wrecks that were under threat were put forward for designation as a reactive measure to provide, in fairness, sorely needed protection from damage to those wrecks and loss of the heritage. However, we had no overarching strategy for identifying comprehensively what should be designated or for managing that designation. It was purely a means of designating a restricted area and saying that activities are prohibited, on pain of a criminal offence, within that area. What we have with marine conservation zones is, if I may say so, a much more thoughtful and responsive mechanism.

I heard the witnesses before us talking about clause 24 and the availability of by-laws. Again, that is something that we would be very supportive of, because the by-laws allow us to do things like restrict access, which neither the 1995 Order nor the 1973 Act does. Let me add that I am not talking about trying wholesale to make no-go zones. Responsible access is to be encouraged, but there may be circumstances where such zones are needed. We could also, for instance, regulate activities through by-laws. Fishing is one example. Trawling, for instance, can cause great damage. We can regulate the speed of vessels. That is quite a subtle regulation, which is much more subtle than is allowed by either the 1995 Order or the 1973 Act. We could also prevent anchoring.

I should raise the problem of enforcement. I did some work, admittedly in relation to England, in 2005, about the enforcement of the Protection of Wrecks Act 1973. In the 22 years that, at that time, the Act had been in force, in England — and, to my knowledge, in the United Kingdom — there had only been one prosecution. It was in relation to the Hazardous off Sussex, when recreational divers were found making their way down the anchor chain of the buoy. You could say that they were caught red-handed.

We do find it difficult. To take the example of anchoring, when somebody throws an anchor overboard, within, say, 300 metres of the Girona, which is the protected wreck off County Antrim, how do we prove that that has caused damage so as to prosecute? Strictly, one might think that you would have to have a diver down on the floor contemporaneously, but if we had by-laws — I know we are talking about a level 3 fine of £500 — at least it would be a disincentive. The Protection of Wrecks Act 1973 also only covers vessels, so it does not cover aircraft, although we query seaplanes, or vehicles, again, query amphibious vehicles. It does not cover the wider things like submerged landscapes or artefact scatters. It is, if I may say, a piece of legislation very much of its time. I know that it has been described rather more rudely as strings and ceiling wax law. It has been criticised. It has served a purpose, but we now have an opportunity for something much more impressive.

I will move quickly to the 1995 Order, which is a little bit wider in its scope, but there are still difficulties when it looks at effectively scheduling structures about extending its remit to submerged landscapes and artefact scatters. We also have the issue that, really, the 1995 Order and scheduling were designed for a terrestrial setting — monuments on dry land. The 1995 Order extended it to the sea, and that is absolutely right, although, in practice — Mr McErlean can tell you better than I — not a lot of scheduling goes into the marine zone. There may be some in the intertidal zone, and we will come

to that. Issues of access are not really issues for the 1995 Order unless the Department owns or is a guardian of a zone and has a direct interest in access.

What we are looking at is a much more flexible management regime, with a focus on management rather than enforcement. Finally, I will flag up a couple of provisions, which I commend. Clauses 20 and 21, for instance, place duties on public authorities, when taking decisions and making acts, to actually take into account the furtherance of — in ecological terms — conservation objectives. If we were looking at the historical environment, it may be preservation objectives, but that is only a difference in language. We can see with that example that we have got the means to integrate marine historic environment into marine spatial planning and actually move forward. I would say bluntly that the Scottish Government have got it right in this case. Perhaps it is wrong of me to say this, but I would respectfully say that perhaps Westminster missed an opportunity with the 2009 Act.

I am conscious of not overrunning on my time, and allowing you to hear from Mr McErlean. I am happy to take questions.

Mr Thomas McErlean (Centre for Marine Archaeology): Tim anticipated most of what I want to say. I am sure that you will be glad to hear that I will be brief and to the point. The maritime archaeologists had quite an emotional response when the Bill came out. We had assumed that maritime archaeology would be ranked the same as the other aspects of the maritime environment.

The background is that the Northern Ireland Environment Agency (NIEA), for example, has invested a lot of time and money in maritime archaeology since about 1999. It had dedicated maritime archaeologists. A head of steam had built up since the European Valletta convention raised awareness of the importance of maritime heritage. We were a bit disappointed with the UK Act, but it did make provisions. We were absolutely delighted with the Scottish Act. We assumed naively that we, here, would copy both Acts, especially the Scottish Act. However, when the Bill came out, we found that maritime archeology had been totally thrown out. Subsequently, we have found out some of the reasons why that happened, one of which was a feeling that it was adequately dealt with under other pieces of legislation. We argue strongly that it is not.

You said that the Committee has been to Scotland, so I am sure that you are investigating the Scottish approach. As you know, the guidelines for selecting their historic marine protection areas are out for consultation. I will not go into all its subclauses, etc, but I will just say that, if possible, we would like those to be subsumed in a redraft of our Bill. One of the fundamental statements that I would like to make is that our maritime heritage resource is as good, perhaps better, than the Scottish material. So, why do we not protect it as much?

Tim mentioned the two main pieces of legislation that we work under: the Protection of Wrecks Act 1973 and the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995. I will pass around some handouts that give you an idea of the resource and the shipwreck archive here, and, if we are to have protection zones based on maritime archaeology, the data sets that those would be based on. At the moment, the sites and monuments subsection of the maritime record for Northern Ireland indicates that we have approximately 2,600 wreck sites. That number is being increased all the time with further survey.

In theory, those sites are protected under the Protection of Wrecks Act 1973. Of course, they are absolutely not. We have only one wreck protected under that legislation, namely the Girona, the great Armada ship of 1588. One of the reasons why we do not have more designated wrecks here is that the conditions to get a wreck designated are very stringent. Wrecks have to be demonstrated to be of national importance. For various reasons, it is very difficult for us to demonstrate that. For example, because of the resources required to do research on individual wrecks and the fact that, although a wreck may be of tremendous regional importance to us in Northern Ireland, it may not be in a British context and cannot be demonstrated to be such, or, at least, it would be very hard to do so. It is all very cumbersome really.

As you know, Scotland has opted out of the Protection of Wrecks Act 1973. The Centre for Marine Archaeology's feeling is that we should do that too and take the responsibility under our own wing. In the provision for scheduling under the 1995 Order, the architecture was designed almost exclusively for terrestrial sites. There are various reasons for that, including the condition for monitoring, the definition of boundaries and the nature of that type of work at an archaeological site. The Centre for Maritime Archaeology advises NIEA built heritage on the scheduling of maritime sites. It is an expensive procedure and we are allowed to propose five a year. All are coastal edge intertidal sites. None is a submerged site. You can imagine that if we were to protect even a small proportion of our

2,600 wrecks by scheduling we are talking about another 300 or 400 years. There are just not the resources for that.

We need a mechanism or blanket protection of non-designated sites. We thought that the Bill would have that overarching effect and we were going to embed everything into that and into the marine protection zones. We hope that we will have as big a feed into marine planning as we already have through various bodies.

One aspect of legislation that I did not mention, and which helps us somewhat, is the new marine licensing agreement under the UK Act. A little subclause there mentions the removal of objects from the seabed, etc. So, potentially, we could use that. We have not used it yet. We have considered it and, again, there are big financial implications to using that.

The ideal scenario for us to protect this tremendous resource we have is to follow the Scottish route and have historic marine protection zones, and copy that clause into the Bill, with amendments for the local area. Failing that, and I hope that does not fail, we need maritime archaeology up there with the same status as the others.

After a reference to marine flora or fauna in clause 12(1)(a), clause 12(1)(c) refers to:

"features of geological or geomorphological interest".

I am delighted they are there but I cannot see how they rank above us. If anything, man's interaction with the sea is even more important. Of course they should be there, but a phrase such as "or of archaeological interest" should be added. That would raise the status of maritime heritage and give it its proper place in the Bill.

To sum up, we feel that this approach is totally piecemeal. For us, it has left us out totally. There are very serious shortcomings in existing protection legislation. It leaves all our maritime archaeology at risk of being ignored and people being unaware of it.

The Chairperson: Thank you very much for your presentation. You are right: the Department told us that maritime protection is left out of the Bill because we already have the two pieces of legislation you mentioned. What you are saying, however, is that it is not adequate and you would like to add at least a phrase about maritime archaeology. What about Scotland? We went to Scotland and were quite impressed with their work and what they have invested. Do they not have the same two pieces of legislation? What was the argument put to the Scottish Department to add that into their Bill?

Mr McErlean: We work closely with our colleagues in Historic Scotland. Maritime archaeology is a very small community. They felt the same frustration as us with both Acts, if not more so. The Scottish are more proactive with regard to research into the maritime environment and have been doing intensive studies. They know better what the resource is. We are catching up and realising that ours is as rich. So, in a way, their sensitivity about the deficiencies in the legislation was acute. They had the information to act on.

Mr Howard: I will add a point of detail. The Protection of Wrecks Act 1973 applies in Scotland as does the equivalent of the 1995 Order. Interestingly, Historic Scotland and the Scottish Government had scheduled a number of high-profile maritime sites, the most famous of which is the remains of the German high seas fleet at Scapa Flow. It is a scheduled monument, rather than a protected wreck. Clearly, the Scottish consideration that was given felt that that site would be better protected through designation as a historic marine protected area. I am sure that you are aware that Scotland has been consulting on the mechanism, but when consultations are finished, it is expected certainly that the protected wreck sites will become historic marine protected areas.

The Chairperson: Would it be confusing if maritime protection were covered by three different pieces of legislation?

Mr Howard: I would respectfully suggest that you could recommend repealing section 1 of the Protection of Wrecks Act 1973. I choose my words carefully, because that Act also covers dangerous wrecks. That is not a heritage issue; it is a health and safety issue. It comes into play, for example, when toxic waste goes down. The well-known case is that of the SS Richard Montgomery, which was a liberty ship that went down, full of ammunition, in the River Thames during the Second World War and is still there. It would be a good idea to keep section 2 of the 1973 Act, but section 1, which

relates to archaeological and historic matters, could be repealed. That is what the Scottish Government have done. It will be repealed once the mechanism is in place. We would not be adding a layer; in effect, we would be substituting one.

The Chairperson: OK. It is just making things more coherent.

Mr Howard: Of course.

The Chairperson: I am surprised to hear that we have so many known wrecks and recorded wrecks. What are they, mostly?

Mr McErlean: There are different zones of concentration, but most of them occurred on very well known and fairly predictable shipping hazards in the past, such as the Copeland Islands, the Maidens and the mouths of the River Bann and the River Foyle. However, there are unknown resources. We do not know the seabed yet, and we are legislating for the unknown. That is why the Bill has to be future-proof and why we would argue strongly for maritime archaeology to have higher status.

Mr Hamilton: This aspect of the Bill is quite interesting, not just because some of the stuff that you are dealing with is interesting, but because it raises questions as to why the Department is proposing to do something differently from the way in which others have. As the Chairperson said, we were in Scotland and asked them why they did what they did. The Department told us that it believed that current legislation was sufficient to cover this.

In Scotland, they were very clear: they said that they wanted to opt out of the UK framework. In the belief that most things have a political element, a cynic might say that a Scottish National Party Government would take any opportunity that it could to opt out of UK-wide legislation. Before the Committee would consider taking a similar approach — I am not making a political point — we would want to consider other aspects of opting out of a UK framework. The Committee, obviously, can do that.

Many of the sites on your map may be designated as MCZs, but not, perhaps, for historical reasons. As you will know better than me, they can become habitats for all sorts of species. You are talking about arguing a case specifically because it involves a wreck. I was going to ask on how many instances might this happen, but then you produced this map. I would not fancy going out in a boat on certain parts of the coastline after looking at the map. All of these are potential MCZs, arguably.

Mr McErlean: Yes.

Mr Hamilton: Are you arguing that all these should have some sort of special protection? That simply could not happen.

Mr McErlean: I thought you might ask me what our approach might be in designating an MCZ. For instance, the Copeland Islands or the Maidens would definitely be big candidates.

Your point that they would also qualify as MCZs as a habitat is exactly right. Hopefully, and it is within the ethos of the Bill, we will dovetail all those interests. In the arguments during and proposals from the public consultation on the formation an MCZ, hopefully our data sets and archaeology would be contributing factors towards a joined-up approach on the maritime environment. I do not see us working in isolation; we are very much integrated. Having the same protection conditions helps to protect archaeology as well as the nursery for fish, the maerl beds or whatever.

Mr Hamilton: I am very sympathetic to that point, and it is well worth the Committee pursuing it in more detail. I am almost playing devil's advocate and arguing against myself here, but whether they are called marine conservation zones or marine protected areas, "marine" is the operative word. So, an area has to have something more than a wreck; it has to have some marine feature.

Mr McErlean: To us, a wreck is part of our marine heritage.

Mr Hamilton: I can see how wrecks such as the Girona or a warship are at a completely different level and should have protection, even beyond the protection of a marine conservation zone or marine protected area. For a lot of the other examples, some special, distinct habitat will have to have developed around it because it is a wreck.

Mr McErlean: I disagree; the archaeological heritage value as an asset is equal to the habitat value. It is a finite resource, and it is one that we have to admit is under daily or weekly attack from certain elements among sports divers. We want to encourage sports amenity diving, because we get feedback from those who do it. However, that has to take place strictly on the grounds of, "Look, but do not touch". That is not really accepted yet, but if it is in the Bill it will be accepted more.

It is accepted to a certain extent, because most divers would not go down and chip away at coral or walk over maerl beds, but they still do it with the wrecks. If you go into any of their backyards, you will see beautiful brass portholes. That is everybody's heritage, yet we are not protecting it. It will be gone for our grandchildren.

Mr Hamilton: I understand the point you are making. However, it then gets into the realm of how many wrecks are designated for that purpose and whether we should be designating them for protection simply because they are wrecks. If we get into the scenario where you are protecting all, or even a substantial number, of the wrecks on the map, we are into the realms of being unrealistic.

Mr McErlean: I agree. However, at the moment, and this is not really reflected much in discussions, the issues are spatial planning and how many zones we are going to have. Because this is such a small region and so much of our inshore area has special qualities, most of it has to be under protection of some type or other. It already is. I do not know if the Committee has a vision for that.

Mr Hamilton: The Scottish are talking about 30, and they have 50% of the UK waters. These are not things that are going to be designated in every single instance. There are about 30 around one of the Copeland Islands. Taken in that context, not that we should be slavishly following what Scotland or anybody else is doing, these are not designations that are always going to be made in every instance. They are going to be made because of specific reasons; for example, because they cross a certain threshold.

Proportion is an issue. If the argument is on archaeological grounds, and the Department accepts that and puts it in the Bill, the rule will have to be applied proportionately. It will be used in exceptional circumstances rather than in every case.

Mr McErlean: I agree; that is realistic.

Mr Howard: I accept that as well. That will be a major issue for the guidelines. If this were accepted, what has happened in Scotland this spring would inevitably follow: there would be consultation on the guidelines and criteria.

Mr McErlean: On your question, I would like to list some of the wrecks that you might not know about, which maybe should be covered by the conditions. Peter, you are a Member for North Down, are you not?

Mr Weir: Yes.

Mr McErlean: For instance, in Belfast lough, we have the SS Appin, which was lost in 1913. With the use of very good sonar equipment, we can see that structure on the seabed. We have the SS Oregon, which was lost in Belfast lough in 1945. Its superb remains are on the seabed. There are loads around Rathlin, of course. For example, the Lochgarry, which was lost in 1942, and the Drake, which was lost in 1917. It was a beautiful battleship and there are great remains. Off Fair Head, we have the Santa Maria from 1918. Up at Portstewart, we have a very good U-boat, which looks to be very much intact. That is just a sample. We have information on them all.

Mr Hamilton: All of us want to protect those types of wrecks in the most appropriate way. However, it is about finding out whether this is the right way to do it. Do we weld something on to the Bill that provides that level of protection or do we need to do something entirely different? If we were to do something entirely different, we would have to consider the implications of that in a wider context. We are not unsympathetic towards this; we just have to find the best way to take it forward.

Mr McErlean: May I interject again? Sorry; I am taking up all the airspace here. If we do nothing else — although we would want you to do something else — it is essential for public awareness that "maritime heritage" be added to the clause and given recognition. I think that is a big omission.

Let us look at other jurisdictions. The legislation in the Republic, for example, is superb for submerged wrecks. All wrecks that can be demonstrated to be or are thought to be over 100 years old are protected. There are very strict laws, and they are implemented. If the guards think that a sub-aqua crowd are diving on a wreck, they can immediately lift their diving gear onshore. We deal with southern archaeologists daily to address cross-border issues in Foyle and Carlingford. The legislation here is totally inadequate.

Mr Hamilton: Other legislation may need to be amended to address some of those issues. You make a good point. However, this Bill is maybe not the way to do that. It would have a huge impact on that type of practice. However, other legislation would probably have to be amended to address that.

Mr McErlean: The vision for this Bill was that it would do that. That is what all us maritime people were told: this was it. Then, it comes along and hits us like a wet lettuce leaf. What is wrong with us here that we did not grasp the opportunity? It will probably be another 100 years before we get another maritime Bill.

The Chairperson: I think that you made a number of very good points. We will certainly look into that.

Mr Elliott: Thanks for your presentation. Had I not seen the map that you handed out, I would never have believed that there were so many wrecks round Northern Ireland. When you see the number of wrecks dotted on a map like that and then you look at a map of the amount of flora and fauna and other archeological sites that may have to be protected, you realise that there will not be much room for fishermen to fish or for wind turbines to be put in to generate electricity. There will not be much room on the seabed to do anything if all this is protected.

Mr McErlean: That is a very good point. You are talking about sustainable development. I sit on the alternative energy committee, which looks at the licensing of various areas. Because our information is so good, we have already designated areas where no restrictions are needed and where there is no conflict. We have done our strategic environmental assessments. So, we are well beyond that stage. We have designated areas that are not sensitive to maritime archeology in order to solve our sustainable development issues. Perhaps it is the size of the dots that is frightening you. The whole purpose of the Bill is to ensure that we all interact on the issue of marine environment and stop friction.

Mr Elliott: Earlier in your presentation, I noticed that you said you wanted a flexible management regime. From my experience of dealing with archaeologists and planning aspects, I know that they have a far from flexible management regime, if I could say that, unless they are planning something different for the marine environment. I have not witnessed that in the past. That is all.

Lord Morrow: Again, this question is about the issue of recorded wrecks and known wrecks. Is there a catalogue of all these here that one can consult?

Mr McErlean: We agonised over this, but it is open access because the public and the developer have to know where they are. Unfortunately, the sports diving community can plan their wrecking weekend from our archives. We know that it is used so that people can identify where to get a porthole from a 17th century vessel.

Lord Morrow: On a more serious note, some of the issues that you highlighted in your document would be quite insignificant or small, if that is the right word.

Mr McErlean: If we had a hierarchy, yes, but, as maritime archaeologists, we think that any evidence of the past is significant and must be preserved or recorded for future generations. It is a finite resource, and our great-grandchildren may look back and say, "What did they do? They let such and such be destroyed."

Mr Campbell: I think that Lord Morrow means something such a rowing boats —

Mr McErlean: Yes, and if the rowing boat is from the 18th century, we would regard it as very interesting. We have loads in Lough Erne, too, that is just the maritime objects. There are nice cots and dugouts and things.

Lord Morrow: Those who are angling and carrying out other activities might find that they are restricted for something that is maybe quite negligible, such as a rowing boat.

Mr McErlean: The anglers are fine; they are great friends of ours, because they want to know where the artefacts are for their nets and so forth.

Lord Morrow: They are supposed to be good friends of everybody.

Mr McErlean: They report their findings back to us. We have no conflict with them whatsoever.

The Chairperson: That was my earlier question. What are the artefacts mostly? Are they little boats or battleships?

Mr McErlean: There are Viking boats. There is a record of a whole Viking fleet being sunk in Dundrum Bay. We have not found it yet, but it could still be there.

The Chairperson: So, you are aware that there may something there. OK. That is interesting. Thank you very much indeed.