

**COUNCIL FOR NATURE CONSERVATION
AND THE COUNTRYSIDE**
An Advisory Council to the Department of the Environment

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Via email

9 July 2010

NI Marine Bill Team
Department of the Environment
Planning and Natural Resources Division
3rd Floor,
Calvert House
23 Castle Place
Belfast
BT1 1FY

Dear Sir/Madam

Northern Ireland Marine Bill – Policy Proposals

Thank you for the opportunity to comment on these extremely important proposals.

CNCC members have put a great deal of effort and thought into this response and have discussed the proposals with colleagues in JNCC.

Yours faithfully



PATRICK CASEMENT
CHAIRMAN

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Dear Sir/Madam

NORTHERN IRELAND MARINE BILL - POLICY PROPOSALS

Setting the Scene

General Points –

- CNCC notes that DOE has been established as the Marine Plan Authority (Para 2.17) and as the licensing and enforcement authority (Para 3.2) in NI under the UK Marine and Coastal Access Act 2009, and that it also has the power to delegate these functions, should the Minister decide that it is appropriate. We would be happy to see delegation to a single, independent MMO-type body, but would have grave reservations about dividing the functions, and about delegation of planning powers to individual local authorities. A major objective of this proposed legislation is to provide a unified focus and strong leadership for the marine environment, and to that end a consistent approach is essential. Delivery of marine and coastal management in the past has been bedevilled by the division of responsibilities between government departments and the inability of one department to take a lead role. Changing this confused arrangement is a pre-requisite to effecting real change in the marine environment.
- CNCC is concerned at the way in which information on the value of Northern Ireland's seas is presented in Para 1.3. Firstly there is no attempt to put a monetary value on biodiversity, in spite of a great deal of work that has been done, and is underway, under the National Ecosystem Assessment to value our ecosystems and the services they provide. In addition, the table is ridiculously skewed towards Fishing and associated industries, and fails to recognise the wider importance of our seas and coasts to tourism and leisure, and the considerable number of jobs in this sector that are underpinned by the marine environment. This tourism income is dependent on a high quality environment, and is part of the value that is imparted by biodiversity and marine ecosystem services.
- CNCC is concerned about a number of vague definitions that appear in this document, which remain wide open to a range of interpretations. These need to be reconsidered, and either qualified or redefined in Annex F. They include 'inshore region' and 'offshore region', 'sustainability', 'appropriate' (as in Para 2.76) and 'public interest' (as in Para 4.55).

Q1. CNCC agrees that change is needed to the management of and legislative framework for managing NI's seas.

Q2 (a) CNCC supports a new system of marine planning for the sustainable use of NI's seas

(b) CNCC would support further streamlining of marine licensing as long as this went hand-in-hand with real progress on marine conservation measures, such as designation and species protection, and the bureaucracy that surrounds the designation process and its effectiveness. Streamlined licensing must go hand-in-hand with improved mechanisms for conservation, and should not be at the cost of damage to the natural environment.

(c) CNCC welcomes improvements to marine conservation so as to safeguard, protect and restore NI's marine assets. Our seas are not in a 'natural' condition – we have lost a great deal of our biodiversity and some of our habitats have been excessively modified to the detriment of both biodiversity and the fisheries that depend on a healthy sea.

Q3. This question is covered in the points raised in the following responses.

Marine Planning

General points

- CNCC is deeply concerned about the position of fisheries in the proposed planning system. It appears that they lie outside of these considerations, and remain the responsibility of DARD, which will simply perpetuate fragmentation and impede a holistic approach to the marine environment. The fishing industry both impacts on planning decisions and is impacted by them. It is imperative that it is built into this process – we have to plan for fisheries as well as for other uses of the sea, which may include areas where fishing is excluded. We cannot have the fishing industry operating in a totally separate, parallel universe!
- CNCC is also concerned that there is no mention of Integrated Coastal Zone Management (ICZM) in the proposals. This issue has been on the agenda in Northern Ireland for more than 20 years, but no progress has been made in implementing it. The Marine Bill provides the perfect opportunity to introduce ICZM, with a single body taking responsibility for overseeing the management of the interface between land and sea, and integrating all activity in a zone that is currently a no-man's land in terms of planning and regulation. The legislation should spell out that ICZM is carefully integrated into Area Plans on land and the Marine Plan and any appropriate local plans and should form the bridge between these two arms of the planning process.
- All plans need to be updated at regular intervals, and we feel that there should be reference to this process in the proposals. It is essential that as both land-based Area Plans are produced and updated they should be carefully aligned with and tested for consistency against the current Marine Plan, and vice versa when the Marine Plan is updated.
- CNCC is concerned that the existing suite of Planning Policy Statements does not adequately cover the coastal zone and its particular range of issues. With major changes coming to the planning system through Planning Reform, including the introduction of more local plans, it is even more important that coastal planning principles are clearly articulated to ensure a consistent delivery across the province. We believe that these should be an integral part of both the Regional Planning Strategy and the Marine Plan, and that it is essential that these documents are entirely mutually consistent.

Q4. CNCC broadly supports the proposed approach to develop one marine plan, supported by more localised plans where appropriate. We welcome the establishment of one Department (DOE) as the Marine Policy Authority, which must consult with other Departments. For too long there has been an unwillingness in government for leadership where marine and coastal issues are concerned and we hope that this step will make a significant difference. We welcome the clear statement in Para 2.11 that the marine plan will contribute to the achievement of sustainable development in the UK marine area, and the accompanying commitment to carry out an appraisal of sustainability in the process of preparing the plan. However we have some concerns around the definition of 'sustainability' and the use of this term throughout this paper. Sustainability must be regarded as having three equally important pillars – environmental, economic and social issues.

We are also pleased to see the clearly stated intention in Para 2.19 to put an ecosystem-based approach at the heart of marine policy, and that the use of research into Marine Spatial Planning in the Irish Sea (Para 2.20) will be used to inform the development of the marine planning system in NI. We would, however, stress that this will require a significant input of resources, skills and a requirement to build clear and effective relationships with other parts of government as well as private stakeholders.

We welcome the proposed preparation of a State of the Seas report, but would stress the need for it to be based on accurate and up-to-date science, gathered and interpreted by experienced and qualified professionals. This sort of base-line survey is essential if future monitoring (as mentioned in Para 2.50) is to be of any use in detecting changes to the marine environment.

Q5. CNCC welcomes the proposed stakeholder involvement in the development of the marine plan, and would wish to be involved in that process as the DOE's advisory council on matters relating to nature conservation. We welcome the commitment to carry out a SEA for the marine plan (Para 2.37) and would also wish to be involved in that process. We are pleased to see clear reference to the need for Appropriate Assessment under the Habitats Directive (Para 2.38), and feel that it is appropriate that information gathered during the development of the plan could also inform future EIAs, as long as that information has not been superseded by more up-to-date or detailed scientific knowledge in the intervening period.

Q6. CNCC strongly welcomes the integration of marine planning with other plans, particularly in coastal areas where management can be complex. We also welcome integration of the marine plan with the Water Framework Directive (Paras 2.57 and 2.59), and Flood Risk Management Plans (Para 2.59). We believe that whether or not the marine plan will have a significant effect on the environment of other EU member states the DOE should consult the relevant authorities in the Republic of Ireland. We strongly endorse the statement in Para 2.65, and welcome the recognition of the importance of seascape and noise, which have hitherto been seriously neglected as important considerations. We recommend that any reference to noise recognises the cumulative impacts that this may have on marine animals, which is only now being identified as a problem.

We would stress the critical importance of defining the boundaries between land and marine planning jurisdictions, so that there can be no ambiguities and no possibility of the intertidal area falling outside of both. This stretch between high water and low water will provide a real test case of how well the two planning systems are integrated, and its position must be carefully defined and set out. CNCC strongly recommends that the Marine Plan jurisdiction should extend to Mean High Water Springs.

We are also concerned about the assumptions in Paras 2.74 and 2.75 relating to activities that are unregulated. The causes of damage to the marine environment are often not fully understood, or may be misinterpreted. For instance there is a current view that intertidal shellfish collection is not significant, and causes little or no harm to coastal habitats. However this activity is now being carried out on a considerable commercial scale on much of our coastline, with clear negative effects on intertidal habitats and biodiversity, including in ASSIs, SACs and SPAs. While bye-laws (Para 2.75) may be useful they need to sit conformably and accountably within the wider planning system, and should be produced in response to issues raised in the more detailed local plans that are proposed to sit beneath the central Marine Plan.

Q7. CNCC is generally happy with the proposed process for developing the marine plan, with the drawing up and consideration of a draft plan, possible amendment and then adoption and publication. We are pleased to see that the publication would be user-friendly (Para 2.49), but would warn against trying to make complex situations appear very simple. We are pleased that NI intends to make use of experience gained in other parts of the UK. We are also pleased with the commitment to monitoring both matters that might affect the plan's content or effectiveness, and how well the content of the plan has been taken forward through decision making (Para 2.51). This data needs to be published on an annual basis as soon as possible after a set reporting date to ensure public confidence in the plan and the planning system. CNCC notes with some concern that after the initial mention of 'more localised plans' there is no further consideration of such smaller-scale tools for managing marine planning in particularly contentious or sensitive areas. We believe that such plans should be a priority in Natura 2000 sites, in Marine Nature Reserves, and in heavily used areas such as the approaches to major ports and harbours and this document should have given some detail of where such local plans would be required. A process for developing these plans also needs to be outlined, and it should involve stakeholders in the same way as proposed for preparation of the main plan.

Marine Licensing and enforcement

General points -

- CNCC welcomes the commitment in Para 3.3 that streamlining licensing will not reduce the environmental assessment requirements. We also welcome the statement in Para 3.6 that the intention is to use marine resources in a sustainable and environmentally sensitive manner in order to conserve ecosystems and achieve optimum environmental, social and economic benefit. However we do retain some reservations about how streamlining licensing will retain the balance between development and conservation, and who will judge where this balance should lie. This concern is highlighted by the proposals in Para 3.30, which appears to suggest systems for exempting a range of activities from regulation without any proposals for the criteria to be used in deciding which activities to consider.
- We note the recognition in Para 3.35 that there is a particular need to ensure consistency in respect of enforcement within the inshore and offshore regions, but suggest this should read ...'between the inshore and offshore regions.'
- We believe that the issue of marine renewable electricity generation is a critical area, particularly as it involves bringing the electricity ashore at some point and therefore impinges significantly on the coast. The need for consistency and detachment leads us to believe that the licensing and planning activity should all reside with one organisation and that this should be a MMO-type body.

- We are particularly concerned about the assumption that marine sand and aggregate extraction could be considered as potentially environmentally sustainable. We believe that these activities not only severely affect the sea-floor ecosystem, but also threaten our coastline by upsetting the dynamic balance between offshore and coastal sand and gravel deposits. This could lead to seriously accelerated erosion particularly of our softer coastlines, with dramatic changes to beaches, dune systems, and their associated benefits including golf courses and nature reserves. In addition such activities may well have severe and adverse impacts on the nursery grounds of commercially important species. The proposals also fail to recognise that future demand will come from the rest of the UK or even further afield, not simply from an internal Northern Ireland market. We believe that the combination of these factors make an irrefutable case for a presumption against marine sand and gravel extraction at any time since it cannot be considered a sustainable operation.

Q8. We would wish to see the following included for consideration:-

- Marine biomass production - effectively the growing and harvesting of marine algae.
- New fisheries and aquaculture technologies
- Tidal barrages, both across the mouths of bays and inlets and as self-contained structures – these have been considered in Strangford Lough, and could be proposed again. Proposals are currently being looked at in the Severn Estuary.
- ‘Reclamation’ or intake of land from the sea. With predictions of rises in sea level this seems unlikely, but should be considered nonetheless.

Q9. CNCC has major concerns about the exclusion of fisheries from the proposed licensing system as well as from the planning system. As an activity that has already impinged so heavily on marine ecosystems and will continue to do so, this seems extraordinary. Any attempt to take a holistic approach to the marine environment will inevitably fail without this major player being included in the system. Leaving fisheries outside of the process, in a different department will inevitably lead to conflicts and will slow up any progress with the key objectives. The experience of the attempts at meeting the conservation objectives of the marine SAC in Strangford Lough gives us little grounds for any optimism in achieving results when responsibilities are divided. This is also true in the ‘no-man’s land’ of the inter-tidal area, where responsibilities are divided between NIEA, DARD Fisheries Division, Environmental Health Officers of local Councils and the Crown Estate Commissioners. The result has been chaotic exploitation of resources with severe but largely unrecognised damage to habitats and species, many of which are meant to be protected by European or national designations. If we are failing at this level, we are very likely to fail again in the future in the marine environment.

Other activities that seem to have been excluded from the process are Ports and Harbours and some aspects of marine renewable energy generation (see Paras 3.24 and 3.25). We have similar concerns about these, and believe strongly that it is essential to bring all of these activities that have the potential to impact strongly on the marine environment under one jurisdiction so that important decisions can be made objectively and relatively quickly, based on the plans that are the property and responsibility of the body in charge of the whole sector.

Q10. CNCC would wish to see the introduction of an MMO-type organisation that brings all the responsibilities for the marine environment under one roof, and which covers a considerably wider remit than currently suggested. This body would need to carefully balance any changes in licensing arrangements against the environmental concerns, and have absolutely clear guidelines on where the lines could be drawn. It would also need to set very clear criteria for applying exemptions, and have thorough, well-thought-out safeguards in place.

Q12. CNCC believes that there needs to be clear recognition that there are changes and developments that have the potential to bring clear benefits to the marine environment and that these need to be recognised and, if possible encouraged. They include new fishing and aquaculture technologies that are more sustainable than current practices, either through being more selective or by simply causing less physical damage. It is also important to recognise that some marine renewable energy technologies may provide significant biodiversity gains through provision of physical diversity in otherwise uniform habitats and by excluding other more damaging activities from an area of sea bed.

Q13/Q14. We are concerned that NI is not following the lead of England and Wales in granting enhanced fisheries management powers to MEOs. We strongly believe that all enforcement could be more streamlined, effective and consistent if it were carried out by a single MMO-type organisation. Enforcement must be tailored to the objectives of management, and if there are a range of objectives imposed by different bodies there will be no consistency of enforcement.

Marine Nature Conservation

General points –

- CNCC is concerned about the complacent statement in Para 4.2 on the state of marine biodiversity, which has been under severe pressure for at least the past century. All marine habitats, but particularly those close to our coasts, have been heavily modified with subsequent significant loss of biodiversity, and we therefore believe that there needs to be clear articulation of an over-riding objective of recovery of marine biodiversity.
- CNCC agrees with the statement in Para 4.4, about education, but feels that this needs to be supported by some real commitment to produce a plan of action and the resources to implement it.
- CNCC would like to stress that the network of MCZs should be ecologically coherent. There are places in this document where the word 'ecologically' is omitted, bringing a potentially completely different interpretation to the term.
- CNCC is very concerned about the situation outlined in Para 4.22, which suggests that legally marine conservation remains a function reserved to Westminster. If the Northern Ireland Assembly wishes to designate MCZs it must clarify its legal position or the process will rapidly degenerate into judicial reviews and legal challenges which could set back progress by years. Sorting out the responsibilities for policy setting, site proposals and amendments, and site approvals should be identified as an urgent priority. This has been achieved in Scotland, where the Scottish Government has an executive devolved responsibility for proposing MCZs with the UK Secretary of State retaining the role of approval only.
- In Para 4.13 the international commitments that the UK government has made are clearly set out, but there is no reference to the OSPAR Convention (The Convention for the Protection of the Marine Environment of the North East Atlantic) which has been the key factor in setting out targets and legislation for Marine Protected Areas. CNCC would welcome a similar clear statement of the NI Assembly's support for these commitments.
- With respect to targets, CNCC is utterly dismayed by the lack of ambition shown here in NI. There is a commitment, expressed in Para 4.13, to establish a network of well-managed MPAs by 2012, but in Para 4.34 we are told that 'DOE intends to have a network of effectively managed MPAs in place' by 2020! The Marine Strategy Framework Directive requires member states to have the measures in place by 2016, while OSPAR are about to re-emphasise the need to have effective management of MPAs in place by 2016. We have already had 10 years to prepare for the 2012 target, but have done

nothing other than to fulfil the very limited requirements of the Habitats Directive in designating a few marine SACs, which we have dismally failed to care for. CNCC recommends that this target is brought into line with the overall UK target of 2016.

- CNCC recommends that, in line with the procedure for independent scrutiny of designations on land, such as ASSIs, and for Marine Nature Reserves, there needs to be some further consideration of governance issues. The logical step would be to replicate the above arrangements, with CNCC as the DOE's Statutory Advisory Council on nature conservation providing the public oversight and final approval stage of the process.
- CNCC believes that there should be a clear statement on how MCZs will deliver the objectives set out when they are designated. In the rest of the UK the statutory nature conservation bodies (JNCC, NE, SNH and CCW) all have a role in providing advice to their respective administrations on conservation objectives, and also have been tasked with monitoring and reporting on the status of MCZs as independent advisors. NIEA can and should provide the advice, but as part of the DOE cannot be seen as independent in reporting on status. This anomaly needs to be resolved, and the arrangements clearly set out in the Marine Bill.
- CNCC is concerned about the issue of fisheries management with regard to MCZs. Government will need to seek measures under the Common Fisheries Policy (CFP) for regulation in the 6-12nm zone, and will need to work collaboratively with other areas of the UK and with the Republic of Ireland at an 'Irish Sea level' to achieve this. These negotiations need to be initiated immediately, and require close collaboration between DOE and DARD, working with DEFRA. Without the necessary derogations it will prove very difficult to manage MCZs in order to achieve their objectives.

Q15. CNCC agrees that a new, flexible mechanism for the designation of MCZs should be introduced in NI. We welcome the recognition given here to the current difficulties and shortcomings in protecting species and habitats in the marine environment (Paras 4.23 to 4.27) which strongly support the case for a new approach. We also are pleased to see the recognition of the value to society of MPAs through their contribution to biodiversity and more directly as essential habitats for many commercially important species (Paras 4.7 and 4.8). We would also point out that there is now considerable evidence to show that MPAs provide huge benefit to fisheries through significant 'edge effects', effectively restocking adjacent areas of the sea with the increased productivity achieved through the absence of disturbance. We therefore welcome the proposal in Para 4.31 that the NI Marine Bill should introduce new powers for the establishment of MCZs in NI waters.

Q16. CNCC agrees that different MCZs will need to have different conservation objectives, but we feel that there will need to be some minimum standard of protection that is common to all MCZs to give them a clear identity and presence. Each area designated will have its own habitats and species and its own set of other pressures that are acting on these. It will therefore be necessary to have different conservation objectives and different ways of achieving those objectives. We welcome the insistence (Para 4.54) that these objectives will be based on scientific evidence, but are concerned that it appears that all the objectives will need to be in place before a Designation Order can be produced. If these MCZs are to be truly more flexible than their land-based equivalents we would suggest that while basic objectives will be essential for designation they can be refined and added to over time as the habitats involved change in response to protection and understanding of them grows. The precautionary principle of providing protection with an overall objective of recovery/restoration of the habitat should override the need to have every last detail in place at the outset.

Q17. CNCC does agree that these factors may be taken into account, but believes that if we are serious about setting up an ecologically coherent network of MCZs conservation must be recognised as the primary purpose and over-riding concern of this legislation. This means the setting up of an ecologically coherent network of protected areas. Apart from that we have significant binding international commitments to honour (Para 4.13 – WSSD, CBD, OSPAR and MSFD). While we are happy that there should be a degree of consensus (Para 4.42) it is important to recognise that there will always be vocal and often organised objections from certain sectors to any sort of regulation of the marine environment.

Q18. CNCC welcomes the proposal to replace provisions for the designation of MNRs with the new measures for MCZs. We are well aware of the shortcomings of MNRs and the failure of the Strangford Lough MNR to offer even rudimentary protection to the priority habitats and species within it. We recommend that the existing MNR should automatically become a MCZ when the legislation changes.

Q19. CNCC welcomes the proposals for the identification and selection of MCZs, based on the best science available, and the adoption of the DEFRA designation principles developed by JNCC (Para 4.32). However there remain many gaps in the science available and we believe that there should be a commitment to constantly improve our knowledge of the marine environment and its flora and fauna. There will inevitably be a need to add further species and possibly habitats to the existing priority lists in need of special protection. While the quinquennial review of the Wildlife Order Schedules will offer opportunities to do this there may need to be other mechanisms as well. With regard to site boundaries we are pleased to see the statements made in Para 4.47 with regard to encompassing future changes and the possibility of revision of boundaries in future. We consider that decisions on boundary changes to protected areas should only be made on scientific grounds, and not on economic ones. We would urge that the precautionary principle is used in this context to provide not merely minimal protection but the opportunity for buffer zones around the most important habitats and sites.

We would like to see some recognition of the fact that the principles outlined in Para 4.32 have been developed primarily for the sea bed, and we need to establish how they might apply to the water body. This will be essential if we are to make any progress in conserving a significant proportion of marine biodiversity, including the features of the Irish Sea Front, such as plankton, juvenile fish, basking sharks and cetaceans.

We recommend that Para 4.37 makes specific reference to habitats and species that have been identified as Priority Habitats and Species in the NI Biodiversity Strategy in order to ensure that we conserve those features that are unique to Northern Ireland or are particularly well represented here, as well as fulfilling our UK and European requirements.

We have some concerns about the wording of Paras 4.44 and 4.45, which could lead to confusion at best, and at worst to the designation of tiny 'boxes' which will not be fit for purpose. This sort of argument has bedevilled the attempts to create a no-disturbance zone for *Modiolus* biogenic reef habitat in Strangford Lough, with the result that we are failing to meet the requirements of the Habitats Directive in protecting this priority habitat.

While we welcome the principle of a statutory duty on Departments and Public Bodies (Para 4.55) to further the achievement of the conservation objectives, we believe that this needs to be significantly fleshed out, with details of how and by whom it would be enforced. This is based on the very serious difficulties at present experienced in achieving co-operation between Government departments in respect of implementation of the Birds and Habitats Directives, even within the prescriptions of The Conservation (Natural Habitats) Regulations (1995) which transpose those collective responsibilities into NI law.

Q20. CNCC believes that the introduction of bye-law-making powers will be essential, if protection of MCZs is going to be achieved and enforced. However we believe that the introduction of the powers to make bye-laws is not enough. There must be the political will and the resources to formulate and enact the bye-laws and then to enforce them. We believe that the enforcement powers should be delegated by DOE to a MMO-type organisation, or at the very least to NIEA.

Q21. We believe that the enforcement powers proposed will probably be adequate, provided that a team of dedicated Marine Enforcement Officers is set up, equipped and trained to deal with the possible situations that they may find themselves in. They will also need the support of the PSNI which will require training in marine issues, and the prosecution system. Finally, if the courts are unwilling to impose proportionate penalties for marine offences the whole process will be a waste of time and resources. We believe that there needs to be consistency with ASSI protection under the Nature Conservation and Amenity Lands Order, Environment Order and Wildlife and Natural Environment Bill, to avoid confusion and differences of approach on land and sea. This will be particularly important in dealing with issues arising in the inter-tidal area.

Q22. Having considered all the proposals within this document CNCC remains convinced that the best approach would be to bring all marine regulation under the jurisdiction of one agency, preferably outside of a government department. This would include fisheries, electricity generation and harbours. At the very least the proposed legislation should not rule out the option of creating such an agency in the future if present resource constraints preclude this course of action now.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Patrick Casement', written over a horizontal line.

**PATRICK CASEMENT
CHAIRMAN**