

## A Northern Ireland Marine Bill – Policy Proposals Consultation – April 2010

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<b>Main area of interest:</b>	Nature conservation

### INTRODUCTION

The Northern Ireland Marine Task Force (NIMTF) is a coalition of eight environmental non-government organisations campaigning for new, integrated and comprehensive marine legislation for Northern Ireland through a Northern Ireland Marine Bill. The coalition includes Northern Ireland Environment Link, Ulster Wildlife Trust, WWF Northern Ireland, The National Trust, RSPB, the Wildfowl & Wetlands Trust, the Irish Whale & Dolphin Group and Friends of the Earth, and has a combined membership in Northern Ireland of over 100,000 people.

The NIMTF welcomes this opportunity to comment on proposals for a Northern Ireland Marine Bill. We have been campaigning for better protection and management of the UK marine area, including Northern Ireland's seas. We see the Northern Ireland Marine Bill as the last piece of the legislative jigsaw for full and effective protection of marine wildlife throughout UK waters.

In our response, there are cases where we have supported proposals which we consider are not ambitious enough. These are proposals which we lobbied against during the passage of the UK Marine & Coastal Access Act and the Marine (Scotland) Act through their respective legislatures. However, despite our objections in principle, we are either supporting or recommending the same approach for the Northern Ireland Marine Bill to ensure consistency of approach throughout the UK's seas.

## MAIN ISSUES

1. The NIMTF believe that this reform of marine policy, legislation and delivery will only be successful if it overcomes the problems caused by the complexity of the current system. Having a large number of Departments and Agencies managing the marine sector in NI has led to a lack of adequate environmental protection, delays and costs to commercial and social projects, and unnecessary expense to government.
2. The NIMTF are concerned at the absence in the consultation of any discussion or exploration of the feasibility of a Marine Management Organisation in Northern Ireland, which would integrate the marine functions of the 11 Northern Ireland Government Departments and Agencies. This is a vital discussion that needs to be had openly and urgently, as the success of the measures proposed in this consultation depend upon wholesale reform of the marine delivery responsibilities of these Departments and Agencies.

## SETTING THE SCENE

### *Q1. Do you agree that change is needed to the management of and legislative framework for managing Northern Ireland's seas?*

The NIMTF agrees with the points made in the introduction section of this consultation document. Northern Ireland has incredible marine natural history, including rare and vulnerable species and habitats. There is a diverse array of commercial interests, all competing for space to operate and resources, often under different sectoral licensing regimes that are not joined up. There is therefore a need for sweeping marine legislative reform for the benefit of the marine environment, the commercial and leisure sectors, and government efficiencies. Furthermore, the need to deliver national objectives, as well as wider international commitments and EU obligations, such as the EU Marine Strategy Framework Directive's aim of achieving good environmental status (GES) in EU seas by 2020, requires a new approach to marine management and regulation.

The introduction section of the consultation lists the economic resources that the Northern Ireland sea area provides. However, it must be recognised that as well as providing direct extractive economic returns (fishing, power, raw materials, etc) the Northern Ireland sea area provides a wealth of ecosystem services, which depend on intact, healthy, diverse and, in some cases, unimpacted habitats. It is therefore critical that the coastal and marine habitats of Northern Ireland are conserved not just for their inherent value, but also for the economic benefits that they support. Marine ecosystem services are those natural marine processes that provide support, or are critical to, economic or social benefits. These services are provided by intact and healthy systems of species and habitats.

We are therefore concerned by the tone of the reform as set out in the consultation document. We agree with and strongly support the aim of achieving sustainable

development in the marine area, following the five principles of sustainable development: “to achieve our goals of living within environmental limits and a just society, and we will do it by means of a sustainable economy, good governance, and sound science”<sup>1</sup>. As a consequence, we believe that the consultation document focuses too strongly on economic growth to the detriment of the other principles and hence the delivery of sustainable development of the marine area. Secondly, to achieve true sustainable development, the joint UK Sustainable Development Strategy states that the five principles must be integrated rather than balancing or trading off individual principles against each other (e.g. para 1.12; 1.13). Again the consultation document focuses on the latter approach.

With respect to achieving sustainable development in the marine area, the NIMTF would reiterate the comments that we made by the RSPB in response to the recent consultation on the UK-wide Marine Policy Statement (MPS) but which equally apply to a reformed approach to managing Northern Ireland’s seas in a sustainable manner.

- The **ecosystem-based approach** and the **sustainable development principles** need to be at the heart of the new marine management regime (see para 1.14).
- The marine environment and its conservation is more than a sectoral interest and covers more than just marine protected areas. Without a sound, healthy and functioning marine ecosystem, many marine ecosystem goods and services and hence benefits to society and the economy will be lost. Therefore, to achieve the UK’s and Northern Ireland’s marine vision, achieve sustainable development of the marine area and deliver an ecosystem-based approach, living within environmental limits must be a, if not the, cross-cutting theme and must underpin marine management and resource use decisions if they are to achieve sustainable development in the marine area.
- There needs to be a proactive approach to the management of human activities at sea and as a consequence decision-makers must initially aim to protect and conserve, and avoid damage and harm, only where that is not possible, then look to minimise and mitigate damage where it does occur (e.g. see Introduction; para 3.8).

However, we would note that Northern Ireland, in rationalising its marine management, is starting from a point far behind that of the other administrations of the UK, due to the extreme complication of its approach to marine management. Mention is made in the document of how the many marine activities that take place are diverse, and vary in their compatibility with each other and the extent to which they affect the marine environment. This statement is probably truer for Northern Ireland and its marine area than anywhere else in the UK. Not only is the Northern Ireland sea area heavily impacted, it is also managed by a particularly diverse, sectorally-split system. This results in problems, time

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<sup>1</sup> From the joint UK Sustainable Development Strategy, *Securing the Future* (2005). The five guiding principles are reiterated by the UK’s four political Administrations in the UK shared framework for sustainable development, *One future - different paths*; and specifically for Northern Ireland in the *Sustainable Development Strategy for Northern Ireland*.

delays and cross-sectoral conflicts for marine industries, as well as unnecessary expense and time burdens for government.

This proposed Northern Ireland Marine Bill therefore will only be effective if it provides a new, coordinated system for managing, together, all the diverse sectors of marine activities (both existing and proposed). The other countries of the UK have shown the way for this, through recent comprehensive and substantial changes to their respective marine management regimes.

**Q2. Do you agree, for each of the following areas, that the Northern Ireland Executive should put in place a new legislative and management framework that provides for:**

- (a) a new system of marine planning for the sustainable use of Northern Ireland's seas?**
- (b) further streamlining of marine licensing?**
- (c) improvements to marine nature conservation so as to further safeguard and protect Northern Ireland's marine assets?**

The NIMTF believe that new legislation is required in Northern Ireland to complement the UK Marine & Coastal Access Act 2009 and the Marine (Scotland) Act 2010, improving the protection of Northern Ireland's marine environment and introducing more streamlined management of the many human activities that occur there. Existing management regimes must be modernised to integrate environmental concerns more effectively with social and economic concerns. An ecosystem-based approach and the need to live within environmental limits must be at the heart of a new system of marine planning, and hence the achievement of Northern Ireland's marine nature conservation priorities should underpin the granting of licences for activities throughout the marine area.

*(a) Marine Planning*

As noted in response to Q1, there is a predominant focus on economic growth in the consultation document. For example, statements such as that in paragraphs 1.19 and 2.76, regarding the aim of marine planning give us grave cause for concern: *"ensure that we are getting maximum social and economic benefit and use from our marine resources, whilst ensuring appropriate environmental protection"*. It is our view that the focus should be on ensuring the attainment of sustainable social and economic benefits, and therefore, the focus should not be 'maximising' benefits but getting optimum sustainable benefits from that marine environment. We believe that this imbalance, with respect to the five principles of sustainable development, needs to be redressed with respect to DOE's and the Northern Ireland Government's overall approach to the Northern Ireland Marine Bill as well as marine planning, to one which respects all five principles, and recognises that living within environmental limits and attaining a just society are cross-cutting themes.

A marine planning system should be developed for Northern Ireland's waters, that works in tandem with the plans, and systems for making plans, in Scottish, English, Welsh, Irish and the Isle of Man waters. Commercial activities such as fishing, marine aggregate extraction, marine renewable energy production, submarine cabling and pipelines and shipping (to name a few) generally happen at the regional sea scale. Of course, considerations for marine

nature conservation need to be made at a whole sea scale too, particularly when managing threats to biodiversity and habitats through the licensing, marine planning and protected area systems. Planning in Northern Ireland's waters therefore, needs to be taken forward as a subset of a wider regional sea (e.g. Irish Sea) plan, agreed between Administrations.

We welcome commitments to engaging stakeholders in the marine planning process. However, we would highlight that consultation has to be both early and effective and that all stakeholders, not just "key" stakeholders must be involved (see para 1.18).

The final statement of the consultation introduction is that these policies will contribute to ensuring that Northern Ireland will have coherent, integrated marine plans by 2014, in exactly the same timeframe as the rest of the UK. We would be further assured of this if more detail were given as to the timetables for developing the marine plans and the Marine Protected Area network, alongside the development of legislation.

#### *(b) Marine Licensing*

We welcome further reform and streamlining of the marine licensing system in Northern Ireland, aside from the transposition of the licensing reform provisions of the UK Marine & Coastal Access Act. However, the licensing system needs to maintain the checks and balances necessary to ensure the environmental sustainability and social and economic equality for which it exists. There should be a Northern Ireland Marine Management Organisation, and this organisation should be the body responsible for making licensing decisions.

While we welcome the aims in paragraph 1.21, we note again that the focus is on "*sustainable economic development*", rather than on sustainable development. We would also add that the main aims of marine licensing are "*to protect the environment, protect human health and prevent interference with legitimate uses of the sea*" as set out in s69 of the UK Marine & Coastal Access Act 2009.

#### *(c) Marine Nature Conservation*

There should be a vastly improved legislative and institutional framework and approach to marine nature conservation and protection in Northern Ireland, for the maintenance and recovery of its natural species and habitats, and the ecosystem services that they provide. To this end, there urgently needs to be an ecologically coherent network of Marine Protected Areas in Northern Ireland's waters, above and beyond existing or planned MPAs under the European Birds and Habitats Directives. Marine Protected Areas need to be set up to protect nationally important features of biological or geological interest.

A national network of ecologically coherent (biologically-connected) Marine Protected Areas, with levels of protection appropriate to their conservation objectives, needs to be set-up urgently because:

1. There is an urgent need to protect, maintain and recover the vitally important and diverse marine and coastal ecosystems of Northern Ireland from unsustainable and cumulative impacts in a coherent manner, and;

2. There are numerous international, UK and European targets and legal imperatives for setting up such a network along fairly specific guidelines, including but not limited to OSPAR and the Marine Strategy Framework Directive. Northern Ireland is currently behind on most of these MPA-related targets, particularly in comparison with the rest of the UK.

A further example of the lack of prominence given to ensuring environmental sustainability can be seen in Figure 1 and other parts of the Introduction section (e.g. page 5) of the consultation document. These refer to the timetable and deadline for delivering marine planning and marine plans but do not set any target date for designating an ecologically coherent network of marine protected areas. Figure 1 gives the impression that Northern Ireland is keeping pace with the other UK countries for reforming marine management. However, looking at the important dates, i.e. the dates for Royal Assent of each Bill, it is clear that Northern Ireland is at least 2 years behind the rest of the UK. Also, in the lead up to this consultation, the various timetables for the Northern Ireland process that were made public have slipped, in some cases quite considerably. The NIMTF would like assurance that the Government is still on target for the NI Marine Bill to go to Royal Assent in Summer 2012.

The UK, Welsh and Scottish Governments have committed to designating ecologically coherent networks by 2012 to meet international commitments, such as 2010 OSPAR<sup>2</sup> and 2012 WSSD<sup>3</sup> targets, while the EU Marine Strategy Framework Directive sets a reporting deadline on MPAs of December 2013. The lack of a timetable for designating the Marine Conservation Zones (MCZs) under the Northern Ireland Marine Bill raises alarm bells for us as we have been repeatedly assured by DoE that they will have both nationally and internationally sites in place to meet the 2013 MSFD reporting deadline.

It would be useful therefore to see an accompanying timetable for processes such as the lead-up to the designation in Northern Ireland's waters of the equivalent of the Marine Conservation Zones (MCZs), currently being planned in English waters. This is indicated in Figure 1 for Marine Planning, but as there are also international targets and obligations for a network of marine protected areas, this process for Northern Ireland should also be included.

We are particularly concerned that it appears that MCZs in territorial waters "*will take into account any social and economic factors relating to the site*" (emphasis added) as both the UK Marine & Coastal Access Act and the Marine (Scotland) Act use the term "*may*" rather than "*will*", i.e. the consideration of socio-economic factors is a discretionary power rather than the proposal for Northern Ireland which appears to be obligatory. Such a proposal is not only a departure from the traditional approach to designating protected areas including those on land, e.g. Natura 2000 sites or ASSIs, but would also be a departure from the

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<sup>2</sup> The OSPAR target is for Contracting Parties (including Northern Ireland) to establish an ecologically coherent network (which includes but is not limited to Natura 2000 sites) of well-managed Marine Protected Areas by 2010.

<sup>3</sup> The World Summit on Sustainable Development (WSSD) agreement, made by Ministers in 2002, committed signatory members (including the UK countries) to creating representative networks of MPAs by 2012.

approach taken in the rest of UK waters for nationally important sites. While the inclusion of this clause in the UK and Scottish Acts is not an approach which we support, a discretionary power is preferable to the proposal for the Northern Ireland Bill. While we do not support the consideration of socio-economics in site designation in principle, we do urge that should this consideration be included in the Northern Ireland Marine Bill that the proposal is a discretionary power to ensure consistency of approach throughout UK waters.

#### *Northern Ireland Marine Management Organisation*

The NIMTF also believe that there are elements missing from the policy proposals, most notably provision for a Northern Ireland Marine Management Organisation (NI MMO). The NIMTF strongly support the setting of a NI MMO, and believe that not including a section on this in the consultation is a missed opportunity to properly engage stakeholders in the decision on whether or not there should be a NI MMO. An NIMMO would ensure the delivery of an integrated approach to management of the marine area across the various Government Departments with marine responsibilities in Northern Ireland waters.

Northern Ireland has the most convoluted, unwieldy and bureaucratic system and approach to marine management of all the countries in the UK, even ahead of the introduction of the UK Marine & Coastal Act and the Marine (Scotland) Act. This results in problem issues such as unnecessarily expensive and inconsistent environmental protection, conflicts across and between commercial sectors and government departments and agencies, expense and delay to commercial marine industries, not to mention disproportionate time and financial costs for Government. Crucially however, changes to the legislative framework will only have a beneficial impact upon these issues if there is an institutional change to marine management in Northern Ireland, and realistically, a single Northern Ireland marine management body is the only way to achieve this. It seems from this consultation document as though the legislation will be brought in and effected by the Departments without any reorganisation of functions, and as established by Tony McCusker in his report of 2009 (see below), this will have serious cost and practicality implications for both Government and for the private sector. By not considering institutional change, any of the potential added economic and environmental benefits of this legislation will also be missed in Northern Ireland.

The Marine Management Organisation (MMO) model is by far the most efficient, pragmatic, modern and sustainable way to manage the seas in Northern Ireland, so that everyone “*can continue to benefit socially, economically and environmentally from the resources that (Northern Ireland’s) seas have to offer*”, which is the express intention of the proposals. The Northern Ireland Marine Task Force commissioned the 2009 McCusker Report<sup>4</sup> which showed categorically that a single marine management body in Northern Ireland could solve an overwhelming majority of the problems that Northern Ireland has when it comes to marine management, whilst also beginning to save Government money. These benefits will only be made manifest by co-managing all marine sectors within one agency. There was a commitment by Government (from the Minister as well as the Department) to explore this,

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[http://www.nimtf.org/documentbank/uploads/McCusker%20\(2009\)%20NI%20Marine%20Management%20Economic%20Implications%20report.pdf](http://www.nimtf.org/documentbank/uploads/McCusker%20(2009)%20NI%20Marine%20Management%20Economic%20Implications%20report.pdf)

made in the original Northern Ireland Marine Bill proposals, and presented to the Assembly Environment Committee in 2008. The NIMTF were assured, in response to submitting the McCusker report, that this Marine Bill consultation would discuss and consult on proposals for a Marine Management Organisation for Northern Ireland. We now ask why this Marine Management Organisation is not included in the policy proposals?

#### *Northern Ireland Fisheries Bill*

The NIMTF would like to know if the Fisheries Bill will be developed in parallel with the Northern Ireland Marine Bill to ensure consistency of overall objectives and a coherent approach to the management of the marine area? The Fisheries Bill is referenced in para 3.38, but there is no mention of when this is due to be published. The NIMTF strongly support the modernisation of fisheries management in NI, and would like to see this taken forward under the Northern Ireland Marine Bill. We would like to know why the opportunity of modernising the fisheries legislation through the Northern Ireland Marine Bill has not been taken, or at least discussed as an option in this consultation?

#### ***Q3. What difference would each of these changes make to your area of interest?***

The proposed changes to the management and protection of Northern Ireland's territorial waters should:

- deliver a strategic, proactive, forward looking, plan-led approach to the management of the marine area.
- lead to better integration of environmental considerations into the full range of marine decision making and policy development.
- complete the suite of tools needed to protect the full range of species and habitats throughout Northern Ireland's seas.

#### **MARINE PLANNING**

#### ***Q4. What comments would you like to make on the proposed approach that Northern Ireland develops one marine plan, supported by more localised plans where appropriate?***

The NIMTF supports the development of a national plan for Northern Ireland covering both inshore (under the Northern Ireland Marine Bill) and offshore waters (under the Marine & Coastal Access Act), which mirrors the approach taken in Scotland.

However, we are unable to give a definitive view on whether the proposal to have a power "*to create more localised plans, if considered necessary*" (para 2.26) is adequate. The consultation document provides us insufficient detail to allow us to make a reasoned opinion on this approach. Instead, we ask the following questions of DoE for greater clarity:

- Are DoE considering regional scale plans or only local plans?

- Are there any situations which DoE foresee as requiring a local marine plan to be produced, i.e. what does DoE mean by stating in the question that local plans will support the national plan “*where appropriate*”?
- Does DoE foresee situations which do not require a local marine plan to be produced? For example, Marine Scotland states that “*if there are no specific activities in an area, a regional or local plan may not be necessary*”.
- Will DoE commit to marine planning under certain circumstances, e.g. in areas of conflict, in busy locations or where local bodies/communities request a more detailed local plan?
- Who will produce the local plans? For example, paragraph 2.17 proposes a power for the Minister to delegate plan making powers. However, without an NI MMO, it is unclear who planning would be delegated to. We believe that strict criteria would need be developed to ensure that whoever the planning powers were delegated to were responsible, and had the appropriate levels of skill and expertise to plan. The DoE would also need to ensure that the delegated planning authority will effectively and fairly engage all stakeholders, etc. Is DoE considering setting up local planning bodies/groups, equivalent to the Scottish Marine Planning Partnerships to deliver local marine plans?

We believe that criteria must be developed to ensure that where and when local marine plans are needed or requested that they are produced.

The NIMTF also asks for clarity on the following statement in brackets in para 2.28: “*it is not possible to exclude most users as property rights are not well defined*”. Is this specific to Northern Ireland, given that in the rest of the UK it is possible to exclude everybody from an area, e.g. an MPA, precisely because there are no property rights? There are complications, with the right of innocent passage and fishing – there are historic fishing rights for the Republic of Ireland and France within the 6-12nmile zone of Northern Ireland’s territorial waters, and in the Northern Ireland offshore zone, management of fisheries exclusions comes under the jurisdiction of the Common Fisheries Policy (CFP). However, in both cases there are processes for excluding fishing activities if so required and where the case can be made, the same applies to shipping. Finally, the MSFD provides additional impetus, as well as a further mechanism, for supporting the exclusion of e.g. fishing from an MPA if that is needed.

***Q5. What comments would you like to make on the proposed stakeholder involvement in the development of a marine plan?***

The NIMTF welcomes the commitment to early and broad consultation and stakeholder engagement (paras 2.33-2.34), particularly as paragraph 1.18 seems to make a point that “*key*” stakeholders are to be involved rather than all stakeholders. Our view is that all stakeholders and interested parties must be given the opportunity to be involved. We would also highlight that consultation has to be effective as well as early – the process must be clear and transparent and ensure enough time and appropriate opportunities for stakeholders to engage and respond. The NIMTF and other environmental NGOs will be important

stakeholders in the marine planning process, with a knowledge of specific marine species, habitats and areas, that will need to be included in the plans.

We support the publication of a statement of public participation (SPP) (para 2.35). While this is a requirement for offshore waters under the UK Marine & Coastal Access Act, we believe that it will be just as important to have one that covers the entire Northern Ireland marine planning area.

We welcome the clarification that “*Involvement in consultation on the plan would not prevent issues and objections being raised at a later stage in response to specific licence applications*” (para 2.34). This is particularly pertinent as project Environmental Impact Assessments (EIAs) may provide more information than was available at the time the plan was being prepared. Moreover, as paragraphs 2.71-2.72 make clear, there will be times when other considerations other than the plan are relevant, including the availability of new data or research.

As DoE are following the Scottish model, will the equivalent to Marine Planning Partnerships be set up in Northern Ireland? In Scotland, they will be responsible for marine planning for each marine region and will deliver regional and/or local marine plans.

***Q6. What comments would you like to make on the proposed integration of marine planning with other related, adjacent and/or overlapping plans in Northern Ireland?***

The NIMTF supports the DoE making use of best-practice from the pilots carried out to date (paras 2.20 & 2.22), for example, Defra’s Marine Spatial Planning Pilot in the Irish Sea, and the 4 pilots to develop and test new approaches to improve the sustainable management of Scotland's marine environment. We would also recommend as a good source of information the following joint NGO report, *Mobilising the Marine Act – Implementing Marine Spatial Planning in the UK: lessons learned from international case studies*<sup>5</sup>, which reviews the best-practice and lessons to be learnt from marine planning in other countries around the globe which are of relevance to the new marine planning authorities in the UK.

We welcome the list of “*other plans*” that should be considered when developing marine plans set out in paragraph 2.58.

*Marine Policy Statement (MPS)*

The NIMTF welcome the Northern Ireland Executive’s support and engagement in the development of a UK-wide MPS. We believe that the UK-wide MPS is vital to ensuring a consistent approach to marine management throughout UK seas and to aid the delivery of ‘good environmental status’ (GES) under the EU Marine Strategy Framework Directive (MSFD). The RSPB, as members of the NIMTF, has already provided detailed comments to DOE on the MPS ‘pre-consultation’ discussion paper earlier this year.

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<sup>5</sup> [http://assets.wwf.org.uk/downloads/mobilising\\_the\\_marine\\_act.pdf](http://assets.wwf.org.uk/downloads/mobilising_the_marine_act.pdf)

With respect to achieving sustainable development in the marine area, the relationship between the MPS and the RDS in Northern Ireland (para 2.6), highlights the lack of strategic policy and objectives for the marine environment. We would highlight again that living within environmental limits is a cross-cutting theme that underpins the achievement of sustainable development. This view is articulated in paragraph 2.2, with the acknowledgement of the importance of a healthy marine environment to our own health and well-being and to ensuring the long-term sustainability of the marine economy. We would also draw attention to paragraph 2.19, which reiterates the joint UK intention “*to put an ecosystem-based approach at the heart of marine policy*”. Both these positions need greater emphasis in the development of the Northern Ireland Marine Bill.

With respect to the appraisal of the MPS, we would highlight that the Sustainability Appraisal (para 2.11) will also have to meet the requirements of the EU Strategic Environmental Assessment (SEA) Directive. Having to meet the SEA Directive requirements will ensure that environmental issues are fully and properly considered and that the most environmentally-friendly and sustainable policy scenarios and objectives are taken forward in the final version of the MPS.

#### *Adjacent & Overlapping Plans*

We welcome the recommendation that marine plans must have regard to adjacent plans (para 2.24), including terrestrial plans and River Basin Management Plans (RBMPs). This will involve consultation with terrestrial planning authorities as well as the marine planning bodies in the other UK Administrations, such as the MMO for England, Marine Scotland and the Welsh Assembly Government. It will also involve consultation with international neighbours including the Republic of Ireland, but also the Isle of Man. However, we would like clarity that in addition to marine plans having regard to e.g. terrestrial plans, these other plans will also have regard to marine plans to ensure that marine priorities and the impacts of terrestrial decisions on the marine area are adequately considered, particularly when the other plans are being reviewed or updated. Consequently, we would urge DoE to commit to ensuring that as a minimum, the terrestrial planning guidance is amended to ensure that terrestrial planning takes marine plans into consideration (see para 2.64).

We offer a word of caution regarding the intention to remove duplication between plans where possible (para 2.57). We agree that unnecessary duplication can be confusing. However, there are certain considerations that must be made before either a duplicate plan is removed or the information from that other plan not included in the marine plan. For example, as an overarching plan for Northern Ireland’s marine area, the national marine plan will quickly become the first place that marine users and regulators come to for planning and licensing information. Therefore, any duplicate plan that is not included in the marine plan must be clearly referenced in the marine plan, so that the information it contains is not ignored during decision-making. Secondly, certain plans are a statutory requirement, e.g. RBMPs under the EU Water Framework Directive (WFD), and as such must be produced to meet specific regulatory requirements. The same information could not be subsumed into the marine plan without clearly delineating where the legal requirements are still being met.

The consultation document is not clear on whether the marine plan will overlap with terrestrial plans in the intertidal as is the case in England, Wales and Scotland. This overlap in the intertidal area helps ensure that marine and terrestrial plans must consider and be consistent with each other.

***Q7. What comments would you like to make on the proposed process for developing a marine plan in Northern Ireland?***

The NIMTF supports the DoE's intention to ensure consistency of approach between the marine planning system within Northern Ireland's territorial waters and the other UK planning systems outwith 12 nautical miles, including that which will operate in the Northern Ireland offshore zone (para 2.18). We therefore welcome the process for plan preparation, appraisal, consultation on draft plans, plan monitoring (performance and compliance), adoption, publication, review and enforcement that is proposed in the consultation document. At the level of detail provided in the consultation document, the approach appears to be the same as that already agreed for England, Wales, Scotland and offshore. For example, we welcome the implicit commitment to undertaking an SEA for marine plans (para 2.63), though obviously it is a legal requirement. Furthermore, despite calling for the independent investigation in the Marine & Coastal Access Act to be obligatory, we recognise that a discretionary public investigation (para 2.45) is at least consistent with the approach taken in the published Act.

We welcome and support the statement in paragraph 2.2 that "*the importance of a healthy marine environment to our well-being, the protection and sustainable development of marine resources now and for the future has become a key element of marine policy*". However, we would like to see this approach given greater prominence with respect to the marine planning proposals and throughout the consultation document. We would also note that a further benefit of marine planning is that it should allow greater consideration of the cumulative impacts of marine activities on each other and the marine environment, which while not acknowledged in paragraph 2.1, is referred to in paragraph 2.32. However, paragraph 2.32 highlights our concern that environmental considerations are being sidelined. This paragraph focuses on the economic benefits that marine planning will bring, while there is little or no consideration of the marine environment or of integrating environmental considerations in to the development of Northern Ireland's marine policy or marine planning. This is a serious omission, if DOE and the Northern Ireland Executive are serious about delivering an ecosystem-based approach to the management of human activities and achieving sustainable development in the marine area, this omission needs to be rectified.

Paragraph 2.69 states that decisions regarding the protection of resources and the designation of MPAs will be affected by the marine plans. We disagree with this approach. MPAs should be designated based on conservation science alone and using ecological criteria to ensure the protection of the full range of marine biodiversity and ecosystems and the delivery of an ecologically coherent network. Whilst the location and boundaries of MPAs should be determined through separate processes, marine planning should provide a strategic overview of the location of sites and the success of the MPA network. See our

response to the section on Marine Nature Conservation, below, for further details. This bullet should be removed from the list of decisions that marine plans will affect.

It is not clear from paragraph 2.74, what DoE is proposing with respect to currently unregulated activities. We would recommend that as a minimum, those carrying out unregulated activities should have regard to marine plans. Furthermore, we recommend that DOE makes it clear that those carrying out unregulated activities cannot damage or harm MCZs or other MPAs without repercussions, i.e. despite being unregulated such activities cannot carry out their activities without considering other users and the environment.

### LICENSING MARINE ACTIVITIES

***Q8. Are there any specific emerging trends, new technologies or novel types of activity which the licensing regime should address?***

The licensing regime should be designed to be able to consider and assess each activity based on the pressure that it represents to a particular natural interest feature. These may be abrasion pressures, chemical change or physical impact pressures, but would represent a more proactive approach to protecting the marine environment through the licensing system. This would also allow new emerging technologies to be assessed.

It is clear that the reforms to the marine licensing regime should enable it to respond to the many different marine renewable electricity generating technologies, whether they be wind turbines, or for harnessing wave, tidal or current power.

***Q9. Do you have any views on the inclusion or exclusion of certain regimes from the scope of the proposed further reforms to licensing of marine activities?***

The NIMTF welcomes and supports the proposal to streamline the licensing regime within territorial waters to provide consistency with licensing in the offshore zone and throughout the rest of UK waters. We therefore support the adoption of the same approach to streamlining and removing duplication between the marine licensing regime and any remaining sectoral consenting regimes *via* Special Procedures to ensure consistency, particular between the inshore and offshore regimes and between devolved and reserved regimes throughout Northern Ireland's seas.

We accept that there needs to be a common-sense approach to the inclusion or exclusion of certain activities from the licensing regime. From an environmental point of view it is essential that there is some scheme for recording and monitoring the cumulative effects of non-licensed activities over the long term, and measures introduced to halt or cease said activities should they be shown to be having a serious or significant impact.

We are seriously concerned that it appears that DETI are considering licensing CCS and natural gas storage within internal waters, i.e. in effect, in Northern Ireland's sea loughs. These areas are known to be environmentally sensitive and already support a number of existing activities and uses. We question whether locations so close to shore are appropriate sites for gas storage and whether the sub-seabed geology is appropriate.

***Q10. Do you have any views on improvements that might be made to the processing and administration of licensing marine activities, which should be considered throughout the development of proposals for a Northern Ireland Marine Bill?***

Licensing decisions should be made in the round, by a single marine licensing body that will take forward consenting duties for all marine sectors in Northern Ireland. This would speed up the processing and administration of the licensing of marine activities, give more surety at the start of the process for businesses over whether their proposal is likely to receive consent. Furthermore, it would bring massive benefits to Northern Ireland's natural marine environment because consenting decisions would be made in a uniform manner that would inherently take account of single, cumulative and in-combination environmental impacts.

***Q11. How can we ensure that the proposals for the Northern Ireland Marine Bill will further reduce the regulatory burdens within Northern Ireland Departments and on business?***

If the reforms to the licensing system and development of a marine planning system that are urgently required (and have already been taken in the other UK countries) with the current make-up of Northern Ireland Departments, there will most likely be an increased regulatory burden, particularly on the Departments. However, if these licensing, planning and marine conservation reforms were to be taken on alongside the development of a single marine management body for Northern Ireland, as proposed in the McCusker 2009 report (see above), the maximum benefits with regard to lessening the regulatory burden on Departments and on business would be realised.

***Q12. Are there any other key principles that should be considered as part of any further changes to the regulatory system?***

The main aims of or the purpose for marine licensing in the Marine & Coastal Access Act 2009 are: to protect the environment, protect human health and prevent interference with legitimate uses of the sea (s69). This purpose needs to be clearly articulated in the Northern Ireland Marine Bill. While paragraph 3.3 goes some way to making this point, it is not a clear statement. We welcome the intention for marine licensing set out in paragraph 3.6 which provides one of the best and truest descriptions of sustainable development in the consultation document. However, the approach to marine licensing should be aiming to achieve sustainable development in the marine area by integrating consideration of the 5

sustainable development principles when making decisions rather than balancing or trading them off against each other (para 3.21, 1<sup>st</sup> bullet).

While we welcome in principle the intention to enable regulators to consider the “*wider benefits*” of a development as well as any impacts (para 3.4), we are concerned that “*wider benefits*” could be used as a way to discount local impacts. Therefore, assessment of the affects of activities must be considered in the round. For example, when examining the impacts and benefits of a project, where the wider benefits are to be included, so should the wider costs, including environmental costs, as well as the cumulative impacts of a project. We highlight the sustainable development concept that the costs of not protecting the environment and having to restore damage are likely to be greater than the costs of protection and prevention of damage in the first place.

DoE and other Government Departments will need to ensure a close working relationship with the UK MMO which is the licensing and enforcement authority in the offshore zone. Consideration should be given to signing a MOU or other agreement on working arrangements, particularly with respect to transboundary marine activities that do or could cross the inshore-offshore boundary.

#### ENFORCEMENT

***Q13. Do you have any views on issues relating to enforcement and sanctions, particularly in respect of new technologies or novel types of activity?***

We agree that effective enforcement is essential (para 3.33). However, as well as ensuring that licensing is implemented fairly, enforcement must ensure that licences are implemented properly and effectively and that any conditions put on the licences are being met. Enforcement should also ensure that licences are being issued in accordance with marine plans as directed.

***Q14. Do you have any views on the potential for more efficient use of existing enforcement resources?***

The consultation document is not clear but we assume that the Marine Enforcement Officers (MEOs) will also be enforcing other elements of the marine management approach proposed for Northern Ireland waters, including marine planning, fisheries and nature conservation. For a sea area as relatively small as Northern Ireland, yet with so many competing and diverse sectors, it seems obvious that by far the most practical and cost-efficient manner in which to take forward enforcement would be through a single enforcement regime. This approach to marine enforcement and the ability for cross-warranting, as under the Marine & Coastal Access Act, is an efficient use of enforcement bodies and resources.

## MARINE NATURE CONSERVATION

*Q15. Do you agree that a new, flexible mechanism for the designation of Marine Conservation Zones (MCZs) should be introduced in the proposed Northern Ireland Marine Bill?*

The NIMTF believes that most importantly, this new legislation must enable Northern Ireland to deliver on international targets and commitments to establish an MPA network. The designation of MPAs is essential for the protection and restoration of Northern Ireland's marine environment, and for increasing the resilience of the marine ecosystem to changing conditions e.g. as a result of climate change (as recognised in section 4.8 of the Consultation Document). The NIMTF agrees that a new, flexible mechanism for Marine Conservation Zones (MCZs) should be introduced in the proposed Northern Ireland Marine Bill. The new legislation should place a duty on the Department of the Environment to identify, select, and designate an ecologically coherent, representative, national network of well-managed MCZs.

The Bill should also set a specific timetable for designation of the network, and the duty should also contain clear reporting requirements linked to the network objectives, so that progress towards the overarching network targets can be easily measured. The Consultation Document currently contains a commitment to having a network of effectively managed MPAs (both European sites and MCZs) in place by 2020. The NIMTF believes that while this is the ultimate target, the Northern Ireland proposal is not ambitious enough, and lacks milestones. As a minimum, DOE need to commit to having the internationally important (Natura 2000) sites designated by 2012, and the MCZs and hence an ecologically coherent network designated by 2013 at the latest.

The UK Government has various international commitments and obligations to establish a network of MPAs, including:

- 2002 commitment from the World Summit for Sustainable Development (WSSD) to establish a representative network of MPAs by 2012;
- UN Convention on Biological Biodiversity (CBD) commitment to establish a network of well-managed MPAs by 2012 (to enable delivery of WSSD targets); and
- OSPAR commitment to establish an ecologically-coherent network of well-managed MPAs by 2010 (NB that this commitment is omitted from the Consultation Document, section 4.13, perhaps because it has effectively been missed already).
- The EU Marine Strategy Framework Directive (MSFD) sets an MPAs reporting deadline of December 2013 (section 4.15).

Northern Ireland has a key role to play in meeting these targets for the UK. If the Northern Ireland Marine Bill is not introduced to the Assembly until 2011 as proposed, then we agree that it will not be feasible to establish a complete MPA network by 2012. However, the Northern Ireland Bill does not dictate the speed of designation of marine Natura 2000 sites, plus the awareness of the deadlines means that DoE could be progressing the identification of potential MCZs in parallel with the legislation. Therefore, even with the late introduction of legislation in Northern Ireland when compared to the rest of the UK, it should still be possible to introduce and then implement MPA legislation before 2020. Finally, we and other stakeholders have been repeated and publically assured by DoE that they will have

both the internationally and the nationally important sites designated in time to meet the MSFD reporting deadline. Therefore, we believe that a deadline should be set for having an ecologically coherent network of MPAs (including both nationally and internationally important sites) in place by December 2013. .

**Q16. Do you agree that different MCZs will need to have different conservation objectives?**

The NIMTF agrees that throughout the network of designated MCZs, there will need to be a range of different site conservation objectives. The conservation objectives set for a site should reflect the features that the site is designated to protect, and the level of protection required for those features. We welcome the confirmation in the Consultation Document that site conservation objectives should be *“based on scientific evidence”* (section 4.54). For some sites we would expect the conservation objectives to be geared towards maintenance of the existing condition and extent of the site and its features, whereas for other sites it will be more appropriate to set conservation objectives requiring restoration and recovery of the site to former condition.

In each case, site management measures should be dictated by the conservation objectives that are set. We welcome the acknowledgement in section 4.32 of the Consultation Document that: *“a range of protection levels will be introduced”* for sites, including, *“highly protected sites where no extractive activities are allowed”*, for example where site recovery is required. In other areas, the management measures for the site might allow most or all activities to continue, if it is ascertained that this would not hinder the achievement of the site conservation objectives.

We do not agree that it is possible to predict at this stage that *“in most cases conservation objectives will result in few restrictions on the activities that may take place”* (Consultation Document, section 4.54). This statement is disappointing, and suggests a lack of ambition for the MCZ network in Northern Ireland. In general, we believe that there should be a presumption against development within MCZs, controlled mainly through the new licensing and marine planning systems, with the burden of proof on the developer.

The MCZ network must contain a core of sites where no extractive or otherwise damaging activities are permitted (effectively ‘highly protected’ sites). These areas will provide benefits that cannot be achieved by partial exclusion of such activities – such as providing reference areas for scientific research and education purposes, whilst potentially also increasing local populations of commercial species. Highly protected sites are vital for the conservation and restoration of the marine biodiversity and habitats of Northern Ireland’s marine environment, and to help areas recover from damage due to human activities. It is important to make it clear from the outset that some sites will require this degree of protection, so that sea users are not misled about the potential effects of the establishment of the MCZ network.

***Q17. Do you agree that, where options exist, a range of factors including social and economic considerations should be taken into account in choosing between sites?***

While it is the NIMTF's preferred position that conservation sites should be identified, selected and designated based on purely conservation science grounds, for reason of consistency, we can agree that where options exist, social and economic factors may be taken into account in choosing between sites that have been identified in the first instance due to their ecological and/or conservation importance, and that in doing so the achievement of an ecologically coherent network is not compromised. A further crucial point here is the phrase, "*where options exist*". However, we do not agree with the certainty in the statement in section 4.50 – "*MCZs will take account of socio-economic impacts, within the context of marine planning*". We feel that the reference to marine planning is confusing, and it is misleading to say that MCZs "*will*" take account of socio-economic factors, when at the individual site level socio-economic factors should not influence every site designation decision. The integration of social and economic concerns should happen at the scale of the network as a whole, and therefore socio-economic concerns should not influence every site designation decision.

Site designation should be based on the best available science. We were pleased to see recognition of this principle in the Consultation Document e.g. section 4.10: "*it has been agreed at a UK level that sites will only be selected using the best science available to achieve the overall target of a coherent network of MPAs*", and section 4.38: site importance should be assessed based on "*best available science, expert knowledge and advice*".

For some criteria, there may be more than one potential site that would fulfil the requirements of the network. In such cases, social and economic factors could be used to decide between sites offering equal ecological benefit for the network. However, it is very important that economic and social factors do not override the need to establish an ecologically coherent network of well-managed and adequately protected sites. The MCZ network must have the conservation of biodiversity, habitats and natural resources at its heart, and the overarching network objectives must not be compromised by economic and social factors.

It would be useful to see much more detail on the proposed process for site identification, selection and designation. While this detail may not be appropriate for inclusion in the legislation, it is important to ensure that all stakeholders responding to the Consultation Document understand the proposed process and the part they might have to play in it. For example – is the envisaged process for Northern Ireland stakeholder-led as with the regional site selection projects around England? While this level of detail on the implementation will not be specified in the legislation, having an accurate idea of the proposed designation process will allow stakeholders to make a more informed response to the consultation.

*Q18. What comments would you like to make on the proposed mechanism to replace legislation for Marine Nature Reserves?*

The legislation for Marine Nature Reserves has failed to protect the marine environment adequately and therefore we support its replacement with the new mechanism to designate Marine Conservation Zones (MCZs). We were pleased to see that the proposals in the Consultation Document seem to be for the Northern Ireland MCZ mechanism to mirror the MCZ mechanism introduced by the UK Marine & Coastal Access Act. It is important that these two designation mechanisms work together seamlessly (alongside legislation from Scotland) to produce a coherent network for the whole of the UK.

The Consultation Document acknowledges that the evidence from and experiences of the English regional projects will be helpful for DoE to use in developing its own proposals for a site designation process in Northern Ireland (section 4.52). Some key lessons are already emerging from the English regional projects – the first is that more marine data are needed to make the site identification and selection process more robust. DoE should act on this now, collecting new data and collating existing data so that when the legislation is in place there is already a significant pool of marine data available to use in identifying sites.

Although we welcome the introduction of a new mechanism to designate MCZs, replacing the legislation for Marine Nature Reserves, we would still like to see more detail on how the proposed MCZ mechanism for Northern Ireland would be implemented (see also our answer to Q17 above). We would also welcome confirmation that the Northern Ireland Marine Bill will introduce a duty to designate Marine Conservation Zones to contribute to the network (as in the UK Act), rather than just a power to do so.

More detail should also be given on the proposals for MCZ protection and management. For example, section 4.55 of the Consultation Document contains the proposal for a statutory duty on Departments and public bodies “to further the achievement of the conservation objectives” for MCZs. We welcome this duty in principle, but believe that further detail is required on the content, and on proposals to allow “a degree of flexibility” by allowing developments to proceed when in the public interest. It is important that activities that would damage a site or its features, or significantly hinder the achievement of a site’s conservation objectives, are only allowed to proceed under certain conditions (i.e. where there are no alternatives, the public benefit resulting from the activity clearly outweighs the environmental damage expected, and when compensatory measures of equivalent environmental benefit are taken).

The Consultation Document should also contain more information on proposals for the monitoring and surveillance of MCZs once designated, and enforcement activities. It is important that this enforcement role is clearly allocated and that adequate resources are provided for this purpose from the outset.

**Q19. Do you agree with the proposals for the identification and selection of Marine Conservation Zones and a science-based review of whether new marine species need to be added to the existing list of protected species?**

While we agree with the proposal to introduce legislation for Marine Conservation Zones for Northern Ireland, we would like to see more detail on both the proposed mechanism, and the proposed process for identification and selection of these sites (see also answers to Q17 and Q18 above).

We would support the introduction of an MCZ mechanism that closely mirrors the mechanism introduced by the UK Marine and Coastal Access Act. While this seems to be broadly the intention from the Consultation Document, it is not clear if the proposal is to follow precisely the provisions of the UK Act, or merely to introduce a broadly similar mechanism. For example, the Consultation Document does not specify who the designating authority will be in Northern Ireland (though we assume that this role is intended for DOE); nor how sites should be designated, who should be involved in site designation decisions, consultation requirements for site designations, and whether or not there will be provision for more streamlined or 'emergency' designations where circumstances require this (e.g. where a site needs urgent protection). Whatever the mechanism for stakeholder involvement in the site selection and designation process, we would like to see the full range of stakeholders included, from sea users and developers to environmental interests. Section 4.51 of the Consultation Document mentions a list of stakeholders that it is envisaged would have an interest in the development of the MPA network, but this list focuses on sea users and fails to mention environmental interests and environmental NGOs, who will clearly also have a very keen interest in the development of the network.

Some detail on the selection and designation of sites is provided, and we welcome the detail on the principles on which site designation should be based (sections 4.32, 4.35), ecological and practical considerations in site designation (sections 4.37 and 4.42), and drawing site boundaries (sections 4.43-4.47). The Consultation Document states that MCZ boundaries should be drawn to encompass "*as much area as is necessary to protect the feature of interest at the site*", using "*best available scientific methodology and information*". We welcome the acknowledgement that site boundaries should be set on the basis of the best available science, and the suggestion that boundaries should be drawn "*wide enough to encompass future changes in the features as far as these are understood, to ensure the long-term sustainability of the designated features.*"

However, we cannot agree with the presumption that mobile species, and particularly species listed under the European Directives, will remain largely unprotected by the MCZ network. The Consultation Document does acknowledge that MCZs could be designated to protect mobile species "*where it is considered that their conservation would benefit from site-based protection measures*" (section 4.40), but goes on to say that "*such sites could be proposed only where there is a clearly identifiable area representative of the physical and biological factors essential to their life and reproduction*". While this would not prevent the designation of sites for mobile species (including seabirds), we are concerned at the implication that the evidence needs for

these sites will be particularly high when compared to the rest of the network, which will lead to fewer sites being designated for mobile species overall.

We agree that the aim of the MCZ network should be to complement, rather than duplicate, the European site network. However the Consultation Document itself notes that the European Directives “*limit their scope to a small range of marine habitats and species that are important on a European scale*” (section 4.26-4.27) and therefore “*do not provide the means to protect the range of habitats and species that are important at a national level*”, and that “*the Directives take no account of species and habitats of national importance*” (section 4.27). Furthermore, even for the species and habitats that are listed by the European Directives, sites are only designated if it can be proved that they are of European importance – meaning that nationally-important concentrations of European listed species will not be protected by the European site network. It is our position that the MCZ network should offer protection for nationally important features, including nationally-important concentrations of seabird species listed under the Birds Directive – as these sites will not be covered by the European site network. Therefore, we do not agree with the proposal that MCZs should only be “*proposed for habitats and species which are protected under the EC Habitats and Wild Birds Directives in exceptional circumstances*” (section 4.49).

In general, we believe that the interface between the European site network and the MCZ network needs to be thought about more carefully. Section 4.42 of the Consultation Document suggests as a practical consideration that a site should be preferentially considered for MCZ designation if it is already designated as a European site. This should be clarified as at present it could be seen to contradict the stated policy of avoiding duplication of the protection offered by the European network (section 4.49).

We support the proposals for a science-based review of whether new marine species need to be added to the existing list of protected species (section 4.20-4.21). We also support the proposal to include Basking Sharks, Angel Sharks and Common Skate on Schedule 5 of this Northern Ireland Marine Bill.

***Q20. What are your views on the introduction of byelaw-making powers for the control of unlicensed activities?***

We support the introduction of byelaw-making powers for the control of unlicensed activities, such as jet-skiing, anchoring of boats and snorkelling (section 4.65). As there is only one paragraph in the Consultation Document covering the proposed byelaws for MCZs we would welcome further detail about the proposed byelaw-making power (such as who it is proposed should have this power, and whether the proposed provision would also cover emergency and interim byelaws as in the UK Act). We also welcome the provision for a general offence (section 4.66) as a necessary complement to the byelaw-making power and public authority duties in MCZ protection.

**Q21. Do you consider the range of enforcement tools is adequate for the prevention of marine nature conservation offences and the enforcement of relevant legislation?**

We believe that in order to achieve the maximum benefit from the introduction of new marine conservation legislation for Northern Ireland, all sectors of marine use should be incorporated in the Northern Ireland Marine Bill. However, at present provisions for the modernisation of Northern Ireland's inshore fisheries management system have been omitted. The Consultation Document acknowledges that fisheries powers will also contribute to the management and conservation of marine species and habitats (section 4.62) but there are no proposals in this document for the update of inshore fisheries management powers. We would like to see the Northern Ireland Marine Bill include measures to modernise inshore fisheries management (in line with the 2007 Inshore Fisheries Review), to give an integrated and coherent approach to the update of management powers across all sectors of marine use. Fisheries managers should be required to deliver an ecosystem-based approach to fisheries management, and must be given a duty to further the conservation objectives of any MCZ under their jurisdiction (a duty given to the Inshore Fisheries and Conservation Authorities in England, by the UK Act).

Aside from this omission, the provisions for site management and protection in the Consultation Document seem adequate. However, we would need to see the detail of the proposed enforcement measures, and how the various management and enforcement regimes are expected to interact, before it would be possible to say whether the range of enforcement tools proposed would in fact be adequate for the prevention of marine nature conservation offences and the enforcement of the relevant legislation. Above all it is important that appropriate resources are allocated for the enforcement of MPA provisions.

**Q22. Are there alternative regulatory approaches to the control of such activities that we should consider?**

We do not have any suggestions for alternative regulatory approaches to the control of activities to prevent marine nature conservation offences.

**DETAILED COMMENTS ON THE MARINE NATURE CONSERVATION TEXT**

<b>Section</b>	<b>Comment</b>
1.3	We welcome mention of the biodiversity significance of NI waters – and the specific mention of seabirds (including wintering wildfowl and waders).
1.12	The second bullet point in this section mentions “ <i>balancing</i> ” social, economic and environmental considerations, which implies that trade-offs will need to be made between the various factors. We would therefore prefer to see reference to “ <i>integrating</i> ” these considerations.
1.23	This section states that MCZ designations “ <i>will be flexible in terms of their level of protection, boundaries etc., and will take into account any social and economic factors</i> ”

	<i>relating to the site</i> ". We believe this should say that MCZ designations " <i>may</i> " take social and economic factors into account, rather than " <i>will</i> ". We would welcome clarification of the fact that the intention for the Northern Ireland Marine Bill is to introduce a power for the designating authority to consider social and economic factors in site designation decisions (as in the UK Marine & Coastal Access Act and Marine (Scotland) Act), rather than a duty to do so.
2.75	This paragraph states that the bylaw-making powers proposed for MCZs will help regulators protect those sites. There is a duty on marine planners as for other public bodies to further the achievement of MCZ conservation objectives in fulfilling their functions.
4.1	We welcome the recognition in this section that " <i>marine biodiversity has a significant value to society through the goods and services it provides</i> " – but believe that there should be a further recognition of the intrinsic value of marine biodiversity beyond the goods and services it can provide.
4.3-4.4	We welcome the recognition in these sections that " <i>there is a growing need to protect our fragile and diverse marine ecosystem</i> ", and that, " <i>there is also a need to educate and inform the public of the economic social and environmental benefits which marine nature conservation provides for current and future generations</i> ".
4.8	This section acknowledges that " <i>MPAs have a vital role to play in enabling marine biodiversity to become more resilient and adapt to changing climatic conditions</i> "
4.10	We welcome the statement that " <i>It has been agreed at a UK level that sites will only be selected using the best science available to achieve the overall target of a coherent network of MPAs</i> ".
4.13	The list of international biodiversity commitments in this section does not include the OSPAR commitment to establishing an ecologically-coherent network of well-managed MPAs by 2010, nor the MSFD 2013 MPAs reporting deadline.
4.20	We welcome the proposal to give protection to basking sharks, angel sharks and the common skate through a Schedule to the Northern Ireland Marine Bill.
4.26	This section acknowledges that the European Directives " <i>limit their scope to a small range of marine habitats and species that are important on a European scale. As a result, they do not provide the means to protect the range of habitats and species that are important at a national level</i> ", repeated again in section 4.27 which states that " <i>the Directives take no account of species and habitats of national importance</i> ". This is the basis for our argument for designating MCZs for European features, where they are found in nationally-important (rather than internationally-important) concentrations, as these features will not be included in the European site network and yet are still worthy of designation.
4.32	We welcome the acknowledgement (under 'Protection levels') that some highly protected sites will be necessary within the network.
4.38	We welcome the statement in this section that the assessment of the importance of potential sites should be based on " <i>best available science</i> " as well as " <i>expert knowledge and advice</i> ".
4.39	This section states that Defra has let contracts to produce " <i>additional biophysical and socio-economic data layers</i> " – but does not explain what these are additional to?

4.40	This section states that "MCZs could be designated for mobile species where it is considered that their conservation would benefit from site-based protection measures. For mobile species that range over wide areas, such sites could be proposed only where there is a clearly identifiable area representative of the physical and biological factors essential to their life and reproduction". While nothing in this statement would prevent sites from being designated for mobile species including seabirds, it is disappointing in that it suggests that a much higher level of certainty and evidence will be required to designate sites for such sites.
4.42	Under the title " <i>Synergies with other sectors</i> " it is suggested as a practical consideration that a site should be considered preferentially for MCZ designation if it is already designated as a European site. However this is not the approach taken by the regional projects in England to date, and seems to conflict with the stated approach of avoiding duplication of the European site network.
4.43-4.47	We welcome the detail provided in these sections on setting and drawing site boundaries. The boundaries should be drawn to encompass " <i>as much area as is necessary to protect the feature of interest at the site</i> ", using " <i>best available scientific methodology and information</i> " to delineate boundaries, and drawing boundaries " <i>wide enough to encompass future changes in the features as far as these are understood, to ensure the long-term sustainability of the designated features.</i> "
4.49	We do not agree with the statement that "MCZs will only be proposed for habitats and species which are protected under the EC Habitats and Wild Birds Directives in exceptional circumstances", as we believe that there will be numerous occasions where sites might be required for nationally-important concentrations of species which are protected under the European Directives.
4.50	We do not understand the sentence: " <i>it is intended that MCZs will take account of socio-economic impacts, within the context of marine planning</i> ". In particular, the reference to marine planning is not clear. Furthermore, we do not agree with the implication that socio-economic impacts will influence the designation decisions for all sites. Socio-economic factors should be taken into account at the scale of the whole network, and so for some sites socio-economic factors will not come into the designation decision.
4.51	The list of stakeholders that would have an interest in the development of the MPA network presented in this section focuses on sea users rather than any environmental interests. Environmental groups/NGOs are not mentioned at all but should be represented on this list.
4.52	Some key lessons are already emerging from the English regional projects - the first is that more marine data (ecological as well as socio-economic) are needed to make the site selection process more robust. NI should think about this now and start collecting new data and collating existing data so that when they have the legislation in place and are ready to implement it, they already have a significant pool of marine data to use in identifying sites.
4.54	We welcome the fact that each MCZ will have conservation objectives that are " <i>based on scientific evidence</i> ". However, we think it is premature to say that in " <i>most cases conservation objectives will result in few restrictions on the activities that may take place</i> " - without knowing where the sites will be or even what the objectives for

	the NI network will be yet. This statement signals a lack of ambition for the NI network that is worrying to see at this early stage. Also this section fails to mention that for some sites, all extractive and otherwise damaging activities may need to be excluded. It is important to include this from the start, so that stakeholders are clear about the potential impacts of establishing a network.
4.55	We welcome the fact that the duty will be set up so that Departments and public bodies have to " <i>further the achievement</i> " of site conservation objectives in fulfilling their functions.
4.61	This section states that the use of " <i>sanctions</i> " will " <i>enable a faster, more effective and proportionate response</i> " to marine nature conservation offences. But this does not explain what sanctions are – for that it is necessary to refer to section 4.67.
4.62	This section mentions fisheries powers – though it seems clear that these will not be updated or included in the NI Marine Bill. We believe that this opportunity should be taken to update inshore fisheries management for Northern Ireland.
4.65	This section covers the use of byelaws in MCZs for unregulated activities. We would like to see more detail of the proposed byelaw mechanism. This section also states that the intention is to introduce fixed penalties for any breach of " <i>a byelaw or order</i> " – but does not explain what an order means in this context.
4.66	We welcome the inclusion of a general offence for deliberate or reckless damage to MCZ features as a necessary complement to the public authority duties and the byelaw regime.
4.71	This section covers the use of Stop Notices to prevent harm to sites. These are not in the UK Marine Act for nature conservation offences. We would welcome more detail about who would have the power to issue Stop Notices, and under what circumstances?

#### ANY ADDITIONAL COMMENTS

***Q23. Are there any other comments which you would like to make on the proposals contained in this consultation document?***

The NIMTF welcomes and supports the development of both the Northern Ireland Marine Programme and the *Northern Ireland State of the Seas* report (para 2.30). We would highlight that the *State of the Seas* report should also contribute to the requirement under the EU MSFD to carry out an assessment of the state of the EU's Marine (Sub-)Regions by 2012.

We strongly welcome the commitment to this report making recommendations on where the data gaps exist and on the necessary actions needed to fill those data gaps. A known data gap is the age and spatial and temporal coverage of the current European seabirds at sea (ESAS) database. Filling such a data gap has more than one application, for example:

- assisting marine planning by ensuring the most up to date and complete data is available upon which to base decisions;
- providing information on the locations that are important for seabirds at sea and which need to be designated as marine SPAs or MCZs; and

- seabirds, by virtue of being top predators at the top of the marine food chain and breeding on land thus making them easier to survey, have been recognised as good indicators of various aspects of marine ecosystem health. As a consequence, they have appeared in a number of the MSFD GES descriptors, e.g. biological diversity, marine food webs and marine litter.

## **OUTLINE REGULATORY IMPACT ASSESSMENT**

### ***Reference source:***

The Regulatory Impact Assessment for the UK Marine & Coastal Access Act highlights the benefits that protecting the marine environment can have. Figures taken from the RIA show that the designation of a network of marine protected areas provides society with benefits at least 5 times and up to 26 times greater in value than the initial investment. These estimates should be used to inform the Northern Ireland Marine Bill RIA.

[www.defra.gov.uk/environment/marine/documents/legislation/marine-ia-0410.pdf](http://www.defra.gov.uk/environment/marine/documents/legislation/marine-ia-0410.pdf)