



Department of the  
**Environment**  
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## **PLANNING AND NATURAL RESOURCES DIVISION**

### **A NORTHERN IRELAND MARINE BILL – POLICY PROPOSALS**

#### **CONSULTATION DOCUMENT**

This document may be made available in alternative formats. Please contact us to discuss your requirements. Information and additional copies of the document can be requested by text phone 028 9054 0642.

**April 2010**

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## INTRODUCTION

The UK's vision of *clean, healthy, safe, productive and biologically diverse oceans and seas* is particularly relevant to Northern Ireland. As an island-based society, the sea has always had an important role to play, offering a source of recreation and a place of work to many.

Fishing communities depend upon the seas' resources for their livelihoods, while shipping vessels make use of our ports and rely on safe navigation through our waters. The seabed itself possesses a wealth of archaeological and cultural heritage and is an important source of minerals, including aggregates.

Beyond these more traditional industries, other ventures are increasingly making their presence felt, such as the development of marine-based energy initiatives, which are developing ways to harness the power of both sea and wind.

Importantly, Northern Ireland's seas also support around half of our wildlife, including many threatened marine animal and plant species, some of which are found nowhere else in the world.

However, the sea is not a limitless resource, and as competition for, and pressure on marine space grows, so does the potential for conflict between different activities. These activities also vary in terms of their compatibility with each other and the extent to which they affect the marine environment.

Therefore, it is recognised that a sustainable approach to the way in which these activities are regulated, and long-term damage is mitigated, is essential.

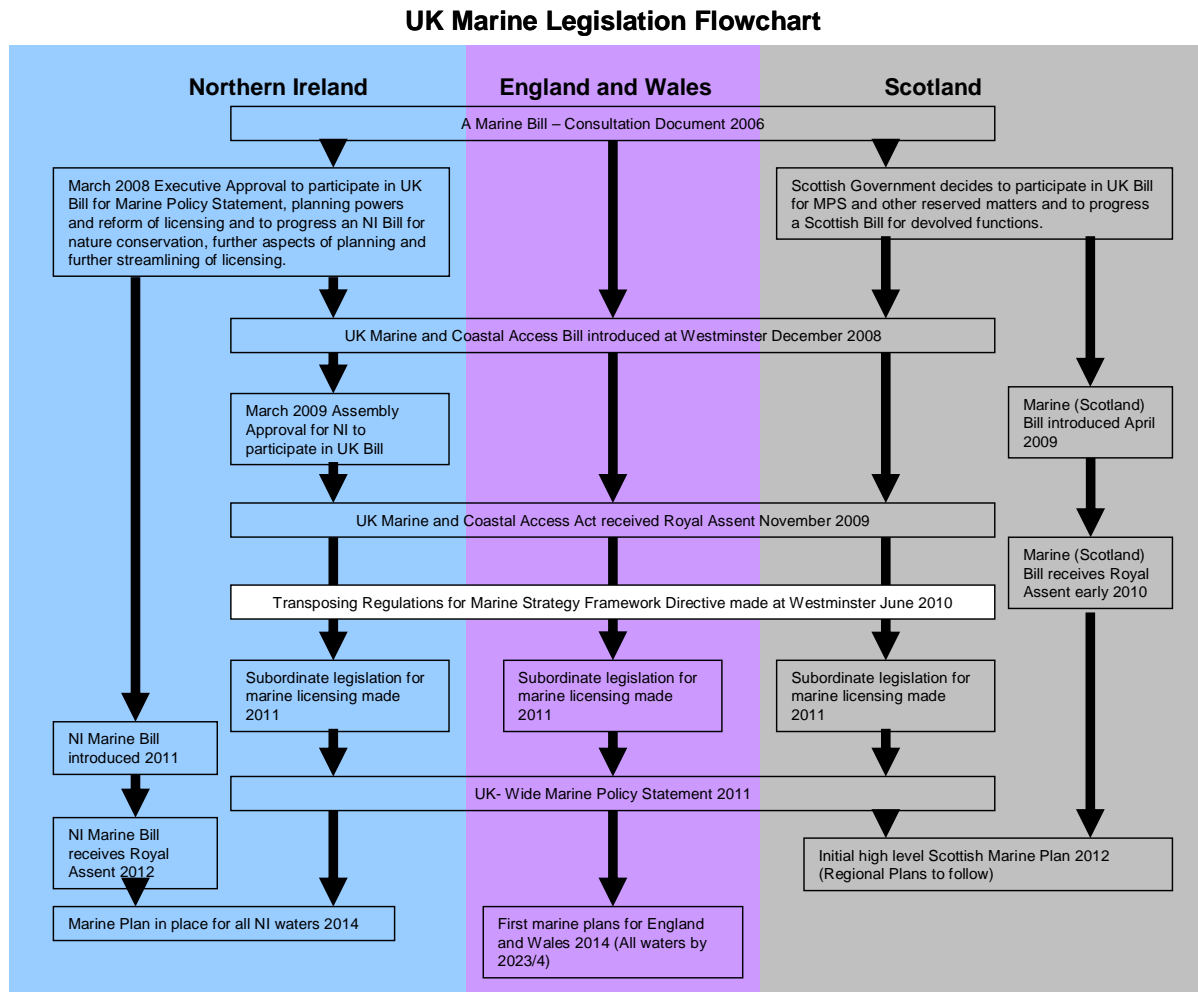
It is for this reason that the UK Government and the Devolved Administrations have been working to develop policies that will provide a framework for our seas based on a new system of marine planning.

Due to the nature of the devolution settlement for Northern Ireland, and the complex mix of devolved and non-devolved functions, this framework will be achieved in Northern Ireland through three interlocking pieces of legislation:

- the UK Marine and Coastal Access Act 2009 (the UK Act) (which received Royal Assent on 12 November 2009);
- UK-wide Marine Strategy Regulations 2010 (which it is intended will come into operation on 15 July 2010) transposing the Marine Strategy Framework Directive (2008/56/EC); and
- the Northern Ireland Marine Bill (which, subject to Executive approval, should be introduced to the Northern Ireland Assembly in 2011).

The relationship between these pieces of legislation is outlined in Fig. 1.

Fig. 1.



**It is in relation to the policy proposals contained in this consultation document, and which will lead to introduction of the Northern Ireland Marine Bill, that your views are sought.**

These policies will play a key part in ensuring that an integrated, coherent marine plan is in place for Northern Ireland in 2014, in exactly the same timeframe as elsewhere in the UK, so that Northern Ireland can continue to benefit socially, economically and environmentally from the resources that its seas have to offer.

## HOW TO RESPOND

### Responding to this consultation

You are invited to respond to this consultation by not later than **9 July 2010**.

### Response method

Responses can be sent either by e-mail or post.

E-mail: [marineteam@doeni.gov.uk](mailto:marineteam@doeni.gov.uk)

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

Should you have any enquiries please send them to [marineteam@doeni.gov.uk](mailto:marineteam@doeni.gov.uk) or call on **02890 254931**.

The consultation paper is also available on the Department's website at [www.doeni.gov.uk/index/protect\\_the\\_environment/water.htm](http://www.doeni.gov.uk/index/protect_the_environment/water.htm)

There is no requirement to respond to all of the questions in this consultation.

It would be helpful if you could indicate clearly to which question(s) or section(s) of the consultation (using paragraph numbers) you are responding.

Please also provide:

- **Your name**
- **Your contact details**
- **The organisation you represent (where applicable)**
- **The main area of interest with which you identify** – for example, nature conservation, fisheries, industry/transport, aquaculture, recreation/tourism, academic and scientific, local government, voluntary/community group, public sector, local partnership, other.

This will assist with the analysis of the responses received.

## **Freedom of Information Act 2000 – confidentiality of consultation responses**

The Department of the Environment (DOE) may wish to publish responses to the consultation document. It will certainly publish a summary of responses following completion of the consultation exercise.

In addition, your response may be disclosed on request.

DOE is only able to refuse disclosure in very particular circumstances. Therefore, you are advised to read the information at Annex C before sending a response to this consultation document. It provides guidance on the legal position of any information given by you.

Should you require further information about the confidentiality of responses, please contact:

Information Commissioner's Office – Northern Ireland  
51 Adelaide Street  
Belfast  
BT2 8FE

Telephone number: 028 9026 9380

Alternatively, your request can be sent electronically to [ni@ico.gsi.gov.uk](mailto:ni@ico.gsi.gov.uk)

Information can also be accessed at:

[www.ico.gov.uk/about\\_us/regional\\_offices/northern\\_ireland.aspx](http://www.ico.gov.uk/about_us/regional_offices/northern_ireland.aspx)

### **What happens next?**

Following the closing date for the consultation on **9 July 2010**, all responses will be considered along with any other available evidence to help us reach decisions on the legislative framework for a Northern Ireland Marine Bill.

## **LIST OF CONSULTATION QUESTIONS**

### **SETTING THE SCENE**

- Q1. Do you agree that change is needed to the management of and legislative framework for managing Northern Ireland's seas?
- 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?
- Q3. What difference would each of these changes make to your area of interest?

### **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?
- Q5. What comments would you like to make on the proposed stakeholder involvement in the development of a marine plan?
- 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?
- Q7. What comments would you like to make on the proposed process for developing a marine plan in Northern Ireland?

### **MARINE LICENSING AND ENFORCEMENT**

#### **Licensing marine activities**

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



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

### **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?
- Q14. Do you have any views on the potential for more efficient use of existing enforcement 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?
- Q16. Do you agree that different MCZs will need to have different conservation objectives?
- 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?
- Q18. What comments would you like to make on the proposed mechanism to replace legislation for Marine Nature Reserves?
- 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?
- Q20. What are your views on the introduction of bye-law-making powers for the control of unlicensed activities?
- 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?
- Q22. Are there alternative regulatory approaches to the control of such activities that we should consider?

## **ANY ADDITIONAL COMMENTS**

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

# SECTION 1

## SETTING THE SCENE

- 1.1 Northern Ireland's waters are of significance for a variety of reasons.
- 1.2 For instance, the majority of Northern Ireland's 650km of coastline is protected for its special interest, and a number of its coastal species and habitats are recognised as internationally important. The marine life in the seas surrounding Northern Ireland is rich and varied and includes marine mammals such as common seals, whales and dolphins, seabirds, waterfowl, and other species that migrate here such as salmon and eels, both of which are endangered. The coastline also includes productive and biologically diverse ecosystems, with features which serve as critical natural defences against storms, floods and erosion.
- 1.3 The seas are a major environmental and economic asset for Northern Ireland as set out below.

### The value of Northern Ireland's seas

#### Biodiversity

- The marine environment contains over 50% of all biodiversity.
- Some species may be endemic to Northern Ireland – for example, some 29 new species of sea sponge were discovered off Rathlin Island in 2005.
- Northern Ireland's waters contain 2,500 separate marine species, including 17 different species of cetacean such as the Minke whale.
- Northern Ireland's seas support several internationally important seabird species, including waders and waterfowl which spend the winter feeding here.

<b>Industry</b>	<b>Value</b>	<b>Jobs</b>
<b>Fishing</b> *Value of fish landed into NI by UK vessels in 2008	£23.2m	F/T 532 P/T 93
<b>Salmon fishing</b>	£46,000	10
<b>Aquaculture</b> **value of first sale fish and shellfish in 2008	£9.6m	F/T 91 P/T 56
<b>Fish processing</b> ***estimated gross turnover in 2008	£70.1m	FTE 653
Value added 2007	£15.2m	
<b>Leisure and Tourism</b> Cruise ships	£16m	

\*UK Fisheries Statistics – Marine and Fisheries Agency, 2009

\*\*Department of Agriculture and Rural Development (DARD), Fisheries and Climate Change Division, 2009

\*\*\*Size and performance of the Northern Ireland Food and Drinks Processing sector, sub sector Statistics 2007, with provisional estimates for 2008, DARD 2009.

- 1.4 The marine environment is also important in providing employment and sustaining numerous local communities – for example:

#### Employment

- the Northern Ireland licensed sea fishing industry is concentrated at the three east coast fishing ports of Ardglass, Kilkeel and Portavogie and there is also a significant number of small vessels operating from other harbours around the north coast, and larger vessels berthing and unloading at Lisahally;
- at the end of 2008, the Northern Ireland fishing fleet comprised some 147 fishing vessels over 10 metres in length and 204 vessels 10 metres and under in length. The fleet depends mainly on fishing opportunities in the Irish Sea and North Channel and is the main UK fishery interest in the former. The estimated total value of fish landed by Northern Ireland vessels in 2008 was £23.2 million, around 4% of the total landings of the UK fleet. However this information does not include full data on the commercial operations of the 10-metre and under inshore fleet, for which data submission is voluntary for species other than crabs and lobsters;
- being part of an island, Northern Ireland is entirely dependent on the seas for the transport of trade, with the exception of a small volume handled by air cargo. This dependency has been attenuated over recent years with the globalisation of world trade, and the integration of Northern Ireland into the logistic chains of the major UK supermarkets;
- Northern Ireland has four commercial trust ports at Belfast, Londonderry, Warrenpoint and Coleraine. Collectively, these ports handle 84% of Northern Ireland's seaborne trade. The remainder is handled by the privately-owned Port of Larne;
- the sea is also important to Northern Ireland tourism. The coast is home to much of Northern Ireland's tourism infrastructure (e.g. resorts, beaches and scenic drives) and many tourism activities take place on the water or along the coast. Tourism and leisure interests in the sea are increasing, and provide an important source of income and local employment. There is a chain of harbours and marinas along the coast of Northern Ireland, which are used as bases for recreational boating activities. The increasing role of the sea in tourism and leisure is illustrated by the increasing number of cruise ships now docking in Northern Ireland. For example, 36 ships brought more than 57,000 visitors to Belfast in 2009, and it is anticipated that some 37 cruise

ships will bring more than 62,000 visitors to Belfast in 2010. In addition, more than 1 million people visited National Trust coastal properties in 2009;

- there are currently 81 fish farms (covering 95 sites) licensed by DARD. These include 48 marine farms licensed for the cultivation of shellfish, 33 licensed for the cultivation of finfish including brown trout and rainbow trout and one salmon farm with marine sites in Glenarm Bay and Red Bay;
- statistical returns submitted by licensed operators indicate that in 2008 the total quantity of aquaculture products was 10,872 tonnes with a first-hand sales value of £9.618m. This is broken down as follows:

<b>Species</b>	<b>Volume (tonnes)</b>	<b>Value (£m)</b>
Bottom grown mussels	9977	7.349
Pacific oysters	185	0.526
Trout	531	1.194
Salmon	138	0.469
Other Shellfish	41	0.073
Other Finfish	0.24	0.007
<b>Total</b>	<b>10.872</b>	<b>9.618</b>

- and a small net fishery for salmon takes place off the county Antrim and Down coasts.

1.5 In addition, there is the potential for renewable energy generation around Northern Ireland's shores. While there are currently no marine wind developments in Northern Ireland, the sector has developed considerably in recent years, and represents a major opportunity for Northern Ireland.

1.6 The technology to harness wave and tidal energy is at an earlier stage of development than marine wind, but it has the potential to contribute a significant level of renewable electricity. There has, of course, been promising progress in the past few years with the ongoing testing of technologies and different devices - for example, deployment of the Marine Current Turbine (MCT) SeaGen tidal stream project in Strangford Lough in 2008 was the world's first commercial scale project to generate to a national grid. This innovative project has drawn international attention to the potential in Northern Ireland's waters, and a number of national and international companies have indicated their interest in investing in Northern Ireland and developing marine renewable projects here.

1.7 The Department of Enterprise, Trade and Investment (DETI) has also identified that potential levels of marine renewables could give rise to possible investment ranging from £330m to £880m by 2020. The same study estimated the potential employment figure to be in the order of 4,500 by 2020,

although it is acknowledged that the number of regional jobs could be fewer than this estimate, given the relative immaturity of the sector currently. This is notwithstanding that companies such as Harland & Wolff, B9 and Deep Blue Renewables are already successfully working in this sector.

- 1.8 Invest NI is currently undertaking work to quantify the economic benefits (and supply chain potential) of the marine renewables' sector.
- 1.9 There are potential aggregate (sand & gravel) resources in the seabed sediments in several marine areas in Northern Ireland. These are not currently being exploited, but there will be a need to carry out an assessment of both land and marine aggregate resources in order to produce a strategy to meet future demand for aggregates in Northern Ireland.
- 1.10 There remains the potential for both the exploration and development of oil and gas resources, and the storage of natural gas or carbon dioxide, in the rocks below the seabed in Northern Ireland's seas. This potential has yet to be fully evaluated and would be restricted to specific areas, but could bring significant benefits to the economy and help to ensure security of supply for Northern Ireland's energy infrastructure.

#### **Potential conflicts in Northern Ireland's seas**

- 1.11 However, as competition for the seas' resources increase, so does the potential for conflict between activities – for example, there is a need to balance:
  - aquaculture, renewable energy generation and navigational safety for shipping;
  - the protection of marine habitats against the requirements of commercial operations;
  - the development of undersea infrastructure against safety of fishing;
  - the requirements to dredge in order to keep ports open and navigational channels clear against the impact on aquaculture; and
  - marine tourism against the impact of commercial exploitation.

#### **A growing consensus for change**

- 1.12 Over recent years, as evidenced through feedback received from the UK-wide consultation on the Marine and Coastal Access Bill, there has been a growing consensus that change is necessary in order to:
  - clarify overall objectives for the marine environment and meet them more effectively and affordably;
  - manage the growing, sometimes competing demands for the use of marine space, including balancing social, economic and environmental considerations;
  - meet existing and new marine obligations;
  - develop and implement ecosystem-based approaches to marine management;

- improve integration and reduce complexity of marine management and regulation; and
- ensure that Northern Ireland plays an integral role in the wider management of the UK's seas.

## Proposals for change

1.13 This consultation proposes a new framework for Northern Ireland's seas based on:

- a new system of marine planning that will balance conservation, energy and resource needs;
- a further streamlining of marine licensing beyond that already provided for in the UK Act; and
- improved management for marine nature conservation.

1.14 The objective is to establish a marine framework founded on the principles of sustainable development, better regulation and modern government; one which will deliver benefits to all users of Northern Ireland's seas.

1.15 As set out in the following paragraphs this consultation paper explores the proposed new framework in more detail.

## Section 2 - Marine planning

1.16 **Section 2** sets out proposals that aim to: provide greater certainty for marine developers and marine users; maximise the social, economic and environmental value of the marine resource; and ensure sustainability.

1.17 It proposes that Northern Ireland would adopt a two-tier approach to marine planning: a single plan covering its inshore and offshore regions, with the power to create more localised plans where appropriate.

1.18 The preparation and delivery of these plans will require early engagement with key stakeholders; effective co-operation between Government departments with marine responsibilities; and integration with other related, adjacent or overlapping plans.

1.19 It is essential therefore that we look more strategically at the whole of the marine environment, to the way that we use and protect our resources and the interactions between different activities that affect them. This will require a shift in practice to a much more integrated approach, but the case for doing so is now compelling. We need to plan ahead to address the conflicts and to ensure that we are getting maximum social and economic benefit and use from our marine resources, whilst ensuring appropriate environmental protection.

### **Section 3 - Marine licensing and enforcement**

- 1.20 **Section 3** sets out the proposals to reduce the regulatory burden on developers by further streamlining and modernising the marine licensing and consents system – this would be in addition to those improvements already provided for in the UK Act.
- 1.21 Its aims would be to deliver quicker and clearer decisions; sustainable economic development; and enable regulators to consider the wider benefits of a development alongside its potential impacts.

### **Section 4 - Marine nature conservation**

- 1.22 **Section 4** sets out the proposals for a new national designation regime that would further protect and enhance Northern Ireland's marine wildlife and habitats in order to meet our objectives in the marine environment.
- 1.23 These designations, to be known as Marine Conservation Zones, will be flexible in terms of their level of protection, boundaries etc, and will take into account any social and economic factors relating to the site.



## **SETTING THE SCENE**

- Q1. Do you agree that change is needed to the management of and legislative framework for managing Northern Ireland's seas?
- 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 safeguard and protect Northern Ireland's marine assets?
- Q3. What difference would each of these changes make to your area of interest?

## **SECTION 2**

### **MARINE PLANNING**

#### **Background**

- 2.1 As outlined in **section 1**, the seas around Northern Ireland are of vital environmental, cultural and economic importance. However, they are coming under increasing pressure, partly because of the expansion of some industries, such as the transportation of goods by ship, and as a more extensive range of activities in our marine waters begins to emerge. These changes in marine use mean there is greater potential for conflict between different activities. We do not plan ahead to cope with these pressures in the way we do on land.
- 2.2 As we gain an increased awareness of our impact on the marine environment, and 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.

#### **The introduction of marine planning in Northern Ireland**

- 2.3 Marine planning will be introduced in Northern Ireland using a combination of the UK Act and a proposed Northern Ireland Marine Bill, the latter of which will be introduced to the Assembly in 2011.
- 2.4 The UK Act provides the framework for marine planning for the whole of the UK's marine waters extending to the fullest extent of the UK's marine jurisdiction (the UK continental shelf and fisheries limits).
- 2.5 That framework consists of a two-stage approach:
- a UK-wide Marine Policy Statement (MPS); followed by
  - a series of marine plans, which will apply policies in more spatial detail to particular parts of the marine area.

#### **Marine Policy Statement**

- 2.6 The Marine Policy Statement (MPS) will set the key policy priorities for the marine environment and its management, and will inform marine licensing decisions until marine plans are in place. The UK Act makes clear that the policies in the MPS should contribute to the achievement of sustainable development in the UK marine area. The MPS will complement the Regional Development Strategy (RDS), which offers a strategic and long-term perspective on the future development of Northern Ireland based on sustainable, economic and social development principles. The RDS and the Planning Policy Statements are the key planning documents which set the framework for terrestrial planning decisions.

- 2.7 A pre-consultation paper has been published, which seeks views on the content and structure of an initial draft MPS. This will be followed by a full 12-week consultation during the summer on the formal draft MPS, followed by appropriate scrutiny in the respective legislatures in the autumn, with a view to adopting a UK-wide MPS in early 2011. Whilst the detail is to be found in the MPS pre-consultation paper (which is available on the DOE website at [www.doeni.gov.uk/mps-discussion.pdf](http://www.doeni.gov.uk/mps-discussion.pdf)), it is relevant in this paper to provide some information on the MPS as it will guide marine planning in the Northern Ireland zone (see chart Pg 81).
- 2.8 The UK Act provides for a MPS to be created for the whole of the UK's waters. The UK Government, Scottish Ministers, the Welsh Assembly Government and the Northern Ireland Executive are working together on the MPS. This shared approach will ensure that the planning arrangements implemented throughout the UK's waters will be fully joined up, but flexible enough to meet the needs of different Administrations, stakeholders and decision makers in different parts of the UK.
- 2.9 DOE is established, by the UK Act, as the Marine Policy Authority for Northern Ireland's marine waters. It also places a statutory obligation on DOE to consult other Departments with marine functions on the draft MPS, which will require Executive approval before its adoption.
- 2.10 The MPS will provide a useful opportunity to articulate policy on how integration can be achieved in coastal areas between the objectives at sea and on land by covering the marine aspects of the coast and the important interactions with terrestrial planning.

### **Sustainability Appraisal**

- 2.11 It will be a defining characteristic of a MPS and a marine plan that the policies contained therein will contribute to the achievement of sustainable development in the UK marine area. It is therefore essential that we are confident that the policies in the MPS and the marine plan make this contribution. Appraisal of sustainability is inherent in the process of preparing a MPS and a marine plan, rather than a separate consideration, and, as required by the UK Act, the MPS and marine plan will be supported by such an appraisal. An outline Impact Assessment accompanies the MPS pre-consultation paper.

### **Involving people**

- 2.12 The UK Act sets out a clear procedure for developing, consulting on, and agreeing a MPS, including provision for the Northern Ireland Assembly to scrutinise the contents of the draft Statement.
- 2.13 The process by which a MPS is prepared must be fair, transparent and open to engagement by stakeholders and the general public. The UK Act therefore sets out certain requirements for consultation and community engagement that must be followed during the preparation of a MPS, including publication of

a Statement of Public Participation (SPP) at the start of the process. The SPP will set out how the Marine Policy Authority will involve people in the development or revision of the MPS, and the timetable for taking it forward.

- 2.14 As stated previously the current pre-consultation engagement seeks views on the initial draft MPS, and will be followed by a full 12-week consultation during the summer. Representations made during these exercises, including the reports of any public meetings or hearings, will be taken into account by the Marine Policy Authorities when refining the proposals within the MPS before it is adopted in 2011.
- 2.15 Within Northern Ireland, all of the Departments with marine functions have contributed to the draft MPS and will continue to contribute to the completion of this exercise. As part of the current pre-consultation engagement, a series of workshops/discussions with different sectors with an interest in the MPS is being arranged.

### **Translating policy into plans**

- 2.16 Adoption of the MPS will provide the policy framework for developing marine plans in more detail within Northern Ireland. The UK Act establishes DOE as the Marine Plan Authority (MPA) with responsibility for preparing a plan from 12 nautical miles (nm) to the boundary of the Northern Ireland zone (the offshore region) in conjunction with other Northern Ireland Departments with marine functions. The final version of this plan will be agreed with the UK Government (as not all matters are devolved).
- 2.17 The power to plan for Northern Ireland's waters out to 12nm (the inshore region) will be provided through the Northern Ireland Marine Bill. It is proposed that DOE will also be established as the MPA for the inshore region, working again in conjunction with other Northern Ireland Departments with marine functions. However, it is also proposed that DOE will have the power to delegate its planning functions for both the inshore and offshore regions, should the Minister choose to do so.
- 2.18 Because we are developing our policy on marine planning after GB, there are now models available to adapt to our use. In addition, we are already included in the UK Act for one aspect of planning, and we want to ensure consistency of approach. Therefore, as set out in the following paragraphs, we propose to mirror largely the principles of the policy approach to marine planning already taken by England, Wales and Scotland, which are very similar. One area in which they differ however is the basis on which to plan, which will be explored later.

### **Marine planning in England, Wales and Scotland**

- 2.19 Early work on establishing a marine planning system for the UK began in 2002 with the joint UK Government and Devolved Administrations' Marine Stewardship Report '*Safeguarding Our Seas*', that stated the intention to put an ecosystem-based approach at the heart of marine policy.

- 2.20 Building on this commitment, the Department for Environment, Food and Rural Affairs (Defra), with contributions from other partners, funded the Marine Spatial Planning project in 2005 that looked at how a new planning system might be implemented in the Irish Sea. The outcomes of this are continuing to influence policy development within Defra and will also inform the development of the marine planning system in Northern Ireland.
- 2.21 Clear support for a robust but flexible marine planning system was received through previous consultation responses including those from Northern Ireland. The Marine Bill White Paper '*A Sea Change*', published on 15 March 2007 set out proposals for a UK Marine Bill which would lead towards a more integrated approach to marine management.
- 2.22 In Scotland, 4 pilot projects have been established on marine planning and reports are expected in 2010. The outcomes of these projects will help inform development of the Northern Ireland marine planning system.
- 2.23 Wales is currently developing its approach for marine waters.

## **Scope of plans**

### Coverage

- 2.24 In England, plans will be prepared for the inshore and offshore regions with plan areas designated on bio-geographic rather than political boundaries. This approach will lead to planning areas of different sizes, but will ensure that marine plans do not overlap and that there is only ever one marine plan applying to a given geographical location, although within that plan some parts (particularly coastal areas) may contain more detail. Defra considers this to be a more flexible and user-friendly system than a multiple layer one of 'sub-regional' plans which co-exist within larger 'regional' plans. A consultation on the proposed marine areas has been completed with the intention to start marine planning in 2012 following adoption of the MPS.
- 2.25 Scotland on the other hand is adopting a three-tier approach to planning: the international level dealing with planning matters that go beyond Scotland; the Scotland level which will set out national marine objectives; and the regional level within Scotland to deal with local planning.
- 2.26 Given that the extent of our marine waters is comparatively small, a similar approach is being proposed along the lines of Scotland: a single plan covering Northern Ireland's inshore and offshore regions with the power to create more localised plans, if considered necessary. As with the rest of the UK, it is the intention to commence marine planning in 2012 following adoption of the MPS and enactment of a proposed Northern Ireland Marine Bill.

## Subject matter

- 2.27 It is, therefore, proposed that a single marine plan will consider, as far as possible, all of the relevant activities and the impacts they may have on each other. The plan will address both the current situation, and also emerging and future marine uses and technologies (e.g. carbon capture and storage in the sub-seabed, renewable energy sources, and new Marine Protected Areas), whilst also anticipating changing economic and social trends and the impacts of climate change. The plan will also consider both the natural and cultural resources within an area, changing ecosystems and seasonal patterns and migration routes.
- 2.28 As a new marine planning system is developed, any useful principles and relevant experience gained from the long-standing mechanisms developed over a number of years on land will be considered. There are, of course, differences – principally, the marine area is three dimensional and dynamic in nature, and has multiple uses of the same location, simultaneously, or during different times or seasons, more than is the norm on land. In addition, the sea is generally a public rather than private resource (it is not possible to exclude most users as property rights are not well defined), although there are some private property rights in the coastal zone, and some general rights, such as fishing and innocent passage through territorial waters for ships.
- 2.29 To improve our understanding of the marine environment, a UK Marine Science Strategy has been developed jointly by the UK Government and the Devolved Administrations through the Marine Science Co-ordination Committee, in liaison with the UK marine science community and other key stakeholders. The Strategy provides “an agreed, strategic framework for shaping, supporting, co-ordinating and enabling the delivery of world class marine science for the UK”. By co-ordinating and aligning our scientific requirements this Strategy will complement and support the development of marine policy across the UK.
- 2.30 To inform the development of a Northern Ireland Marine Programme, including a new marine planning system, a Northern Ireland State of the Seas report is being prepared which will identify: the legislative drivers; the current pressures; the current state; and any temporal trends, and recommendations for where more information is needed. The report will recommend the necessary actions needed to fill any gaps identified, and will look forward to the future management and research measures needed to underpin the development of the plan as envisaged by the UK Marine Science Strategy.
- 2.31 The outcomes and recommendations from the various projects will be assessed for valuable lessons and insights to inform the development of a new marine planning system in Northern Ireland.
- 2.32 Marine planning is therefore a strategic system for improved regulation and sustainable development of the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea. A statutory

marine planning system would enable Northern Ireland to deliver more effectively its commitments by:

- improving integration of objectives and reducing duplication of effort and the associated waste of resources;
- improved understanding and consideration of cumulative and combined effects between different activities;
- improving the speed, quality, accountability and transparency of decision making; and
- increasing the certainty for developers on proposals in line with the plan and thus reducing commercial risk.

## **Preparing plans**

### Wider public engagement in the planning process

- 2.33 The new marine planning system will be as open and transparent as possible. Early engagement of the public, industry, other stakeholder groups, local government and other regulators in the planning process is fundamental to achieving its objectives. Those with an interest will be given the chance to get involved in the planning process as early as possible, in deciding on the broad scope of the plan as well as in the drafting stages. This will lead to better planning, and give those who might be affected by a plan a role in shaping it, enabling them to take ownership of the final plan.
- 2.34 Early and broad consultation, at a stage when any concerns and issues raised can be addressed and reflected in the plans, will also lead to greater certainty for developers submitting licence applications. At present, developers have often made significant financial commitment to a project before such concerns are raised. The new system would help to avoid this by giving people the opportunity to raise issues before applications are submitted, and for developers to begin a project with better information. Involvement in consultation on the plan would not prevent issues and objections being raised at a later stage in response to specific licence applications.
- 2.35 It is proposed that, at the start of the planning process, the MPA should publish a statement of those whom it proposes to consult during the preparation and drafting of the plan, and how it intends to carry out that consultation. The MPA would then be expected to proceed in accordance with that statement. This would ensure transparent consultation and that all with an interest were aware of the opportunities that they and others were being given to contribute.
- 2.36 In particular, it is proposed that the MPA would seek the views of stakeholders on the matters that should be included in the plan before the detailed work of producing a plan begins. Involvement at this stage from stakeholders with knowledge of the specific factors affecting an industry, or a particular marine region, will be crucial to the plan's success.

### Appraisal of the impacts of the plan

- 2.37 The Strategic Environmental Assessment (SEA) Directive (2001/42/EEC) will be applied throughout the process. A SEA is being completed for the MPS (as part of the Appraisal of Sustainability), and the proposed new marine planning system will also require consideration to be given to the possible impact any new plans and programmes would have on the environment.
- 2.38 It is also proposed that the wider effects on communities and economic activity are considered at an early stage and throughout the planning process. An economic, environmental and social appraisal and an assessment of sustainability will be carried out by the MPA during preparation of the draft plan. This process will incorporate the requirements of the SEA and Public Participation Directives (2001/42/EEC and 2003/35/EC), Appropriate Assessment under the Habitats Directive (92/43/EEC), and other requirements of EC legislation, and will also consider the practical feasibility and cost-effectiveness of the plan.
- 2.39 Information gathered during this process could also inform future Environmental Impact Assessments associated with new licence applications, thereby helping to reduce the burden on applicants and minimising duplication of effort.
- 2.40 Appraisal of sustainability will be integral to the process of preparing the plan, and will help to shape the eventual proposals. The earliest stage would be to agree sustainability objectives for the planning area (which would themselves flow from the MPS). These will then be used to refine proposals during the drafting process, and also to assess the draft plan as a whole. Appraisal would continue after the plan is adopted, by providing a framework against which progress towards implementation could be measured and monitored.

### Drawing up a draft plan

- 2.41 The MPA would be required to produce a draft plan giving effect to the MPS, having regard to relevant factors affecting Northern Ireland's inshore and offshore regions.
- 2.42 Any plan must have regard to existing plans in adjacent areas (both marine and land plans), and also to any other plans affecting the same geographic area (e.g. River Basin Management Plans).
- 2.43 To ensure that a plan is made on the basis of the best information available, and to minimise the likelihood of later challenge to the plan, the MPA would be expected to seek advice during the planning process from bodies and organisations with specific expertise or marine-related responsibilities. These could include:
- stakeholders who have detailed local knowledge of an area;
  - scientific or industry specialists;
  - environmental, cultural and heritage bodies;



- relevant Government Departments;
- other UK Administrations, and the RoI Government where there are likely to be cross-border implications; and
- bodies with responsibilities that overlap with marine plans (e.g. District Councils).

#### Consideration of the draft plan

- 2.44 The initial plan would be published in draft, after which it is proposed that there would be a time before the plan is finalised, during which the public could consider the draft plan and raise with the MPA any issues or concerns it may have with the proposals.
- 2.45 The MPA would then consider whether there is a need for a formal public investigation or hearing into the plan, or parts of it. In making a decision about this, the MPA would take regard of the public response to the plan, the level of stakeholder involvement that there had already been in the preparation and drafting of the plan and any other matters it considers relevant.
- 2.46 If an investigation is carried out, the MPA would consider whether, as a result of the representations made to the investigation and during the consultation period, there is a need to amend the plan. A decision would then be published, stating whether or not any changes were needed, the reasoning for that decision, and the nature of any changes proposed.
- 2.47 If the planning function has been delegated, responsibility for making the changes would rest with the MPA, which would then send the revised plan back to DOE.

#### Adoption and publication

- 2.48 Once DOE is satisfied that the plan implements the MPS (taking account of any relevant considerations affecting the area to which the plan applies), and adequately reflects the outcome of any hearing, it would formally adopt the plan after consultation with other relevant Departments and Executive agreement.
- 2.49 An adopted plan would then be published. It is proposed that the plan would be published in an easy-to-use format, and it is anticipated that certain information would be presented graphically using maps and charts. In particular, the Northern Ireland plan would be accessible to anyone who may be affected by decisions influenced by it. To ensure comparability between plans, some standardisation in how marine plans are presented throughout the UK is anticipated.

#### Monitoring

- 2.50 During the lifetime of a plan, the MPA would be required to keep under review matters which may affect the plan's content or effectiveness, (such as environmental trends, changes to biodiversity, effects of climate change), as

well as to monitor how well the content of the plan has been taken forward through decision making.

- 2.51 The UK Marine Monitoring and Assessment Strategy (UKMMAS) already brings together a substantial amount of data about our seas. The planning system would play a key role in the way in which UKMMAS is taken forward. UKMMAS would also feed information back to the UK Government and Devolved Administrations to enable management activities or objectives to be adapted in the light of improved information.

### Review

- 2.52 Although it is intended that marine plans will look ahead for approximately 20-25 years, the MPA would be required to monitor and report regularly on its planning activities and the effects that plans are having, including how well they are achieving their objectives and the objectives set out in the MPS. These reports would then be laid before the Assembly.
- 2.53 In particular, the MPA would be required to report every 6 years on its planning activity, including details of new plans it has prepared, any amendments it expects to make to those plans and any new plans it intends to prepare. This 6-yearly reporting cycle will enable these reports to be combined with those required by the Marine Strategy Framework Directive on the measures being taken to ensure “Good Environmental Status” in the UK marine area.
- 2.54 In addition, each marine plan will be required to be reviewed by the MPA every three years. After each review, the MPA will determine whether the plan is still appropriate or needs to be amended or replaced by a new one. However, there will be no requirement for an amended or new plan within a specific timescale. With such a new system, we do not want to be prescriptive early on but to have flexibility to decide when changes are needed.
- 2.55 If, on review, plans require amending or replacing, they would follow the same broad process (outlined above) of consultation, preparation, appraisal and adoption, as for the initial plan.

### **Integration with other plans**

- 2.56 It is essential that the proposals integrate well with other related, adjacent or overlapping plans, particularly in coastal areas where management arrangements can be complex, or where plans address activities and features which cross planning boundaries. Working to ensure how plans can be integrated may reveal areas of duplication between plans and, where that happens, we would be keen to remove them.
- 2.57 The adopted MPS will bring together and reconcile the different policies, objectives and targets that currently exist, and will therefore incorporate obligations we currently have under e.g. the Water Framework Directive

(2000/60/EC). This will promote the achievement of those objectives alongside other marine policies.

2.58 It is proposed that the MPA would consider:

- any adjacent plans;
- any plans covering the whole or part of the same geographical area; and
- any other plans with relevant content and subject matter.

2.59 For example, marine plans would need to consider plans prepared for river basin districts as a result of the Water Framework Directive, any Flood Risk Management Plans and terrestrial plans and planning policy to the extent that these are relevant to the marine environment. This would include statutory and non-statutory plans.

2.60 This approach would facilitate integration across planning boundaries, and harmonisation between plans with the same or overlapping geographical coverage. This will be crucial for activities and organisations which operate across more than one planning area; we do not want plans to impose new burdens on them.

2.61 It should be noted that integration of, and harmonisation between, plans will not be achieved immediately. Different plans in coastal areas are reviewed in different time cycles independently of each other, but this staged approach will enable planners progressively to consider the content of other plans, enabling gradual, more considered integration.

2.62 Where the Northern Ireland plan adjoins the geographical area of one or more other Administration, or affects in any way the functions that one or more other Administration is responsible for, DOE would, before preparing any proposals, be required to notify the other Administration affected (and also notify the Secretary of State regarding all reserved, excepted and non-devolved functions which may be contained in the proposed plan). Reciprocal requirements would apply to the other Administrations in order that the Administrations affected could take note of the impending plans and could consider any possible implications at an early stage. This would not affect the competence of any of the Administrations involved to adopt their respective plans.

2.63 The SEA Directive requires consideration to be given as to whether the marine plans may have a 'significant effect' on the environment of other EU Member States, and if so, requires consultation to take place. The Republic of Ireland will be consulted where a plan may have implications for it.

2.64 DOE will consider whether land planning legislation or guidance should be amended to ensure that terrestrial planning activity could take marine plans into consideration.

- 2.65 The marine planning process will give careful consideration to the impacts of marine activities on the coast (e.g. pollution, seascape and visual amenity, noise, extra marine or land traffic into ports, cables running into connecting stations on land) and also to terrestrial impacts on the marine environment. The science and data used for planning could help to establish these impacts. The socio-economic links between what happens at sea and the communities that will be affected by changes to those activities will also be considered.
- 2.66 This holistic and integrated approach is aimed at building a marine planning system that is transparent, with public participation built in throughout.

### **Influencing decisions**

- 2.67 The UK Act stipulates how the adopted MPS and marine plans in specific areas will influence decisions that are made in relation to the marine environment. All decisions made in the marine area, or which could have implications for the marine area, must be made in accordance with the MPS and any relevant marine plan. This approach will be followed unless relevant considerations indicate that another course of action is appropriate, but in that event the decision maker will have to give clear and convincing reasons for taking this course of action. This is an approach that is already very familiar on land.
- 2.68 This integration will enable Northern Ireland to achieve its overall marine vision and objectives, and create a more efficient approach to the use of marine space. To achieve this, and to secure the benefits a planning process could generate, the MPS and plans must have significant influence over decision making. Otherwise, the outputs of the planning process could be given little consideration, and the cost and effort involved in the process would be wasted.
- 2.69 The types of decisions that would be affected are:
- licensing decisions about projects, developments and activities - for example, those decisions currently made in accordance with the Food and Environment Protection Act 1985 or the Petroleum Act 1998;
  - enforcement decisions;
  - decisions taken about the protection of resources - for example, about whether to designate a protected area;
  - Bye-law making; and
  - creation of other plans (land use plans etc.)
- 2.70 Decisions which will not be affected by this include policy formulation and development by Departments, which will not be restricted by plans. However, we would expect relevant Northern Ireland Departments, the UK Government, Welsh Assembly Government and Scottish Government to have regard to the content of the MPS and any relevant plans when making new policy decisions.

## **When factors other than the plan would be relevant**

2.71 Although it is proposed that bodies must act in accordance with the plan, a marine plan would not always be the only consideration in decision making, and at the time of taking a decision there could be a number of other relevant considerations the decision maker should bear in mind. For the planning system to be effective, it must ensure that the decision maker can act in a flexible way and depart from the plan if relevant considerations indicate that another course of action is more appropriate.

2.72 Relevant considerations could be:

- Appropriate Assessments and Environmental Impact Assessments that may be undertaken as part of the decision-making process, and may reveal information that is not contained in plans;
- the marine environment is dynamic and changes may have taken place since plans were adopted;
- new or changed statutory obligations;
- new Government policies;
- responding to emergency situations; and
- new EC Directives.

## **Ensuring compliance**

2.73 The MPA will review whether decisions are being made in accordance with the MPS and marine plans. This will ensure that the planning system is consistent and predictable. This will be part of the mechanism of reviewing plans – to ensure that plans could be amended to take account of problems that may have arisen or to prompt the early review of a plan.

## **Activities that are not regulated by public bodies**

2.74 There are some marine activities which are unregulated because they generally cause negligible or no significant damage to the wider marine environment. There are also activities which are unregulated because the extent of impact is, as yet, unknown. However, they may have an impact on local areas that are particularly sensitive from a biodiversity or heritage point of view.

2.75 Voluntary initiatives and management schemes are often used to manage such activities, and marine planning would take note of these and any local plans. Bye-law-making powers proposed for Marine Conservation Zones (MCZs) will help regulators to protect those sites.

## **Delivering plans**

2.76 The MPA must provide a clear, consistent and holistic approach to the management and use of the marine environment. As stated earlier, this approach is aimed at ensuring that Northern Ireland achieves the maximum

economic benefit from its marine environment whilst providing the appropriate environmental protection.

## **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?
- Q5. What comments would you like to make on the proposed stakeholder involvement in the development of a marine plan?
- 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?
- Q7. What comments would you like to make on the proposed process for developing a marine plan in Northern Ireland?

## **SECTION 3**

### **MARINE LICENSING AND ENFORCEMENT**

#### **Background**

- 3.1 The majority of human activities which take place at sea are subject to some form of licensing by a Northern Ireland Department. Marine licensing is the system by which consent by Government or another Authority is given to individuals or companies who want to undertake a range of activities in, on or under the sea. Marine licensing articulates how, in practice, Government policies are to be delivered in the marine environment. It is the mechanism by which the objectives of marine plans and the Marine Policy Statement will be translated into decisions allowing activities (subject to specific conditions) or to bar them.
- 3.2 In March 2009, the Assembly consented to the extension of the provisions of the UK Marine and Coastal Access Act 2009 to Northern Ireland. This legislation establishes DOE as the licensing and enforcement authority and provides a power for it to delegate both functions, should the Minister decide that this is appropriate. It is anticipated that the new system will be introduced in 2011. DOE is developing the subordinate legislation necessary to implement this regime, and this will be subject to a separate public consultation exercise in due course.
- 3.3 As with marine planning, a combination of the UK Act and a proposed Northern Ireland Marine Bill will be used to deliver a modernised system that is streamlined, consistent and promotes integrated decision making. The proposed changes are founded on the principles of better regulation, flexibility, proportionality and targeting. This means matching the costs of licensing, monitoring and enforcement to the risks that an activity poses to the environment, human health or other legitimate uses of the sea. However this will not reduce the environmental assessment requirements as these are key to having a clear understanding of how decisions and activities impact on the marine environment.
- 3.4 Delivering sustainable development is of paramount importance to DOE's approach to marine licensing. The intention is to enable regulators to consider the wider benefits of a development as well as potential impacts. This approach will assist with delivery of the holistic management of the seas, which is the ultimate objective.
- 3.5 The overall aim of the reformed regime is to reduce the burden on business whilst helping to deliver better quality of life through sustainable development by managing conflicting uses of the sea, addressing cumulative impacts of activities and enabling a longer-term view of the management of our seas to be taken.



- 3.6 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 benefits from the marine environment. In doing so the aim is also to promote and encourage economically and environmentally sustainable use of natural resources to ensure long-term economic gain and sustainable employment. The main industries which will benefit from the reforms include ports and harbours, fisheries, aggregate dredgers, recreational service providers and renewable energy developers.
- 3.7 Historically, different industries have often been controlled by different regimes which operate in different ways and which have developed in a piecemeal manner over many years. These regimes are often subject to different procedural rules, running to different timescales and having different aims. This often results in overlap and the system can be complex, confusing and costly to businesses. The evidence from previous consultations also suggests that these arrangements cannot respond quickly and flexibly to new legislative obligations, emerging technologies and new market opportunities such as carbon capture and storage or renewable energy projects.

### **Reform of marine licensing – The UK Act**

- 3.8 The UK Act (together with supporting subordinate legislation) will deliver the key marine licensing reforms which will help to clarify and simplify the legislation for both developers and regulators. An independent appeals mechanism will be introduced for the first time allowing applicants to appeal against the decisions of a licensing or enforcement authority to an independent body. The Water Appeals Commission will fulfil this role in Northern Ireland. These reforms will help to promote economically and socially beneficial activity while minimising any adverse impact on the environment, navigational safety and other users of the sea.
- 3.9 The reformed regime seeks to deliver the following objectives:
- enable regulators to adopt a more holistic, long-term approach to managing activities at sea, which will operate in the context of marine planning and will support the delivery of policy objectives for the sustainable development of the marine area;
  - improve the way in which regulators work together to address the cumulative impacts of projects and the consistency of decision making across Departments and between terrestrial and marine regimes;
  - rationalise a variety of sector-specific rules which have developed over a number of years and resolve overlaps and inconsistencies between them;
  - streamline the current arrangements so that licensing is faster, more efficient and transparent and less bureaucratic and confusing. The system will carry less risk, delay and cost and will, in some cases, reduce the number of regulators for an individual project;

- simplify and clarify the legislation for regulators administering the system enabling them to operate more effectively;
  - be more responsive to the needs of applicants, particularly in respect of new developments and emerging technologies that will require licensing in the future;
  - clearly articulate to developers what is required in order for a licence application to proceed effectively;
  - facilitate public involvement in the process; and
  - be structured in a clear and flexible way, in order that regulators can respond to changing obligations from European and international law if necessary.
- 3.10 The UK Act enables the extension, by secondary legislation, of the operations which will require a licence, within the framework of the marine regime, in order to provide for targeted and proportionate control and the promotion of new technologies.
- 3.11 The reformed licensing system is based on the consolidation and modernisation of the Food and Environment Protection Act 1985 (FEPA) and the Coast Protection Act 1949. The latter did not extend to Northern Ireland; however navigational issues for projects were dealt with by administrative means through FEPA licensing.
- 3.12 Under the UK Act licensing regime a licence will be needed to place something on, or take material off, the seabed. For example:
- major infrastructure on the seabed or over the sea/tidal waters – ports, bridges, wind farms;
  - extraction from the seabed – for commercial use of material extracted or for creating and/or maintaining shipping channels;
  - other – jetties, piers, cables, moorings, coastal defences, buoys etc;
  - deposits on the seabed – mainly dredged material as most dumping at sea (e.g. of waste) is now banned.
- 3.13 The list of licensable activities detailed in the UK Act makes the distinction between construction and deposition clearer, although FEPA was applied to both in practice. The licensing authority can amend the list of activities for which a licence is required in order that the regime is flexible enough to deal with emerging technologies. The licensing authority can also exempt certain activities.
- 3.14 In licensing individual developments, the impacts on other uses of the sea must be considered. The interests to be considered include navigation, fisheries, the environment (habitats/marine species conservation), heritage

(preservation of wrecks) and pollution control. These span local, regional and national (e.g. defence) to European and international interests.

- 3.15 Currently DOE is responsible for licensing construction and deposits in the sea through FEPA, as amended by the Marine Works Regulations 2007. The extraction of marine aggregates is also licensed by DOE through the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007. DOE's legislative competence in respect of both of these licensing regimes extends to the limit of Northern Ireland's territorial waters (i.e. 12 nautical miles). DOE will continue to be the licensing authority for these activities through UK Act licences. This reformed regime is expected to be in place throughout the UK in 2011.
- 3.16 The Marine Management Organisation (MMO) established under the UK Act to deliver marine functions in the waters around England and in the UK offshore area (for matters that are not devolved) will have legislative competence for licensing in the area of the Northern Ireland zone beyond the 12-mile limit (the offshore region). The MMO will also be responsible for enforcement in this area. This is consistent with the devolution arrangements in Northern Ireland.
- 3.17 The UK Act will also introduce certain exemptions or special arrangements, a number of which extend to Northern Ireland.
- 3.18 Most activities regulated under the Petroleum Act 1998, which is a reserved matter, will be exempt from the marine licensing regime. This is because the Department of Energy and Climate Change (DECC) has in place a robust and bespoke regime to regulate the environmental aspects of this industry. A special arrangement has also been introduced for Electronic Communications Apparatus.
- 3.19 The UK Act, while bringing all dredging within the scope of marine licensing, contains an exemption for dredging activities (i.e. the act of dredging; not disposal) undertaken by harbour authorities and authorised by harbours legislation. In Northern Ireland this will extend to those activities which are subject to sections 1 or 10(3) of the Harbours Act (Northern Ireland) 1970.

#### **Further reform of marine licensing – proposed Northern Ireland Marine Bill**

- 3.20 Through a proposed Northern Ireland Marine Bill there is scope to consider further streamlining arrangements of licensing in respect of devolved matters, including ports and harbours and marine renewables, so that the full benefits, including those to the economy, of such reforms can be realised and, importantly, so that a consistent approach to decision making is applied throughout the UK.
- 3.21 In taking forward our proposals in respect of the further streamlining of licensing for marine activities, in addition to the objectives listed above, DOE intends to introduce a system that is:

- **Effective** – targeted on activities that need to be controlled to ensure that a proper balance is struck between competing uses and to use finite marine resources in a sustainable way;
- **Efficient** – in respect of both the speed of its processes and the use of resources;
- **Consistent** – this applies both to the sectoral regimes within Northern Ireland and comparable regimes throughout the UK;
- **Simple, clear and transparent** – stakeholders should know what is required of them, what to expect of the process and understand the decision-making process; and
- **Flexible, targeted, proportionate and risk-based** – regulators should strike the right balance between the need to regulate and the promotion of businesses operating in the marine environment.

3.22 The Northern Ireland Executive is committed to the principles of better regulation, including legislative and administrative simplification. This means legislating only where necessary and in the most efficient way. It also means deregulating where it is possible and appropriate to do so, and consolidating and rationalising existing legislation wherever possible. The proposals for further streamlining set out in this section, and, indeed, all of the proposals in this document, embody these principles.

3.23 The key areas for consideration are:

- ports and harbours;
- marine renewables; and
- carbon capture and storage and other gas storage projects.

## **Sectoral regimes**

### Ports and harbours

3.24 Schedule 1 of the Harbours Act (Northern Ireland) 1970 prescribes the “objects” for which Harbour Orders may be made. These include the construction, improvement, maintenance or management of a harbour and also allow for the authorisation of bye-laws and amending or appealing statutory provisions affecting a harbour in Northern Ireland. Section 11 of the Act provides for the consenting of tidal works. The development, redevelopment or maintenance of a port or harbour may also be subject to the requirements of the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003 as amended. The land-based aspects of such development are subject to planning legislation. Responsibility for non-fisheries harbours rests with the Department for Regional Development (DRD) and with the Department of Agriculture and Rural Development (DARD) for fisheries harbours.

## Marine renewables

- 3.25 Responsibility for licensing of electricity generation rests with the Department of Enterprise, Trade and Investment (DETI). The construction of most marine renewable electricity generating stations in Northern Ireland's territorial waters is subject to consent under section 39 of the Electricity (Northern Ireland) Order 1992. Their construction is also subject to the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008. Most marine renewable electricity generating stations will have a land-based dimension which will be subject to planning legislation.
- 3.26 The Electricity Consents (Planning) (Northern Ireland) Order 2006 streamlined the consent process for electricity projects by combining consents and planning permissions. However, this legislation has not, as yet, been commenced.
- 3.27 DETI has undertaken a Strategic Environmental Assessment to consider the potential impact of wind and marine renewables and enable it to operate, in conjunction with Crown Estate as owners of the seabed, a competitive call in 2010 for developers to invest in and install marine renewable energy devices.

## Carbon capture and storage, natural gas and other gas storage projects

- 3.28 The Energy Act 2008 established a regime to regulate carbon capture and storage and the storage of natural gas below the seabed in UK territorial waters which will be operated by DECC. Responsibility for establishing similar regimes in Northern Ireland's internal waters (i.e. sea loughs) rests with DETI.

## **Proposals for further streamlining**

- 3.29 Ideally, for as many sectors as possible, there should be one application and one licence per project. There is a need to develop streamlining which is sufficiently flexible to operate under arrangements where responsibilities for sectoral regimes and marine licensing rest within different Departments and where they are administered by one Department or body.
- 3.30 There are three main ways in which licences for activities can be further streamlined, depending on the nature of the existing regime:
- a Northern Ireland Exemptions Order - the UK Act enables the licensing authority to exempt activities from the licensing regime;
  - exemptions in primary legislation - the proposed Northern Ireland Marine Bill could provide for specific exemptions and amendments to existing regimes; and/or
  - Special Procedures - the proposed Northern Ireland Marine Bill could provide for special arrangements which would enable the sectoral consent and the marine licence application to be considered together.

- 3.31 The UK Act provides for a Special Procedure which applies to harbour and offshore electricity generation consents in England and Wales.
- 3.32 These Special Procedures could be used for activities in Northern Ireland where a marine licence is required and an application for a sectoral licence is also needed. Essentially, the procedure requires the sectoral consent and the marine licence application to be considered together irrespective of whether one or two licensing/consenting authorities are involved. This is to ensure that only one Environmental Impact Assessment (EIA) will be required, and all other relevant information will be collected at the start of the process by the authority with the sectoral responsibility. The special arrangement further provides a power (through subordinate legislation), to amend the procedures of either of the two consenting regimes on a case-by-case basis - for example, to put on hold a procedural requirement of either regime. The decision to approve must be taken jointly if two consenting authorities are involved; marine licence conditions, where appropriate, would be agreed; and the two consents would issue concurrently.

### **Enforcement – The UK Act**

- 3.33 Effective enforcement is essential to ensure that regulations designed to manage the marine area are implemented fairly. Therefore to be fully effective, a licensing regime must be backed up by an enforcement regime. The same principles of proportionality, targeting and flexibility that apply to licensing should also be guiding principles for enforcement.
- 3.34 The majority of marine activities are carried out in a responsible way, but the right tools need to be available to deal with those operating without a licence or posing a risk to the environment, human health, or interfering with legitimate uses of the sea.
- 3.35 The UK Act modernises the enforcement powers and introduces a wider range of tools for enforcement in order to provide a more proportionate response. The enforcement provisions in the UK Act apply to licensing, fisheries and marine nature conservation in England and Wales. In Northern Ireland the provisions will apply in respect of marine licensing, and DOE will be the enforcement authority. In keeping with the devolution settlement, DOE will appoint Marine Enforcement Officers (MEOs) for the inshore region and the MMO will appoint Marine Enforcement Officers for the offshore region. It will consequently be particularly important to ensure consistency in respect of enforcement within the inshore and offshore regions.
- 3.36 The MEOs will have a set of common enforcement powers which will give more clarity to both the Officers and those being inspected. These powers cover activities including the ability to stop, board and inspect marine installations, enter and inspect premises (a warrant is still needed to enter dwellings), search and investigate, retain documents and items.

- 3.37 These powers will complement the management and enforcement measures for marine licensing. The purpose of enforcement is to ensure compliance with regulatory requirements.
- 3.38 MEOs, and those appointed by Welsh Ministers together with other Fisheries Officers (e.g. Inshore Fisheries and Conservancy Officers in England), will have enhanced fisheries management powers through the UK Act. In Northern Ireland, modernisation of enforcement in respect of fisheries management is a matter for DARD and may be considered as part of a review of the fisheries legislation in a Fisheries Bill.
- 3.39 The issue of enforcement, in addition to other aspects of marine nature conservation in Northern Ireland, is considered in **section 4**.

### **Modernisation of licensing enforcement**

- 3.40 It is an offence to undertake a licensable activity without a licence. It is also an offence to contravene any licence condition, to provide false information or to obstruct an enforcement officer.
- 3.41 The UK Act (and associated subordinate legislation) introduces enforcement and remediation notices including stop notices which enable action to be taken without having to go through the Court system for every offence. This will result in a faster, more effective, and proportionate response.
- 3.42 The UK Act also introduces civil sanctions, similar to those contained in the Regulatory Enforcement Sanctions Act 2008. This allows for the use of fixed and variable penalties depending on the severity of the offence. Again, this enables a faster, more effective and proportionate response to be taken to breaches of licence conditions.
- 3.43 The new enforcement regime for licensing will provide more flexible and proportionate sanctions, in accordance with the recommendations of the Hampton and Macrory reports. It will allow differentiation between responsible operators who inadvertently commit an offence and who are keen to make amends for that, and those operators who persistently commit offences or who commit serious breaches of licence conditions.
- 3.44 Fixed monetary penalties will be used for low-level, primarily technical offences. Variable monetary penalties will be used for more serious breaches of licence conditions, such as where the financial gain by the offence needs to be removed or a punitive element applied. The ability to charge proportionately to the scale of operation is an important requirement to ensure that the penalties are effective in discouraging all operators from offending.
- 3.45 The enforcement provisions will apply to all activities which require a marine licence. Since the licensing authority can amend the list of activities for which a licence is required the enforcement regime will also be flexible enough to deal with emerging technologies.

## **MARINE LICENSING AND ENFORCEMENT**

### **Licensing marine activities**

- Q8. Are there any specific emerging trends, new technologies or novel types of activity, which the licensing regime should address?
- 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?
- 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?
- 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?
- Q12. Are there any other key principles that should be considered as part of any further changes to the regulatory system?

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



## SECTION 4

### MARINE NATURE CONSERVATION

#### Background

- 4.1 Marine biodiversity is a term used to describe the variety of life found in the marine environment including plants, animals and micro-organisms. When we talk of marine biodiversity we are considering individual species right up to ecosystems. There is a wealth of biodiversity in the marine environment and marine biodiversity has a significant value to society through the goods and services it provides.
- 4.2 Marine biodiversity is coming under increased pressures due to the wide and growing range of activities being undertaken in the marine environment. These activities include potential for aggregate extraction, marine renewables and increase in leisure sports.
- 4.3 Therefore, there is a growing need to protect our fragile and diverse marine ecosystem. This diversity and its uniqueness are very apparent in areas such as the waters around Rathlin Island where many newly discovered species of sponges have been found.
- 4.4 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.
- 4.5 The creation of a UK network of Marine Protected Areas (MPAs) is an essential part of the UK Government's commitment to integrate marine nature conservation and other marine activities.

#### Marine Protected Areas

- 4.6 A 'protected area' is defined by the International Union for Conservation (IUCN) as:

'A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.'

The term MPA has been used to describe a wide range of marine areas which have some level of restriction to protect living, non-living, cultural, and/or historic resources.

- 4.7 MPAs have been shown to be successful in protecting marine habitats and species. They can maintain existing conditions and restore degraded habitats and populations of species. The marine habitats and species within protected areas play a role in the functioning of the marine environment, contributing to

the productivity of marine ecosystems and enabling the protection of the essential habitats for the different life stages of marine species, including commercially important species.

- 4.8 Under certain management regimes MPAs have been shown to contribute to increasing the biomass, density and species diversity of animals and plants within them. When fish and other invertebrates grow larger they often produce more offspring, so MPAs can contribute to maintaining and potentially increasing the population of these species. MPAs have a vital role to play in enabling marine biodiversity to become more resilient and adapt to changing climatic conditions.
- 4.9 However, the success of a MPA network will depend on many factors including its location, size, level of protection, compliance and most importantly, the biology of the species living there. MPAs may also incidentally protect areas of cultural, spiritual and historical value, such as wrecks.
- 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.
- 4.11 MPAs can help to secure the goods and services that we expect from the marine environment, thereby underpinning many economic and social uses of the coast and sea including education, research, tourism and recreation.

## **Current obligations relating to marine nature conservation**

### **International commitments**

- 4.12 The UK Government and Devolved Administrations are committed to working together to manage marine activities and protect the seas effectively.
- 4.13 To protect marine biodiversity the following international commitments and obligations have been introduced:
- the UK Government's commitment at the World Summit for Sustainable Development (WSSD) in 2002 to establish a representative network of MPAs by 2012; and
  - the UK Government's commitment to the UN Convention on Biological Diversity to establish a network of well-managed MPAs by 2012 to enable delivery of WSSD targets.
- 4.14 In addition to the 2012 target, Defra has committed to have the network of MPAs within its territorial waters and in the UK offshore zone (from 12nm to 200nm) well managed and with conservation measures comparable to those on land, fully integrated with marine planning by 2020. In this context, Northern Ireland has a key role to play in assisting to meet these targets, which also embraces the overall objective of Good Environmental Status (GES) contained in the Marine Strategy Framework Directive.

## **European legislative commitments**

### **The Marine Strategy Framework Directive (2008/56/EC)**

- 4.15 The Marine Strategy Framework Directive (MSFD) came into force in July 2008 and requires Member States to put measures in place to achieve GES in their waters by 2020. Maintaining the biological diversity of our marine ecosystem will form a key element of achieving GES. The Directive leaves it to Member States to decide which measures to use to achieve GES but explicitly refers to MPAs as an important contribution to achievement of GES. In particular, the Directive (Article 13 (4)) requires Member States to publish information on MPAs by December 2013.

### **The Water Framework Directive (2000/60/EC)**

- 4.16 The Water Framework Directive (WFD) is the most substantial piece of EU water legislation to date, and is designed to improve and integrate the way water bodies are managed throughout Europe. The Directive came into force on 22 December 2000, and was transposed into Northern Ireland legislation by the Water Environment (Water Framework Directive) Regulations (NI) 2003. Under the WFD, Member States must aim to achieve good chemical and ecological status in identified water bodies by 2015. This includes transitional (estuarine) and coastal waters out to one nautical mile (3nm in Scotland). The MPA network will make a contribution to the achievement of good ecological status for UK waters.

### **The Wild Birds and Habitats Directives (2009/147/EC formerly 79/409/EEC and 92/43/EEC) (European marine sites)**

- 4.17 Under the Habitats Directive, transposed by The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995, (the Conservation Regulations) Northern Ireland is required to identify and protect a series of Special Areas of Conservation (SACs) for habitats and species of European importance. Sites identified and accepted by the European Commission will contribute to a Europe-wide network of nature conservation protected areas known as Natura 2000. There are currently 6 coastal and inshore SACs in Northern Ireland at Magilligan, Bann Estuary, North Antrim Coast, Rathlin Island, Strangford Lough and Murlough.
- 4.18 The other element of the Natura 2000 network consists of Special Protection Areas (SPAs) for the protection of birds of European importance. There are currently 11 coastal SPAs - a number of which have a marine element. However, there is only 1 exclusively marine SPA (Belfast Lough Open Water) at present. Under the Wild Birds Directive, Northern Ireland is obliged to select sites for those bird species included in Annex 1 of the Directive and also for regularly occurring migratory species. In the marine environment, these include marine bird species such as Arctic, Common, Sandwich and Roseate Terns, Manx Shearwater, Cormorant, Razorbill, Guillemot and Kittiwake.

## National commitment

4.19 The Nature Conservation and Amenity Lands (NI) Order 1985 contains powers to declare and protect Marine Nature Reserves (MNRs). Strangford Lough became Northern Ireland's only MNR on 4 July 1995.

## Species protection measures

4.20 Certain marine species receive specific protection under existing legislation. For example, the killing of cetaceans and marine turtles is prohibited by the Conservation Regulations. Similar protection is afforded to other marine species of national conservation importance by the Wildlife (Northern Ireland) Order 1985 - for example, seals. Further marine species will be afforded protection under the Wildlife Order by amendments contained in the Wildlife and Natural Environment Bill. It is proposed under this Bill (Schedule 5) to give protection to additional marine species such as Basking Sharks, Angel Sharks and Common Skate.

4.21 The existing Northern Ireland nature conservation legislation applying to the marine area is summarised in the following table:

<b>Legislation</b>	<b>Main provisions</b>
<b>Nature Conservation and Amenity Lands (Northern Ireland) Order 1985</b>	Designation and management of Marine Nature Reserves (MNRs). Provides for the creation of MNRs effectively out to the 3nm limit. Provides for the provision of marine based bye-laws out to 3nm.
<b>The Wildlife (Northern Ireland) Order 1985</b>	Protection of wild animals and plants within Northern Ireland. Schedules of listed species contain reference to coastal and marine birds and also to seals and cetaceans.
<b>The Environment (Northern Ireland) Order 2002</b>	Designation and management of domestic sites (ASSIs) to low mean water mark. There is a need to define the land/sea boundary of ASSIs, and it is proposed that MCZs could include some coastal areas.
<b>Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995</b>	Implementation of the EC Habitats and Birds Directives. Designation of a series of SAC and SPA sites in coastal and marine areas representing the NI contribution towards the Natura 2000 network. European site protection provisions include management schemes and bye-laws. Measures to give strict protection of species of European importance.

## **Current status for marine nature conservation in Northern Ireland**

4.22 Marine nature conservation is a function reserved to Westminster under the Northern Ireland Act 1998. However, in practice, the DOE undertakes this activity in Northern Ireland's territorial waters (out to 12 nm) with all marine sites, such as Rathlin Island and Murlough Bay, designated with the approval of the Secretary of State.

## **Current difficulties in protecting species and habitats in the marine environment**

4.23 There are currently two separate methods for designating MPAs in Northern Ireland.

4.24 First, an area can be designated as a Marine Nature Reserve (MNR). The disadvantages of this process are that there are limited protection powers associated with MNRs and they only extend out to 3nm. MNR designation in Northern Ireland applies solely to Strangford Lough. Provisions related to the designation of MNRs are intended to be replaced fully by the new measures proposed.

4.25 Secondly, as stated earlier, designations can be made under the Wild Birds and Habitats Directives.

4.26 Both these designation regimes are limited in 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.

4.27 Experience over the years has highlighted a number of issues which makes this process impractical for widespread national designations. These include:

- species and habitats which could be provided protection are restricted to those listed in the Directives. The Directives take no account of species and habitats of national importance;
- the existing designation process is inflexible. Current site boundaries cannot be easily amended to take account of new scientific data (unless to extend) or of changing circumstances - for example, if a species or habitat is no longer relevant due to changing ecosystems;
- the process does not take account of the abundance cycles of species or effects of climate change;
- the process cannot protect species for part(s) of the year; during the breeding season - for example, seal pupping or bird nesting;
- sites designated under European legislation are purely for conservation objectives and do not have any consideration for socio-economic impacts;

- the process cannot be used to protect any geological or geomorphological features. Good examples of these have been identified following the recent multi-beam sonar project off the North Antrim coast;
- limited stakeholder involvement/input into site selection or designation process; and
- limited management arrangements for existing MPAs.

4.28 The measures proposed are intended to complement existing nature conservation legislation transposing the European Wild Birds and Habitats Directives.

### **The proposed way forward**

4.29 To conserve healthy marine ecosystems and a full range of biodiversity, and to provide opportunities for recovery, we need a site protection mechanism that can protect a wide range of species and habitats, many of which are unique or vulnerable in Northern Ireland's territorial waters.

4.30 To help deliver the UK's aim for an 'ecologically coherent network of Marine Protected Areas' a new type of MPA, called a Marine Conservation Zone (MCZ) was introduced through the UK Act. MCZs will protect nationally important marine wildlife, habitats, geology and geomorphology and can be designated anywhere in English and Welsh inshore and UK offshore waters. The management measures required within MCZs will be decided on a site-by-site basis and will depend on what the site has been designated for.

4.31 It is considered that this policy will be beneficial in helping to protect our nationally important marine biodiversity and meet our international and European commitments. Therefore, we propose that the Northern Ireland Marine Bill should introduce similar new powers for the establishment of MCZs in Northern Ireland's territorial waters

4.32 In order to ensure an ecologically coherent network of MPAs is established throughout the UK, the following principles are being proposed:

- **Representativity** – the network should represent the range of marine habitats and species present in Northern Ireland's territorial waters;
- **Replication** – ensure replication of habitats with other parts of the UK as appropriate to achieve an overall network;
- **Viability** – the network should be made up of self-sustaining, geographically dispersed component sites of sufficient size;
- **Adequacy** – the network should be of adequate size to deliver its ecological objectives and ensure long-term protection and/or recovery;
- **Connectivity** – ensure the network has linkages among individual MPAs and between regional networks;

- **Protection** – a range of protection levels to be introduced from highly protected sites where no extractive activities are allowed, to areas where minimal restrictions on activities are needed to protect the features; and
- **Best available science** – network design should be based on the best information available.

4.33 DOE is currently working with the UK Government and the other Devolved Administrations in defining what constitutes “a coherent network” in terms of representative types of species/habitats and the number/area of sites required. Natural England and the Joint Nature Conservation Committee are developing ecological network guidance notes and these should be available in summer 2010.

4.34 By 2020, DOE intends to have a network of effectively managed MPAs in place comprising European marine sites and MCZs.

### **Principles for the identification and selection of MCZs**

4.35 MCZs will conserve and aid the recovery of:

- the range of marine biodiversity in our waters;
- rare or threatened habitats and species;
- globally or regionally significant areas of geographically restricted habitats or species;
- important aggregations or communities of marine species;
- areas important for key life-cycle stages of mobile species, including habitats known to be important for their reproduction and nursery stages;
- areas contributing to the maintenance of marine biodiversity and ecosystem function in our seas; and
- features of particular geological or geomorphological interest.

### **Ecological considerations in identification and selection of individual MCZs**

4.36 A key consideration in identifying potential MCZs will be whether a potential site is consistent with, and furthers, the objectives of the UK MPA network as a whole. However, the inherent value of individual MCZs in conserving species and habitats needs to be considered in parallel.

4.37 The following factors should be taken into account in identifying MCZs as part of an ecologically coherent network. Ecological coherence is still an evolving concept in the scientific community. However, these factors are largely based on criteria developed for OSPAR Contracting Parties to consider in MPA identification and selection:

- **Threatened, declining or rare species and habitats**  
The area is important for species and habitats that appear to be under immediate threat or subject to rapid decline; nationally or globally rare

species and habitats; and globally or regionally significant areas for geographically restricted habitats and species.

- **Important species and habitats**

The area is important for other species and habitat.

- **Ecological significance**

The area has a high proportion of a habitat type or a population of a species at any stage in its life cycle; important feeding, breeding, moulting, wintering or resting areas; important nursery, juvenile or spawning or resting areas; and a high natural biological productivity of the species or features being represented.

- **High natural biological diversity**

The area has a naturally high variety of species (in comparison to similar habitat features elsewhere) or includes a wide variety of habitats (in comparison to similar habitat complexes elsewhere). This may be considered as a biodiversity 'hotspot'.

- **Representativity**

The area contains a number of habitat types, habitat complexes, species, ecological processes or other natural characteristics that are representative of our seas as a whole or of its different biogeographic regions and sub-regions.

- **Sensitivity**

The area contains a high proportion of sensitive habitats or species.

- **Naturalness**

The area has a high degree of naturalness, with species and habitats still in a very natural state as a result of the lack of human-induced disturbance or degradation.

- **Size and position of site**

The MCZ should be ecologically viable, at a relevant scale to the feature being protected and large enough to support key ecological processes of the majority of species of interest. The distance between potentially connected habitats across sites and the prevailing physical processes should be taken into account to maximise and enhance the linkages within the network.

4.38 The assessment of whether sites are important in terms of any of these factors should be based on the best available science, expert knowledge and advice.

4.39 Defra, with funding from DOE, the other Devolved Administrations, Natural England (NE), Joint Nature Conservation Committee (JNCC) and Countryside Council for Wales (CCW), has let several contracts to produce additional biophysical and socio-economic data layers.



- 4.40 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.
- 4.41 Identification and/or selection of MCZs for protection of geological and geomorphological interest does not stop at the seaward margin of the coast. Features of interest may include:
- areas of international geological importance;
  - areas that contain exceptional geological features; or
  - areas that are representative of a geological feature, event or process which is fundamental to understanding Northern Ireland's geological history.
- 4.42 In addition to the ecological factors set out earlier in this section, we propose that the following practical considerations are applied in selecting MCZs and drawing their boundaries. These are based on the practical criteria developed for OSPAR.
- **Synergies with other sectors**  
The area has a degree of protection for other purposes - for example, the area is already designated as a European site, and the area is already subject to restriction of other activities. The area will provide conservation benefits through excluding activities for reasons of safety (e.g. exclusion zones around offshore wind turbines) or danger areas.
  - **Size**  
The size of the site is suitable for the particular aim of designating the MCZ and should enable effective management of that area.
  - **Potential for recovery**  
The area has a high potential for successfully recovering structure and function of the habitats or species within the MCZ under appropriate management, thus aiding its return to a more natural state.
  - **Degree of consensus**  
The establishment of a MCZ has a comparatively high potential level of support from stakeholders and/or the local community.
  - **Potential for success of management measures**  
There is a high probability that management measures and the ability to implement them will meet the aims of designation.
  - **Scientific value**  
All or some of the area has a high value for scientific research and monitoring. All or some of the area could be used as a reference site/baseline from which to assess change.

- **Accessibility**

The area is accessible for the purposes of monitoring and management. The area has a high value for environmental education and recreational activities that are compatible with the conservation objectives of the proposed MCZ.

### **Drawing of site boundaries**

- 4.43 Boundaries should encompass as much area as is necessary to protect the feature of interest at the site. They should take account of the need for the site to operate as a functional whole for the conservation of the habitat type(s) or species. The ability to enforce management measures for the site should also be a consideration in boundary determination.
- 4.44 Boundaries should be as simple as possible using a minimum number of straight lines and vertices, but should also follow the distribution of the feature for which the site has been identified.
- 4.45 MCZs for species should be drawn around areas of species concentration, using the best available data on their distribution.
- 4.46 The best available scientific methodology and information should be used to delineate boundaries.
- 4.47 Consideration should be given to drawing the boundaries of MCZs 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. In addition, boundaries may need to be revised in future years should features move beyond existing boundaries.

### **Relationship to other site-based nature conservation designations**

- 4.48 The proposed Northern Ireland Marine Bill will allow for a limited degree of overlap between MCZs and terrestrial sites (i.e. ASSIs).
- 4.49 It is intended that MCZs will complement the existing site designation and protection measures for European marine sites. MCZs should not duplicate the purposes of the European Directives. MCZs will only be proposed for habitats and species which are protected under the EC Habitats and Wild Birds Directives in exceptional circumstances where they are essential to meet the objectives of the wider MPA network.

### **Stakeholder participation**

- 4.50 An important element of MCZ designation will be stakeholder involvement. In contrast to the designation of European marine sites, it is intended that MCZs will take account of socio-economic impacts, within the context of marine planning. It is intended that the creation of an ecologically coherent network can be achieved whilst minimising the economic and social impacts, thereby maximising the wider benefits to society.

- 4.51 There is a wide range of stakeholders who would have an interest in the development of a MPA network, including fishermen, recreational users, renewable energy providers and Government Departments and Agencies. It is proposed that these organisations will have the opportunity to be fully involved throughout the process, from discussions on boundaries, setting conservation objectives (which will determine the level of protection) to management measures.
- 4.52 Work is currently ongoing in England through its four regional projects (Finding Sanctuary, Balanced Seas, Irish Sea Conservation Zones and Net Gain) to help determine a method of managing the stakeholder involvement process. DOE will carefully study the evidence and experiences which emerge from these projects and use this learning in developing its own proposals.

## **Managing MCZs**

### **Designation Orders**

- 4.53 It is envisaged that conservation objectives for the protected features of a MCZ will be set out in subordinate legislation in the form of a Designation Order. A Designation Order for each site will identify the site boundaries and describe the desired conservation outcomes for the features.
- 4.54 Each site will have conservation objectives set out in its Designation Order, which will be based on scientific evidence. This will determine the extent of the site, what is being protected and the level of protection. In most cases conservation objectives will result in few restrictions on the activities that may take place. However, there will be scope to set more stringent restrictions where the value of a site and its conservation objectives merit them. There may be a number of such sites within the network.

### **Duties**

- 4.55 Once sites have been designated, it is proposed to place a statutory duty on Departments and public bodies to further the achievement of the conservation objectives in fulfilling their functions. The duty would be framed in a way that should best enable MCZs' conservation objectives to be achieved, whilst allowing a degree of flexibility - for example, where it is considered that development needs to proceed in the public interest.

### **Surveillance and monitoring**

- 4.56 Surveillance and monitoring are crucial in determining the success of the network and ensuring achievement of conservation objectives. It is envisaged that monitoring arrangements will be enshrined in legislation in line with the requirements of other obligations such as the Habitats Directive and the Water Framework Directive.

## Enforcement

- 4.57 It is envisaged under the proposed Northern Ireland Marine Bill that DOE will be responsible for the enforcement of the new obligations on marine nature conservation. DOE will also have a power to delegate this function should it be considered appropriate.
- 4.58 We want to ensure that all current and new conservation management arrangements, including those introduced by the proposed Northern Ireland Marine Bill, can be effectively enforced.
- 4.59 We propose to develop an integrated, modernised and effective suite of enforcement powers that can be used for marine nature conservation offences.
- 4.60 The same principles of proportionality, targetting and flexibility that will apply to the enforcement of marine licensing will also be guiding principles for the enforcement of marine nature conservation.
- 4.61 The use of sanctions will enable a faster, more effective and proportionate response to be taken to marine nature conservation offences.
- 4.62 Other legislative regimes such as marine licensing and fisheries powers contribute to the management and conservation of marine species and habitats. These will complement the marine nature conservation functions.
- 4.63 DOE will require a suite of powers for the enforcement of marine nature conservation legislation. The proposed Northern Ireland Marine Bill will make powers for enforcement to be more coherent, with respect to appointed officers' abilities:
- to stop and search individuals and their vessels;
  - to seize and detain vessels or items for evidence;
  - to board, enter and inspect vessels;
  - to make appropriate enquiries and gather evidence ;
  - to take specimens and samples; and
  - to request documentation and take photographs.
- 4.64 MCZs will primarily be protected by duties placed on public bodies when carrying out their functions and when permitting others to carry out regulated activities. These types of activities are the most likely to be capable of significantly hindering a site's ability to meet its objectives. However, it is recognised that unregulated activities can also impact on biological diversity and may also hinder the achievement of conservation objectives for MCZs.

## Bye-laws

4.65 Bye-laws can only be made for the purposes of furthering the conservation objectives of designated MCZs. Most activities will already be controlled through existing regulatory regimes, but sometimes it may be necessary to control unregulated activities like jet-skiing, anchoring of boats or snorkelling. It is also proposed to impose fixed administrative penalties for a breach of a bye-law or order. These can include a fixed monetary penalty of up to £200 or a fine on summary conviction of up to £5,000.

## General offence

4.66 It is also proposed to include a general offence for acts of deliberate or reckless damage to a feature of a MCZ. This is intended to deal with potential acts of environmental vandalism that would be difficult to predict and control through bye-laws and orders. A person found guilty of committing the general offence could be fined up to £50,000 on summary conviction or an unlimited amount on indictment. Fines are likely to be higher if an individual is considered to have profited commercially from the prohibited activities or for deliberate acts of damage.

## Penalties

4.67 We propose that the following sanctions will be made available when a conservation offence has been committed:

- *Fixed penalties.* Where an offence has been committed under the proposed nature conservation bye-laws, DOE will be able to issue a fixed penalty notice. Fixed penalties will apply where minimal evidence is required. They would only apply to offences where evidence of commission of the offence is available at the point of detection. The level of penalty will reflect the seriousness of the offence but offer sufficient incentive for the offender to pay rather than go to court.
- *Fines.* Where a case is taken to court we propose that in the first instance it is dealt with by the Magistrates' court, which will have the power to issue fines on conviction.

4.68 We would expect those undertaking commercial operations and making profit from breaching bye-laws to be subject to more substantial fines.

- *Confiscation of assets.* DOE will have powers to confiscate assets used in the commission of an offence. The court will be able to order forfeiture of any assets, including profits gained during the commission of an offence.
- *Custodial sentences.* Where other enforcement measures have been tried, and in the case of the most serious persistent offenders, we propose that the court is able to impose custodial sentences of up to two years on offenders.

- 4.69 In addition, where an activity results in damage to a MCZ, DOE will be able to demand that the offender undertakes remedial action.
- 4.70 In determining which sanctions should apply to an offender, it is important to ensure that a balance is struck between the capacity of an offender to pay, the damage caused, and the benefit that may have accrued from the illegal activity. This determination will rest with DOE, or the courts if a case progresses to that stage.

### **Stop Notices**

- 4.71 A Stop Notice is a written notice which requires a person to cease activity that is causing (or is likely to cause) serious harm or presents (or is likely to present) a serious risk of causing serious harm.
- 4.72 This proposed measure would be used to bring an immediate cessation to an alleged breach of marine nature conservation objectives of the designated site.
- 4.73 The Stop Notice would be designed to encourage a person back into compliance by prohibiting the person from carrying on with the activity until the steps needed to secure compliance with the law have been taken.
- 4.74 It is proposed that an independent appeals mechanism will be introduced and a Stop Notice should not be automatically suspended on appeal because of the level of harm or potential harm that it is designed to prevent.
- 4.75 It is envisaged that none of the offences outlined in this section will apply to:
- a public body acting in the exercise of its functions;
  - any activities contributing to national security and defence;
  - the Secretary of State or relevant Devolved Administration or anyone acting on their behalf and in accordance with their functions; and
  - any activities governed by European or International law where the UK does not exercise competence, such as fishing activities governed by the Common Fisheries Policy.

## **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?
- Q16. Do you agree that different MCZs will need to have different conservation objectives?
- 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?
- Q18. What comments would you like to make on the proposed mechanism to replace legislation for Marine Nature Reserves?
- 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?
- Q20. What are your views on the introduction of bye-law-making powers for the control of unlicensed activities?
- 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?
- Q22. Are there alternative regulatory approaches to the control of such activities that we should consider?

## **MANDATORY CONSULTATION REQUIREMENTS**

### **Regulatory Impact Assessment**

An outline Regulatory Impact Assessment has been undertaken by DOE, and this is provided at **Annex B**.

### **Freedom of Information Act 2000**

DOE's policy in respect of the confidentiality of consultation responses is outlined in **Annex C**.

### **Equality Impact Assessment**

A preliminary screening exercise has been undertaken, and there is no evidence that the proposals for a Northern Ireland Marine Bill would have an impact on equality issues. Therefore, DOE considers that completion of a full Equality Impact Assessment is not necessary. The evidence relating to the preliminary screening exercise is included at **Annex D**.

### **Human Rights Act 1998**

DOE considers that this consultation document is compatible with the Human Rights Act 1998. However, further assessment of the impact of the proposed Northern Ireland Marine Bill on human rights will be required as the legislation is developed.

### **Rural Proofing**

Rural Proofing is the process whereby all significant new policies (and those being reviewed) are examined to determine whether or not they have a different impact on rural areas from that elsewhere, given the particular characteristics of rural areas. The objective is to reflect rural needs and in particular to ensure that as far as possible public services are accessible on a fair basis to the rural community.

DOE has undertaken a rural proofing exercise in relation to the proposals for a Northern Ireland Marine Bill, the result of which is included at **Annex E**.



## **OUTLINE REGULATORY IMPACT ASSESSMENT**

### **Section 1:**

#### **Introduction**

This outline Regulatory Impact Assessment (RIA) sets out an initial view of the costs and benefits of the options available in the preparation of a proposed Northern Ireland Marine Bill. This is in line with the UK Administrations' commitment to incorporate impact assessments throughout the policy development process.

The outline RIA has been produced as part of this consultation paper seeking further stakeholder engagement in the development of the proposed Northern Ireland Marine Bill.

The impacts are considered with regard to the effect on business, Government, other stakeholders and the environment. To a great extent the proposals will mirror policies that have been subject to impact assessments already through development of the UK Marine and Coastal Access Act 2009 (UK Act).

Following this consultation all responses will be considered along with any other available evidence in order to produce a final RIA which will accompany the proposed Northern Ireland Marine Bill.

It should also be noted that in addition to the final RIA for the proposed Northern Ireland Marine Bill the different workstreams associated with this legislation will be subject to further assessments as they are developed. For example, any subordinate legislation flowing from the proposed Bill, the preparation of marine plans and the process for designation of Marine Conservation Zones (MCZs) will all be subject to further impact assessments, which will include public consultation, in due course.

The evidence base is structured as follows:

- Section 1: Introduction
- Section 2: Background and Policy Rationale
- Section 3: Policy Options
- Section 4: Option 1 – The Baseline
- Section 5: Option 2 – Northern Ireland Marine Bill

## Section 2:

### Background and Policy Rationale

The findings of a series of reviews and reports dating from the Marine Stewardship Report in 2002 and the “Seas of Change” Government response in 2003 suggested that a new approach to managing activities in the marine environment was needed. In particular, better integration and more effective management of conflicting pressures was thought to be a prerequisite for conservation and sustainable development. Better integrated management has been identified as a crucial aspect of delivering our vision of clean, healthy, safe, productive and biologically diverse oceans and seas.

Enacted on 12 November 2009, the UK Act has provided for:

- a new system of marine planning that will clarify our marine objectives and priorities for the future, and direct decision makers and users towards more efficient, sustainable use and protection of our marine resources;
- a streamlined, transparent and consistent marine licensing system making it faster and simpler to license marine activities;
- nature conservation measures which will provide a new mechanism for improving the conservation of marine wildlife and habitats, halting the deterioration in the state of the UK’s marine biodiversity, promoting recovery where practicable and helping to support healthy, functioning and resilient marine ecosystems whilst ensuring environmental considerations are at the heart of decision-making processes for the marine environment;
- marine fisheries’ proposals to strengthen fisheries and environmental management;
- migratory and freshwater fisheries measures introducing powers for better management of inland fisheries in England and Wales; and
- a new Marine Management Organisation for England and Wales.

The provisions of the UK Act which extend to Northern Ireland relate to:

- the UK-wide Marine Policy Statement;
- marine planning in the **offshore** region of the Northern Ireland zone;
- certain of the marine licensing reforms – primarily the replacement of the Food and Environment Protection Act 1985 – and its enforcement; and
- consultation arrangements for the potential designation of MCZs outside Northern Ireland’s territorial waters.

In order to fully achieve our vision for the marine environment, DOE proposes to bring forward a Northern Ireland Marine Bill which will build on the framework set out in the UK Act and will legislate in transferred areas, and also those reserved areas

where it would be appropriate to do so in the Northern Ireland Assembly with the Secretary of State's consent.

## **Section 3:**

### **Policy options**

There are two options being considered:

**Option 1** provides information on the baseline (or 'do nothing') option and outlines what the impact would be of not bringing forward a Northern Ireland Marine Bill; and/or

**Option 2** considers the costs and benefits of introducing a Northern Ireland Marine Bill which will contribute to the achievement of sustainable development in Northern Ireland's marine area, and provide a framework for marine planning and decisions relating to marine licensing and marine nature conservation.

## **Section 4:**

### **Option 1 - The Baseline (No Northern Ireland Marine Bill)**

This section provides a high-level view of the costs and benefits of the measures introduced through the UK Act. It describes the baseline from which the assessment of the proposals for the Northern Ireland Marine Bill is made.

#### **Marine Planning**

The UK Act provides the framework for marine planning through a Marine Policy Statement (MPS), which will set the key policy priorities for the marine environment, and a series of marine plans which will apply these policies in more spatial detail. The MPS will apply in Northern Ireland (subject to the approval of the Northern Ireland Executive), and DOE will be the Marine Plan Authority for the offshore region (Northern Ireland's waters beyond the 12 nautical mile territorial limit).

#### **Marine Licensing**

The UK Act (together with supporting subordinate legislation) will deliver the key marine licensing reforms, which will help clarify and simplify legislation for both developers and regulators. The reformed licensing system is based on the consolidation and modernisation of the Food and Environment Protection Act 1985 (FEPA) and the Coast Protection Act 1949 (the latter did not extend to Northern Ireland, however issues relating to navigational safety were dealt with under FEPA by administrative means).

#### **Marine Nature Conservation**

The provisions of the UK Act relating to marine nature conservation do not extend to Northern Ireland. It is therefore not possible to provide protection, through designation of Marine Conservation Zones, to nationally important wildlife, habitats, geology and geomorphology in Northern Ireland's waters.

#### **Impact on business**

Since marine planning would not extend to the Northern Ireland inshore region, developers in the marine area would continue to encounter a range of policies to which they would need to adhere. The uncertainty brought about by the absence of a marine planning system could result in delays in the processing of consents, licences and other applications and incurs cost to business.

The benefits of retaining the existing management framework for marine planning are ones of consistency and familiarity for those already using the system.

The absence of marine planning for all of Northern Ireland's marine waters would not affect the provision in the UK Act for a simplification of current licensing systems. New arrangements for licensing within the UK Act are expected to give a more efficient, integrated and transparent system, leading to a reduced cost to business.

## **Impact on Government (central, devolved and local)**

The UK Government and Devolved Administrations are committed to achieving sustainable development of the marine area. The MPS would be a key step towards achieving the UK Administrations' vision of having 'clean, healthy, safe, productive and biologically diverse oceans and seas'. The High Level Marine Objectives, which were published in April 2009, will also provide decision makers in the marine environment with high-level guidance to work with in order to help achieve sustainability in the marine area. Additionally, a variety of European policies, legislation and conventions will contribute to better management and sustainable development of the marine environment, including the Marine Strategy Framework Directive which requires the UK to achieve 'Good Environmental Status' by 2020, the OSPAR convention and the Water Framework Directive, as well as other pieces of European legislation which are relevant to the protection and conservation of habitats.

In the absence of a Northern Ireland Marine Bill, plans for Northern Ireland's waters would be limited in scope as they could not include all activities in the marine area as the plans would not have any effect on functions that are retained by the UK Government.

Where no marine plans exist, all bodies which make decisions that affect the marine area will continue to need to take into account a number of disparate policies.

## **Impact on environment**

In many areas the marine environment is becoming increasingly crowded with demands on space for development, to exploit resources, for recreation and nature conservation. At present the demands on marine resources and the pressure on marine habitats and species are affecting the provision of ecosystem goods (food, etc.) and services in the marine environment, and consequently the human benefit derived from them is declining.

There is currently no strategic framework for policy in the marine area and management of the UK seas can be ad hoc and reactive. The lack of overall strategic direction and planning can make it difficult to assess the cumulative impacts of activities on the marine environment.

In the absence of a Northern Ireland Marine Bill it would not be possible to provide protection to nationally important wildlife, habitats, geology and geomorphology in Northern Ireland's waters.

## **Impact on other stakeholders**

Without a strategic framework for planning, other users of the sea would continue to experience a complex system of legislation and regulation, as well as a lack of clarity as to the UK Administrations' ambition and objectives in order to achieve sustainable seas.

## **Section 5:**

### **Option 2 – Northern Ireland Marine Bill**

This section considers the proposed Northern Ireland Marine Bill and the policy objectives that will contribute to the achievement of sustainable development in Northern Ireland's marine area.

The complex system of legislation and regulation that helps us to manage and protect our marine activities and protect marine nature and the marine environment has developed to address sectoral issues over many years and has a number of gaps and limitations. The proposed Northern Ireland Marine Bill, building on the provisions of the UK Act, will deliver improved regulation and protection of the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea. It will provide a strategic direction to the current fragmented framework of domestic and international legislation used to manage the seas, which is considered to be complex and a barrier to effective decision making and the achievement of integrated sustainable development in the marine environment. All those working in the marine environment should benefit from this more joined-up approach.

It is worth noting that it is difficult to attribute costs and benefits solely to each policy area which the combination of the UK Act and the proposed Northern Ireland Marine Bill will introduce. For example, in addition to having the direct benefits of having a marine planning system, the creation of marine plans will enable a streamlined licensing system to function more efficiently and effectively, allow more structured development of marine renewable energy and aid the designation of Marine Conservation Zones.

The proposed Northern Ireland Marine Bill will establish DOE as the Marine Plan Authority. DOE, in consultation with the other Departments with marine responsibilities, will develop a single marine plan for Northern Ireland which will consider, as far as possible, all of the relevant activities and the impact they may have on each other. The marine plan will address both the current situation, and also emerging and future marine uses and technologies (e.g. carbon capture and storage in the sub seabed, renewable energy sources, and new Marine Protected Areas (MPAs)), whilst also anticipating changing economic and social trends and the impacts of climate change. The marine plan will also consider both the natural and cultural resources within an area, changing ecosystems and seasonal patterns and migration routes.

Marine planning is therefore a strategic system for improved regulation and protection of the marine environment that addresses the multiple, cumulative and potentially conflicting uses of the sea. It will provide a strategic direction to the current fragmented framework of domestic and international legislation used to manage the seas, which is considered to be complex and a barrier to effective decision making and the achievement of sustainable development in the marine environment. The Marine Plan Authority will therefore be required to produce a marine plan giving effect to the MPS, having regard to relevant factors affecting the region to which the plan applied.

The MPS and the marine plan will also guide decisions relating to marine licensing, which is the mechanism that will translate the objectives of marine plans into decisions allowing activities (subject to specific conditions) or to bar them. Licensing therefore will articulate how in practice Government policies are to be delivered for the marine environment.

DOE will consider further licensing reforms in areas which are devolved such as Electricity and Harbours activities through the proposed Northern Ireland Marine Bill. Any reforms in these areas would only be with the agreement of the respective Ministers.

The proposed Northern Ireland Marine Bill will include powers for the establishment of MCZs in Northern Ireland's territorial waters to help protect nationally and locally important species and habitats.

MCZs will be a new type of conservation designation and a key part of the MPA network. They will allow for the protection of a range of marine biodiversity in Northern Ireland's waters, including rare and threatened habitats and species, and features of particular geological and geomorphological interest which are considered to be of national importance. MCZs will be protected more effectively and over wider areas than Marine Nature Reserves (which they will replace).

## **COSTS**

### **Marine Planning**

#### **Cost to business**

The introduction of a marine planning system should not result in any direct costs to business.

#### **Cost to Government (central, devolved and local)**

In the absence of existing marine planning systems, terrestrial planning examples, which are to some degree comparable, have been considered to give an indication of the range of costs that might be faced in future marine planning.

Under the proposed Northern Ireland Marine Bill, DOE will be the Marine Plan Authority in Northern Ireland. Northern Ireland has a relatively small marine area, and it is estimated that preparation, adoption and publication of a marine plan would cost approximately £0.5m. This would be spread over two years. A marine plan may also be subject to an independent investigation of any important or contentious elements of the plan.



### **Cost to the environment**

The introduction of marine planning through the proposed Northern Ireland Marine Bill will not lead to any adverse effect on the environment.

### **Cost to other stakeholders**

The introduction of marine planning through the proposed Northern Ireland Marine Bill will not lead to any direct costs to other stakeholders.

### **Marine Licensing**

#### **Cost to business**

At this stage it is not possible to assess fully the cost to business of any further reform of the marine licensing regime. However, it is anticipated that it should not result in any direct costs to business.

#### **Cost to Government (central, devolved and local)**

At this stage it is not possible to assess fully the cost to Government of any further reform of the marine licensing regime. However, it is anticipated that costs would not be excessive.

### **Cost to the environment**

Any further reform of marine licensing through the proposed Northern Ireland Marine Bill would not lead to any adverse effect on the environment.

### **Cost to other stakeholders**

Any further reform of marine licensing through the proposed Northern Ireland Marine Bill would not lead to any direct costs to other stakeholders.

### **Marine Nature Conservation**

#### **Cost to business**

The cost to business through the introduction of additional marine conservation measures will depend on the activities operating within the potential MCZ, the regulatory regime imposed and the size and complexity of the MCZ network itself. A business operating in or near MCZs may incur costs in complying with measures to compensate or mitigate for any adverse impact which proposed developments have on MCZs.

#### **Cost to Government (central, devolved and local)**

In any new process for conserving nationally important species and habitats, DOE will undoubtedly incur additional costs. At this stage it is difficult to clearly define this cost, which will include identification, designation, monitoring and management of

MCZs. While there is some current information on where potential MCZs could be identified, we do not have a full picture of the number, size or complexity of a full MPA network.

It is envisaged that there could be a net increase in expenditure for MCZ work in the region of £200k per annum from 2013/14 onwards, possibly taking up to 5 years to complete the network. There will also be additional costs associated with the ongoing monitoring of the network.

In the meantime, any scientific information obtained in finalising the European sites under the Habitats Directive could inform other workstreams of the proposed Northern Ireland Marine Bill - for example, marine planning.

### **Cost to the environment**

The introduction of marine nature conservation measures through the proposed Northern Ireland Marine Bill will not lead to any adverse effect on the environment.

### **Cost to other stakeholders**

The introduction of marine nature conservation measures through the proposed Northern Ireland Marine Bill will not lead to any direct costs to other stakeholders.

## **BENEFITS**

### **Marine Planning**

#### **Benefit to business**

The MPS will provide a clear and consistent framework for the development of marine plans and a guide for decisions affecting the marine area. It will provide business with a single source from which to be able to identify policy objectives and, where appropriate, to reflect this in applications for development consent accordingly.

The introduction of marine planning will provide developers and users with greater clarity and certainty about Northern Ireland's policy intentions, while recognising the differences between different parts of the UK.

There is increasing demand on marine space and resources, partly because of the expansion of some industries such as the transportation of goods by ship, but also with newer developments such as marine windfarms, the growth of aquaculture and marine leisure activities. With the increasing intensity of marine activities, it is recognised that conflicts will increasingly arise between different activities. Potential conflict between marine activities increases uncertainty for a wide variety of businesses operating in the marine area, including energy and leisure industries. The marine planning system will provide transparency to users regarding the high-level approach that Marine Plan Authorities will take in developing proposals for marine plans, setting out the importance of encouraging co-existence of uses and how impacts should be considered.

#### **Benefit to Government (central, devolved and local)**

A MPS that integrates existing policies in the marine area provides a clear, unambiguous and strong signal of the UK's intention to increase co-ordination, embed sustainability and give greater thought to the use of the UK marine environment. This MPS and marine plans will draw together the UK Administrations' shared policies and objectives for the sustainable development of the UK marine area.

The marine planning system will allow for a more focussed approach enabling a more efficient and strategic use of marine resources. It will also provide clarity across borders with all UK Administrations as well as advocating consistency and integration between marine and terrestrial planning.

Looking ahead, the MPS is expected to benefit Marine Plan Authorities as it will provide a coherent framework for the development of marine plans. The MPS and marine plans will provide a forward-looking and proactive approach to the management of the marine environment and resources. The marine planning system, together with any further reforms of the marine licensing regimes, will help to ensure that activities which use the marine environment, and the management approaches addressing them, are operating consistently in Northern Ireland's waters.

## **Benefit to the environment**

Protection of the marine environment, now and in the future is a key element of marine policy. Whilst at present there are effective measures in place to consider the impacts of individual activities on marine resources and the environment as a whole, it is more difficult for progress to be monitored and for targets to be applied to the combined effects of these activities.

The marine planning system will have the clear purpose of encouraging the sustainable development of the marine environment, including the protection of Northern Ireland's most valuable marine habitats and species. Together with reform of the licensing regimes, it would be expected to reduce unsustainable/damaging, polluting activities.

The UK's seas comprise a dynamic environment with finite resources. The marine planning regime will encourage the accommodation of multiple uses of the marine environment, and allow for better co-existence of activities and use of resources as the marine environment and technology evolves.

## **Benefit to other stakeholders**

The introduction of a proposed Northern Ireland Marine Bill, establishing a new framework for Northern Ireland's marine area, and based on a strategic system of marine planning which will balance conservation, energy and resource needs, will bring benefits to all stakeholders. Sustainable development is at the heart of the proposals, and key to the achievement of this is a holistic and integrated approach to the management of activities in the marine area.

## **Marine Licensing**

### **Benefit to business**

Further reforms to the marine licensing regime will benefit business by providing greater clarity, consistency in delivery and will help reduce the time and effort developers put into preparing licence applications. A clearer regime should minimise uncertainty and delays, with benefits accruing to both operators and regulators.

### **Benefit to Government (central, devolved and local)**

Licensing authorities and Marine Plan Authorities will benefit from a shared evidence base, where appropriate, enabling them to achieve consistency in underpinning evidence and decision making. Licensing authorities will benefit from not having to weigh up the combined intent of many different national and local policies in coming to each decision they make.

## **Benefit to the environment**

The reform of marine licensing will target activities that need to be controlled to ensure that a proper balance is struck between competing uses and to use finite marine resources in a sustainable way.

## **Benefit to other stakeholders**

The reform of the licensing regimes is aimed at promoting and encouraging economically and environmentally sustainable use of natural resources to ensure long-term economic benefits and sustainable employment. The main industries which will benefit from the reforms include ports and harbours, fisheries, aggregate dredgers, recreational service providers and renewable energy developers. The proposals for streamlining the licensing system are based on better regulation principles to assist stakeholders to achieve a holistic and integrated approach to the management of activities in the marine area.

## **Marine Nature Conservation**

### **Benefit to business**

Marine industries currently incur costs due to uncertainty over where important areas for marine biodiversity are located and where licensing applications may be subject to restrictions, conditions or mitigation on ecological grounds. Setting up a network of MCZs would reduce this uncertainty for marine developers.

### **Benefit to Government (central, devolved and local)**

The introduction of new measures for the protection of nationally important species and habitats will bring obvious benefits to the marine environment. The designation mechanism will enable the conservation of healthy marine ecosystems and a full range of biodiversity, and will provide opportunities for recovery of a wide range of species and habitats, many of which are unique or vulnerable in Northern Ireland's territorial waters.

The proposals will help deliver the UK's aim of having an 'ecologically coherent network of Marine Protected Areas'.

### **Benefit to the environment**

Whilst all the proposals are aimed at the protection and sustainable development of the marine environment, marine nature conservation in particular is aimed at providing education and information to the public of the economic, social and environmental benefits it provides for current and future generations.

The creation of a UK network of MPAs is an essential part of the UK Government's strategy to integrate marine nature conservation and other marine activities in pursuing the UK's vision of a 'clean, healthy, safe, productive and biologically diverse oceans and seas', and sits within the marine planning framework which the UK Act has introduced.

## **Benefit to other stakeholders**

There will be benefits to stakeholders by encouraging the accommodation of multiple uses of the marine environment, and allowing for better co-existence of activities and use of resources. There may also be indirect benefits from MCZs - for example, to some parts of the fishing industry. Protection zones and the areas around them can result in increased stocks of certain fish species. This is due to the fact that human activity would be restricted in these areas, providing more opportunity for fish to reproduce and grow larger. MCZs in certain areas may also encourage tourism through greater opportunities for seeing marine wildlife on dedicated boat trips, or by scuba diving and snorkelling. This tourism spin-off is already evident in the waters around Rathlin, where new species of sea sponges have recently been discovered during monitoring of protected sites under the Habitats Directive.

**Comments are sought on the potential costs and benefits identified in this outline assessment which will help inform the final RIA that will accompany the proposed Northern Ireland Marine Bill.**

### **FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS**

The Freedom of Information Act gives the public the right of access to any information held by a public authority - in this case, DOE. This right of access to information includes information provided in response to a consultation. However, DOE does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- DOE should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of DOE's functions and it would not otherwise be provided;
- DOE should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
- acceptance by DOE of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

## SCREENING FOR EQUALITY IMPACT ASSESSMENT

### 1. General Details

#### Title of proposed consultation

A Northern Ireland Marine Bill – Policy Proposals.

#### Brief summary of the scope of the proposals

The proposals follow on from the UK Marine and Coastal Access Act 2009 (which was subject to extensive public consultation). The proposals relate to a new approach to the management of activities in the marine area. This will provide the tools to maximise the benefits from Northern Ireland's marine area whilst preserving their integrity for the future. The proposals are consistent with those in the rest of the UK.

#### Aims of the consultation

The consultation document seeks comments on the following:

- the introduction of a framework for marine planning in Northern Ireland's waters;
- consideration of further reforms to the licensing of marine activities;
- proposals for marine nature conservation; and
- the potential costs and benefits of the proposals, contained in the outline RIA.

### 2. Screening analysis

All public authorities in carrying out their functions relating to Northern Ireland are required under Section 75 of the Northern Ireland Act 1998 to identify those policies which are likely to have the greatest impact on equality of opportunity and community relations. This is assessed against the nine categories listed below:

Persons of different religious beliefs  
Persons of different political opinions  
Persons of different racial groups  
Persons of different ages  
Persons of different marital status  
Persons of different sexual orientation  
Men and women generally  
Persons with a disability and persons without  
Persons with dependants and persons without.



**Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?**

**No** – The proposals will create an integrated approach to sustainable management and use of the marine environment. The policies and subsequent legislation will impact positively on current and future generations. There is no evidence of higher or lower participation or uptake by different groups within the nine Section 75 groups in relation to the proposals.

**Is there any evidence that particular groups have different needs, experiences, issues and priorities in relation to the proposals?**

**No** – The proposals will create an integrated approach to sustainable management and use of the marine environment. The policies and subsequent legislation will impact positively on current and future generations. There is no evidence that particular groups have different needs, experiences, issues and priorities in relation to the proposal.

**Is there any opportunity to better promote equality of opportunity or good relations by altering the proposal or by otherwise working with others in Government or the community at large?**

**No** –the proposals will create a framework for improved management and protection of the marine environment. There is no opportunity to promote equality of opportunity.

**Have consultations in the past with relevant groups, organisations or individuals indicated that this proposal could create problems which are specific to them?**

**No** – Feedback/previous screening exercises for the UK Marine and Coastal Access Act 2009 indicate that the proposals do not create problems specific to any of the Section 75 categories.

### **3. Impact assessment decision**

**A full impact assessment procedure is confined to those policies considered likely to have significant implications for equality of opportunity and community relations. Taking account of the Screening Analysis in section 2, does this proposal need to be submitted to a full Equality Impact Assessment?**

**No.**

#### **Reason for decision**

As a result of the screening analysis in section 2, and the responses to the previous consultation on proposals for the UK Marine and Coastal Access Act 2009, it is considered that there are no significant implications for equality of opportunity as a result of these proposals. There is therefore no requirement for a full EQIA.

### RURAL PROOFING

Rural proofing is a process to ensure that all relevant Government policies are carefully and objectively examined to assess whether or not they have a different impact in rural areas from that elsewhere, because of the particular circumstances of rural areas; and where necessary, what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community. Since the proposals in this paper apply principally to the marine area, and activities that take place there, and not in relation to land, they mainly affect the rights of users of the marine area and the wider public interest of protecting the marine environment. However, these proposals will influence activities on land, and vice versa, since there is some inevitable overlap between marine and land issues. The proposed Northern Ireland Marine Bill aims to provide improved protection and sustainable development of the marine environment. It will enable Northern Ireland to make the best sustainable use of its resources by taking a more strategic approach to managing marine activities and protecting marine resources in the future. Rural communities will benefit from the improved management of marine and coastal resources through increased tourism and more sustainable fishing. However, further assessment of the impact of the proposed Northern Ireland Marine Bill on rural coastal communities will be required as the legislation is developed.

### **GLOSSARY OF KEY TERMINOLOGY**

#### **Aggregate**

The mixture of minerals commonly used in the construction industry that may be sourced from the seabed.

#### **Biodiversity**

The variability among living organisms from all sources including, among others, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part.

#### **Common Fisheries Policy**

Provides the framework for the management of the EC fisheries and aquaculture sector, including all marine fisheries within 200 miles of Member States' baselines.

#### **Community**

The grouping of animals and plants that are found living together in a particular place, habitat or environment.

#### **Continental shelf**

The area of seabed extending from the shoreline to a depth of about 200 metres or where the slope increases sharply to abyssal depths. In the UK, it is defined by the Continental Shelf Act 1964 and generally extends from the edge of the territorial sea to 200 nautical miles from the prescribed baseline in most cases.

#### **Devolved Administrations**

A collective reference to the Scottish Government and Welsh and Northern Ireland Assemblies, and the Ministers and Administrations working alongside them as the Devolved Administrations.

#### **Dredging**

The removal of material from the seabed for a variety of purposes, including the clearing of channels for navigation or the extraction of minerals.

#### **Ecosystem**

A community of organisms interacting with one another and with the chemical and physical factors making up their environment. It is a discrete unit comprising both living and non-living parts; it can range in size from something as small and ephemeral as an intertidal pool to something larger such as the North Sea or the Earth's oceans.

#### **Ecosystem-based approach / Ecosystem approach**

The integrated management of human activities based on knowledge of ecosystem dynamics to achieve sustainable use of ecosystem goods and services, and maintenance of ecosystem integrity.

**Ecosystem functioning**

The sum of the interactions between the plants, animals, micro-organisms and physical and chemical environments that make up the ecosystem.

**Ecosystem goods and services**

Indirect or direct benefits to human society that derive from the marine ecosystem. Examples would include food provision, nutrient cycling, gas and climate regulation.

**Environmental Impact Assessment**

A procedure which ensures that the environmental implications of decisions are taken into account before the decisions are made.

**Environmental limits**

The limit to which an environment or ecosystem can cope with the population, resource exploitation and pollution pressures placed on it. Beyond the environmental limit, there is a risk of causing long-term damage to the health and productivity of an environment.

**Exclusive Economic Zone**

In international maritime law, an Exclusive Economic Zone is a sea zone extending from a State's baselines over which the State has special rights over the exploration and use of marine resources. Generally, a State's Exclusive Economic Zone extends 200 nautical miles (370.4 kilometres) out from the baselines, except where resulting points would be closer to another country.

**Good Environmental Status**

The environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations. For a full definition see Art. 3(5) of MSFD.

**Habitat**

The place where an organism lives, as characterised by the physiographic features and the physical and chemical environment such as salinity and wave exposure.

**Integrated Coastal Zone Management (ICZM)**

The coordination of all activities, regulatory and management functions to safeguard all natural resources and processes found in and affecting the coastal zone. ICZM aims to integrate the various management systems and organisations, and encourage public participation, to create a sustainable management approach for the coastal zone.

**UK Marine and Coastal Access Act 2009**

A UK Act which received Royal Assent on 12 November 2009. It makes provision in relation to marine functions and activities; about migratory and freshwater fish; for and in connection with the establishment of an English coastal walking route and of rights of access to land near the English coast; to enable the making of Assembly Measures in relation to Welsh coastal routes for recreational journeys and rights of access to land near the Welsh coast; to make further provision in relation to Natural

England and the Countryside Council for Wales; to make provision in relation to works which are detrimental to navigation; to amend the Harbours Act 1964; and for connected purposes.

### **Marine Area**

Broad term used to imply a geographic area of UK waters.

### **Marine Conservation Zone (MCZ)**

A tool provided for in the Marine and Coastal Access Act 2009 that can be designated to conserve and/or aid the recovery of: the range of marine biodiversity in our waters, rare or threatened habitats and species, and features of geological or geomorphological interest.

### **Marine Environment**

Broad term used to imply a three-dimensional area of UK waters.

### **Marine Management Organisation**

The working title for the new body in England and Wales that will be created to undertake new activities and existing marine activities. Previously referred to as a 'marine agency' in several marine reports and reviews.

### **Marine Spatial Planning**

Proposed system for the strategic management of activities in the marine area.

### **Marine Nature Reserve**

An area of the sea (or land that is covered by tidal waters) within 3nm of baselines that is designated by DOE under the Nature Conservation and Amenity lands (NI) Order 1985.

### **Marine Protected Area**

An area of the sea subject to one or more forms of environmental control.

### **Mean High Water Springs**

The mean high water spring is the highest level to which spring tides reach on average over a period.

### **Mean Low Water Mark**

The average of all low water heights observed over a period.

### **Mean Low Water Springs**

The mean low water spring is the lowest level to which spring tides retreat on average over a period.

### **Natura 2000**

The European network of protected sites that represent areas of the highest value for natural habitats and species of plants and animals which are rare, endangered or vulnerable in the European Community. The network is made up of Special Areas of Conservation, and Special Protection Areas for birds.

**Nautical miles**

A unit of length used in marine navigation that is equal to a minute of arc of a great circle on a sphere. One international nautical mile is equivalent to 1,852 metres or 1.151 statute miles.

**OSPAR Convention for the North-East Atlantic**

The current mechanism by which fifteen Governments of the western coasts and catchments of Europe, together with the European Community, cooperate to protect the marine environment of the North-East Atlantic. OSPAR concerns itself with the protection and conservation of marine biodiversity and ecosystems, eutrophication, hazardous substances, offshore oil and gas, radioactive substances and monitoring and assessment.

**Strategic Environmental Assessment**

An assessment required under the Strategic Environmental Assessment Directive of certain plans and programmes that are likely to have significant effects on the environment.

**Sustainable Development**

Development that enables all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life for future generations. This is based on the UK's shared set of principles: living within environmental limits; ensuring a strong healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.

**The UK Act**

The UK Act refers to the UK Marine and Coastal Access Act 2009 which received Royal Assent on 12 November 2009.

## SPECIFIC LEGAL DEFINITIONS DESCRIBING MARINE AREAS IN NORTHERN IRELAND

- a) **Baseline** - the marine area around the UK coast is sub-divided into a number of zones. These are measured from a “baseline”. This is usually the low water mark around the coast. However, there can be straight baselines across the mouths of bays, and all rocks, reefs etc above the sea at low water but submerged at other times extend the baseline if they are within 12 nautical miles (“nm”) of the mainland or an island. The UK baseline is delineated in the Territorial Waters Order in Council 1964 (as amended by the Territorial Sea (Amendment) Order 1998).
- b) **Territorial Seas** - the UK territorial sea is defined by the Territorial Sea Act 1987 as the sea extending to a maximum of 12 nm from the baseline (normally the coast) or, if less, to the mid-point between the UK and adjacent States (“the median line”). In relation to the delineation of the territorial sea between the UK and Ireland, the situation is more complex with no boundary having been agreed between the two States. Instead, arrangements have been put in place under the Belfast Agreement for joint management of the two cross-border loughs, Carlingford Lough and Lough Foyle (the Foyle, Carlingford and Irish Lights Commission’s Loughs Agency).

Within the territorial sea, the UK has jurisdiction for the sea itself, the seabed and the air above.

Parts of the UK territorial sea form part of Northern Ireland, Scotland and Wales for the purpose of exercising devolved functions. Section 98 of the Northern Ireland Act 1998 defines Northern Ireland as including so much of the internal waters and territorial seas of the United Kingdom as are adjacent to Northern Ireland.

- c) **UK internal waters** comprise marine waters to the landward side of the baseline. An example in Northern Ireland would be Larne Lough.
- d) **Inshore regions** - the UK Act refers to the English, Scottish, Northern Ireland and Welsh **inshore regions** which means the internal waters and territorial seas adjacent to England, Scotland, Northern Ireland and Wales respectively.
- e) **UK Continental Shelf** generally extends from the edge of the territorial sea to 200nm from the baseline or to the median line. In some cases, such as to the northwest of Scotland, it can extend further. The area of the continental shelf is defined under the Continental Shelf Act 1964.
- f) **British Fishery Limits** extend 200 nm from the baseline. Northern Ireland has its own area within the British Fishery Limits known as the Northern Ireland zone. The Northern Ireland zone comprises the territorial sea adjacent to Northern Ireland and an area of the Irish Sea west and south of

the Isle of Man territorial sea (see chart Pg 81). The area of the Northern Ireland zone beyond the limit of the territorial waters is referred to in the UK Act as the “**Northern Ireland offshore region**”.

- g) The UK’s **Renewable Energy Zone** is an area of the sea prescribed for the purposes of renewable energy beyond territorial waters (designated through the Energy Act 2004). Since this is outside territorial waters, it has no application in Northern Ireland.
- h) The landward extent of the marine area is defined, for all parts of the Act excluding Part 9 (Coastal Access), by “**sea**” which includes any area submerged at mean high water spring tide and the waters of every estuary, river or channel, so far as the tide flows at mean high waters spring tide. This means, for example, in planning, that there will be an overlap between terrestrial planning, which goes down to low water mark, and marine planning which will aid integration of the two regimes, and that marine licensing will apply in the full extent of the inshore region, i.e. the territorial sea and internal waters (as the existing FEPA regime does now).
- i) The **UK marine licensing area** consists of the following:
  - (a) the area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom;
  - (b) the area of sea within the limits of the UK sector of the continental shelf;
  - (c) any area of sea within the limits of a renewable energy zone, where it is not already included under (b) and includes the bed and subsoil of the sea in those areas. However, the UK marine licensing area does not include the Scottish inshore region.

It should be noted that DOE has competence to exercise its licensing functions in Northern Ireland’s inshore region only.



**Adjacent Waters Boundaries (Northern Ireland) Order 2002 - chart to show “the Northern Ireland Zone” as defined in Order - for information purposes only.**

