GENERAL SCHEME OF MARINE PROTECTED AREAS BILL 2022: Pre-Legislative Scrutiny by the Joint Oireachtas Committee on Housing, Local Government and Heritage.

09/02/2023

The following Fishing and Aquaculture Representative Bodies; Killybegs Fisherman's Organisation (KFO), Irish Fish Producers Organisation (IFPO), Irish South and West Fish Producers Organisation (IS&WFPO), Irish South and East Fish Procedures Organisation (IS&EFPO), Irish Fish Processors and Exporters Association (IFPEA) and the Aquaculture Committee of the Irish Farmers Association (IFA Aquaculture) wish to lodge our strongest objection at the failure to include our representative bodies in the recent round of consultation on the General Scheme of Marine Protected Areas Bill 2022.

Background

On the 13th of December 2022 the government approved the General Scheme of a Bill to provide for the designation and effective management of Marine Protected Areas. The MPA draft bill was informed by the 2020 report on *Expanding Ireland's MPA Network*[1] prepared by an advisory group chaired by Professor Tasman Crowe, University College Dublin, and which engaged with over 100 stakeholders, including the fishing and aquaculture industries, in developing its recommendations.

The General Scheme was published on the gov.ie website on the 16th of December 2022[2]. Though there appears to be no official consultation process for the proposed bill it is undergoing pre-legislative scrutiny by a Joint Oireachtas Committee on Housing, Local Government and Heritage. The committee has hosted two sessions in 2023 (31st January and 2nd of February), the first of which featured Professor Crowe, who provided pertinent feedback on the text of the bill and outlined, in particular, the lack of stakeholder engagement in the text of the Bill. This was a notable omission given that one of the key recommendations of the 2020 MPA Advisory Group report[1] was that '***Early and sustained stakeholder engagement should be integral to the selection and management processes for MPAs. Engagement should be inclusive and equitable and the process should be designed to ensure that it is transparent, meaningful and facilitating***.'

A further Joint Oireachtas Committee meeting to discuss theBbill took place on Thursday the 2nd of February. In this instance a select group of stakeholders were invited to give their views of the proposed Bill. These stakeholders included Wind Energy Ireland and a number of Irish environmental NGO's (Fair Seas, Birdwatch Ireland, Irish Wildlife Trust, Irish Whale and Dolphin Group) under the umbrella of the IEN Environmental Pillar. Notable by their absence were the current primary marine stakeholders i.e. the fishing and aquaculture industries as they had not been invited to present their views on the proposed Bill.

The failure by the Joint Oireachtas Committee on Housing, Local Government and Heritage to be fully inclusive in their consultation is most regrettable and the omission of all major fishing and seafood organisations from consultation/pre-legislative scrutiny on the General Scheme (Heads of Bill) of the Marine Protected Areas Bill 2022 has now given rise to a flawed process. Significant deficits now exist in the process of consultation and pre-legislative discussions that any Oireachtas Committee must undertake in order to provide balanced scrutiny of any impending legislation laid before the House of the Oireachtas. This is particularly the case with legislation such as the Marine Protected Areas Bill

[1] Marine Protected Area Advisory Group (2020). Expanding Ireland's Marine Protected Area Network: A report by the Marine Protected Area Advisory Group. Report for the Department of Housing, Local Government and Heritage, Ireland.
[2]https://www.gov.ie/en/publication/2fd71-general-scheme-of-marine-protected-areas-bill-2022/

2022, which will impact on the livelihoods of so many in the seafood sector. To fail to include or engage the key stakeholders such as these fishing industry organisations is extremely difficult to comprehend – no Oireachtas Committee can undertake one sided consultation and deem that to be fully inclusive.

Our organisations will however make the following submission on the basis that we will be called before the same Committee to give evidence, in the same manner which was afforded to all other interested parties that appeared before the Oireachtas Committee on Housing, Local Government and Heritage recently. It would be only fair and balanced that such an opportunity be given to the seafood sector, it must not be taken that this written submission alone is consultation with the Committee. This document must be taken as our opening statement to the Committee and that the Committee needs to call our representative bodies as witnesses to appear before them, anything short of that we will have to reserve our position. We wish to work constructively with the Committee but we need to be afforded equality and respect in order represent the views of our sector.

General Statement

First and foremost is to clarify that the fishing and aquaculture industries are not opposed to MPAs. We recognise and understand the need for and the value of MPAs both in the wider environmental and conservation context and also in the specific value they can add to existing fisheries and food security by improving sustainability. The MPA proposal is a welcome development and if implemented **fairly**, **effectively** and based on **scientific evidence** would no doubt be welcomed by the industry as it could help, for example, with the conservation of sensitive ecosystems and habitats including spawning and nursery grounds of many commercially important species. However, there is need to acknowledge that Ireland's marine area is also a part of a food production system and fisheries and aquaculture provide a vital source of protein for many people around the world. As stated in the draft EU Action Plan: Protecting and restoring marine ecosystems for sustainable and resilient fisheries, '*Sustainably managed and caught fish constitutes a high quality and affordable protein which has a relatively low carbon footprint, is essential to ensure food security and maintain the basis for economic activities and contributes to the protection of biodiversity and the fight against climate change*'. Therefore a balance is needed between existing fishing and aquaculture industry activities, MPA designation and other evolving marine sectors such as the Offshore Renewable Energy (ORE) industry. The only way to achieve this balance is through open engagement of all stakeholders as recommended in the 2020 MPA Advisory Group report.

Specific comments on the proposed Bill

1. Definition of Marine Protected Area

The definition of Marine Protected Area as outlined under Head 2 must be clarified. The current definition states '*Marine Protected Area means a geographically defined area of marine character or influence which is protected through legal means for the purpose of conservation or protection of specified species, habitats or ecosystems and their associated ecosystem services and cultural values, and managed with the intention of achieving stated objectives over the long term.'*

This definition is ambiguous and some of the terms are open to interpretation. For example, what does 'marine character or influence' mean? What 'ecosystem services' are being considered with this definition? Will generation of seafood be included as an ecosystem service?

What 'cultural values' are being considered and how are opposing views of different cultural values accounted for within the definition? What is culturally important to one individual may be considered abhorrent by another with different cultural values. Over time cultural values can also

[3]https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf
[4]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[5]https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print

change so how will this be accounted for? Further, can cultural values alone be used as the basis for designating an MPA if their conservation is the primary objective, or must they be in conjunction with one of the other environmental criteria?

The entire proposed bill depends on the interpretation of the definition of an MPA and it is critical that there is no confusion, ambiguity or incorrect interpretation around the meaning of each and every word within it.

2. 'Other Effective Means of Conservation/ Other Effective Conservation Measures

Under Head 2 the proposed bill defines '*Other Effective Means of Conservation*' as '*a geographically defined area other than a Marine Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.*' In the Head 2 explanatory note and throughout the text under Head 7, 11 and 16 this is then referred to as '*Other Effective Conservation Measures*'. This is a simple mistake but should be corrected to ensure consistency throughout the document. Further it should be aligned with the definition that was adopted in 2018 by The Conference of the Parties to the Convention on Biological Diversity (CBD/COP/DEC/14/8)[3], which refers to such measures as '*Other Effective area-based Conservation Measures*' (OECMs).

The term OECMs identifies that other area-based management tools, and not just MPAs, can generate conservation benefits that need to be accounted together with MPAs when considering international conservation targets. COP 14 also endorsed a set of Principles and Criteria, and a voluntary guidance to facilitate the identification and effective use of OECMs in conservation and in economic sectors.

The proposed Bill must also recognise and account for the outcome of the Convention On Biological Diversity 15 (COP15) in Montreal in December 2022 at which the Kunming-Montreal Global Biodiversity Framework[4] was agreed. The framework has 23 action-oriented global targets for urgent action over the decade to 2030. The actions set out in each target need to be initiated immediately and completed by 2030. Target 3 states '*Ensure and enable that by 2030 at least 30 per cent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas* ***and other effective area-based conservation measures****, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories*'.

In its present format the inclusion of OECMs in the Bill is weak and non-specific. Under Head 7(5) it states the Minister shall '**consider** areas under Other Effective Conservation Measures'. Under Head 11 OECMs '**may** be recognised by the Minster as Marine Protected Area pursuant to subsection'. The proposed bill should be updated to account for the outcomes of COP15 and should reference Target 3 of the Kunming-Montreal Global biodiversity Framework and be aligned with it.

[3]https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf
[4]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[5]https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print

3. Lack of stakeholder engagement

As noted in the general statement above there is a significant lack of aspiration in the text concerning stakeholder engagement in the proposed Bill. Head 9 and 10 are concerned with 'Public Participation' and 'Consultation'. The proposed approach falls far short of the co-creation and co-management advised in the 2020 MPA Advisory Group report[1]. In essence what is being proposed is a notification process that will be open to objections, much like the current Special Area of Conservation (SAC) designation process. The lack of proper engagement in site identification and the other parts of the process will unfairly force the fishing industry to use the only avenue available, which appears to be an objection. This is not stakeholder engagement nor is it effective consultation.

Further under Head 10 the Minister will 'endeavour' to notify a wide range of marine users including those with foreshore interest, foreshore licences and petroleum or gas licences but not the fishing industry apparently. Why are the fishing and aquaculture industries not named as consultees? Are all of these other groups licenced under the DHLGH? Whereas fishing and aquaculture licences are administered by DAFM who appear to have no part in the MPA process. If so perhaps this is indicative of the lack of cohesion and engagement between the departments.

4. **Mandatory inter-departmental engagement and coherence**

There should be mandatory engagement between the different Departments within government, particularly those that are concerned with licencing marine activities such as DAFM is for fishing and aquaculture. The fact that DHLGH is not involved in the regulation of sea fisheries and aquaculture should not mean that the MPA process is undertaken in isolation from the primary marine users i.e. fishing and aquaculture industries. Similarly, issues surrounding renewal of aquaculture authorisations require the Minister to seek '*best available scientific evidence'* from the DAFM which, potentially, may result in loss of necessary authorisation and create serious uncertainty for operators. Such 'ad hoc' approaches need to be eliminated with the inclusion of appropriate arrangements between relevant Departments included in the Bill. This basic level of government inter-departmental collaboration should not need to be highlighted however in the proposed Bill it seems to be lacking.

5. Lack of reference to fishing and food security

The almost complete absence of reference to fishing or the fishing and aquaculture industries in the proposed bill is striking. Fishing and the fishing and aquaculture industries are, and will be, inextricably linked with the identification, designation and management of MPAs and OECMs and will be affected by both the positive and negative aspects. As such there is the potential to develop a mutually beneficial scheme which incorporates both the environmental/ecosystem considerations and international obligations and also the socio-economic and cultural considerations of the fishing industry. As noted in the Draft EU Action plan, '*Sustainable fisheries can and must play a key role in enhancing the protection of Europe's marine ecosystems and achieving good environmental status of EU seas and oceans*.' The proposed Bill in its current format appears to completely disregard the fishing and aquaculture industries.

Further to this, energy security is cited twice in the proposed bill, under Head 7 and Head 16, where it states that it shall be considered when generating a list of potential MPAs. However, **food security** is not mentioned at all when it is perhaps even more relevant and important in the context of the marine environment.

[3]https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf
[4]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[5]https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print

6. Weak language

Under a number of headings within the text there is the use of weak and non-specific language where it is stated that the Minister '*may request advice…..'*, '*may invite submissions from any government departments and stage agencies it deems appropriate to include …..*', '*may make such arrangements as are necessary, including the establishment of ad-hoc working group….*', '*may request advice from the expert body….*' etc. This language should be reviewed and where appropriate revised to be more definite. It should not be difficult to outline a set of basic mandatory steps that must be followed in the MPA process. The use of weak language in the legislation will inevitably lead to important steps being overlooked and short cuts being taken.

7. Short consultation times

Under a number of headings there are objection/consultation steps where selected stakeholders may comment on the process. These consultation/objection steps range from four to twelve weeks. Four weeks is too short and eight to twelve weeks is more appropriate. However, it would be entirely more efficient and constructive to instead have active stakeholder engagement and input at an earlier stage of the process through co-creation and ultimately co-management. This would ensure stakeholder buy-in and avoid wasted effort on all sides.

8. Composition of the expert body

The composition of the expert body needs to be defined and clarified. Will the expert body be comprised of members from academic institutes or from organisations such as the Marine Institute and Bord Iascaigh Mhara (BIM)? Will stakeholders with relevant expertise, from environmental NGO's, fishing, aquaculture or wind energy industry organisations, also be eligible to be part of the Expert Body? What criteria will be established to ensure that the relevant and impartial expertise is available?

How will the approaches of the Expert Body align with international standards and methods? Will the approach taken for identification of MPAs in Irish waters be consistent with the approaches taken in adjacent EU and UK waters?

The International Council for Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF) already undertake similar Expert Body roles at the EU level. Will the proposed Expert Body align with these international standards? Will members of the Expert Body have experience of working within ICES and STECF?

It is important to clarify and define the standards for the official expert advice that the Minister will receive in relation to the designation of MPAs.

9. Measuring and reviewing the effect of MPA closures

The proposed Bill makes provision for an 'Effectiveness Review', which every 6 years will conduct a review of the designation and management processes and their operation. This is a valid consideration and giving a time-line under which to make the review is a sensible idea. However, it does not state that the MPA themselves will undergo regular monitoring and be reviewed to assess if the measures implemented have had the desired effect on the ecosystem, habitat or species of concern. It is important to clarify whether or not the individual MPAs will undergo regular monitoring on a defined time scale to assess if ecosystem restoration has been achieved. Further, if recovery has not been achieved in the absence of the activity or pressure reported to have caused the issue then what will be the process followed.

[3]https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf
[4]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[5]https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print

10. Indicative Designation Criteria

The list of Indicative Designation Criteria outlined in Schedule 3 needs to be elaborated on so that the definition of each criterion is unambiguous. The basis for the definitions should be transparent.

11. Compensation

A potential outcome of the MPA designation process is the closure of important fishing grounds to all vessels or to particular metiers or the closure of important aquaculture areas. This could result in significant financial impact within that sector or locality and could have wider effects in other areas with the displacement of existing effort. In the case of some fisheries or aquaculture sites it may not be possible to move fishing grounds or sites and such there would simply be a cessation of fishing or aquaculture activity.

Given that OECMs are now included as part of the 30% protected areas by 2030 target, this situation should not arise. However it is prudent to put in place a mechanism that could deal with this situation if it does arise and therefore a provision for compensation should be included within the proposed Bill. It must be stressed though that this is the least favourable outcome to the industry and the preference is to work together to identify suitable MPA sites whilst minimising the negative impact on existing fishing and aquaculture activities.

Such a provision already exists in relation to the designation of SACs under the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477/2011)[5]. Regulation 41 states '*Where the Minister refuses consent to an activity under Regulation 30, he or she **shall**, save for the reasons set out in paragraphs (5) and (6), pay to the owner or occupier or user as the case may be by way of compensation an amount equal to the loss suffered by the owner, occupier or user by the depreciation of an interest in the land to which he or she is entitled*'. The same or similar provisions should be incorporated into the proposed Bill to account for the marine area.

[3]https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-08-en.pdf
[4]https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
[5]https://www.irishstatutebook.ie/eli/2011/si/477/made/en/print