

SUBMISSION TO THE DEPARTMENT FOR HOUSING PLANNING AND LOCAL GOVERNMENT

PUBLIC CONSULTATION ON THE MARINE STRATEGY FRAMEWORK DIRECTIVE (2008/56/EC) ARTICLE 17

26 February 2020

Introduction to An Fóram Uisce

An Fóram Uisce | The Water Forum (hereafter, An Fóram) was established in June 2018 in accordance with the provisions of Part 5 of the Water Services Act 2017. An Fóram is the only statutory body representative of all stakeholders with an interest in the quality of Ireland's water bodies. An Fóram consists of 28 members including representatives from a wide range of organisations with direct connections to issues relating to water quality and also public water consumers. Approximately 50 different organisations were involved in the nomination of members.

Summary of Submission

1. An Fóram welcomes the opportunity to respond to the public consultation on the Marine Strategy Framework Directive (MSFD).
2. An Fóram recognises the wide scope of work undertaken by the Department of Housing, Planning and Local Government (hereafter, the Department) to develop the MSFD public consultation document and the limited resources available to undertake this body of work.
3. The limitations imposed on the assessment process undertaken for the MSFD under direction from the EU are recognised by An Fóram.
4. This submission from An Fóram is presented using the template headings provided by the Department. The content of An Fóram's submission was not able to be included within the text boxes provided in the feedback form, presumably due to the length of content, and so the submission is included as an attachment to this letter. An Fóram realises the short timeframes apparent for reporting to the EU and the need for standard format responses to aid assessment and collation of public submissions to report on Articles 8, 9 and 10. However, An Fóram has found the submission template restrictive, resulting in some repetition in content, and also is concerned that content within the 'Additional Comments' section will not be appropriately addressed as a result of the EU condition to report solely on Article 8, 9 and 10. An Fóram would encourage the Department to take on board Additional Comments as appropriate as these can be pertinent to the overall implementation of the MSFD.
5. Article 8 of the MSFD requires "an analysis of the predominant pressures and impacts, including human activity, on the environmental status" of our marine waters which includes "...the main cumulative and synergetic effects". However, because pressures are addressed in a fragmented way across Descriptors, it is not clear whether this analysis of the

cumulative impacts has been conducted. Consequently, an overall picture of the impacts of significant human activities in the marine environment, including cumulative impacts, is not presented.

6. A consistent theme throughout the MSFD public consultation document is the paucity of data upon which conclusions of achieving Good Environmental Status (GES) are made. While An Fóram recognises that decisions must be made on the best available data, the document highlights the need for resource investment to fill knowledge gaps. Consequently, An Fóram recommends taking a precautionary approach with regard to claiming GES.
7. Ireland and the Department have the opportunity to lead by example to address the key issues which link across multiple EU Directives, and to create an ambitious strategy which will understand and address the multiple challenges facing Ireland's (and the EU's) marine environment.
8. The short timeframe of public consultation, with some of the consultation period lying over the busy Christmas and New Year period, limits the potential for effective and inclusive public engagement. The period from when the public consultation closes to Ministerial sign-off and submission to the EU is exceptionally short, raising questions regarding 1) the value of the public participation process to the Department; and 2) whether due account is taken of the outcome of the public participation as per Articles 6 and 7 of the Aarhus Convention.

Attachments

1. Completed MSFD public consultation feedback form.

End

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Environmental Status

Comments on Environmental Status are provided for a selection of the 11 Descriptors:

1. Descriptor One: Biological Diversity. It is acknowledged that assessing Ireland's marine biodiversity is an exceptionally difficult task; that the criteria elements (i.e. species) included for assessment were prescribed in the Commission's amending Directive 2017/845; that the criteria elements included were assessed comprehensively as far as possible; and that the assessment for this Descriptor is an improvement on the last cycle. However, the criteria elements included for assessment are species from the higher trophic levels, and these represent the minimum required to adhere to the MSFD. An Fóram identifies an opportunity to create a greater assessment of Ireland's marine biodiversity. For example, no seaweed or invertebrates are included in the assessment of biodiversity. This is despite a number of invertebrate species providing valuable fisheries in Irish waters, and for which data is likely available, particularly for estuarine and coastal Special Areas of Conservation which are frequently assessed by the Department of Culture, Heritage and the Gaeltacht for Ireland's Article 17 reporting under the Habitats Directive. In addition, there is opportunity to use datasets to inform biodiversity assessments from Descriptor 9 Elements of Food Webs, such as phytoplankton and zooplankton data.

The non-commercial fish species assessed are all anadromous (i.e. live as adults at sea but have to return to freshwater to breed). Therefore, they are far from ideal species for monitoring conditions at sea as the population is obviously impacted by conditions in the rivers where they breed.

2. Descriptor 2: Non-Indigenous Species. Minimising the introduction and spread of Non-indigenous species (NIS) is key to achieving and maintaining Good Environmental Status for this Descriptor. Tourism and Leisure are listed as key drivers of NIS; yet the mechanisms for providing information to the Tourism and Leisure sector to minimise the introduction and spread of NIS are unclear. For example, the Irish Underwater Council (a member of An Fóram) has not received any communication regarding mitigating actions to prevent the introduction and spread of NIS.

The Pacific oyster is a NIS commonly cultivated for aquaculture and despite assurances that this species will not become a problem invasive species in Ireland due to low water temperature, it has already become naturalised in Irish waters (for example, in Lough Foyle). Yet, it seems to not be included or assessed as part of the MSFD.

Ensuring direct legal provision in Ireland of the Ballast Water Convention should be undertaken as a matter of urgency.

While three newly introduced NIS have been identified as present in Irish marine waters since the last cycle, there is no description of their prevalence and distribution or risk of spread. Nor is there any assessment or statement regarding NIS already established within Irish marine waters. Inclusion of assessment of current prevalence and risk of spread of both established and newly introduced Non-indigenous species would also be beneficial.

3. Descriptor 3: Commercial Fish/Shellfish. An Fóram is concerned that scientific data used to establish the maximum harvestable yield has the potential to be overruled by commercial considerations, thereby creating a conflict in setting quotas for individual species and their achieving Good Environmental Status.

In addition, the targets for achieving maximum Sustainable Yield and the associated fishing pressure should be time bound.

4. Descriptor 6: Sea Floor Integrity. The dumping of spoil, which can impact on the integrity of the sea floor, does not seem to be included in the assessment of Descriptor 6.

An Fóram is concerned that biogenic reefs and rocky reefs are included together under the same assessment. These habitats are very different and should be assessed separately.

It is not possible to ascertain whether dredging for aquaculture was included in the assessment of sea floor integrity, which is of particular concern in light of the necessity of dredging for both seed mussels, and for mussel cultivation itself. Such activities can potentially have negative ecological impacts, the timeframes of which can be variable.

5. Descriptor 8 Contaminants; and Descriptor 9 Contaminants in Fish and Other Seafood for Human Consumption. There seems to be little opportunity to include 'Contaminants of Emerging Concern' as criteria elements for assessment. For example, microplastics have emerged as a ubiquitous contaminant of the marine environment and of fish and other seafood; and they have the potential to be a significant public health concern. Is there scope for such inclusion under Descriptors 8 and 9 in the next cycle, in addition to their assessment as 'micro litter' under Descriptor 10?
6. Descriptor 10: Marine litter. An Fóram recognises that OSPAR methodologies are used to assess the level of marine litter in the Irish near-shore environment. Only 100m sections of beach at four locations are assessed four times per year under OSPAR. Additional data, such as that collected by CoastWatch could be used to supplement the OSPAR data. CoastWatch utilises citizen science to assess a larger proportion of the Irish coast, giving a more representative assessment of the impact of marine litter on the nearshore environment. By solely using the OSPAR methodology in this assessment, only the bare minimum of assessment is being undertaken to inform MSFD reporting. OSPAR methodology is limited in the size and number of survey sites. In addition, the locations of the OSPAR survey sites mean that litter present in estuarine/transitional waters is not assessed; and no OSPAR

survey locations are close to areas where aquaculture is present. CoastWatch are reporting that aquaculture is becoming an increasing source of marine litter in the Irish environment. In comparison to the MSFD consultation document's statement that "*The amount of litter, and its degradation products, on coastlines and the marine environment is reducing over time and are at levels which do not result in harmful effects to the coastal or marine environment*", An Fóram is of the opinion that such a claim cannot be supported due to the limitations of the OSPAR survey methodology. Consequently, the indicator for the Descriptor 10 Marine Litter cannot be compatible with Good Environmental Status.

7. Descriptor 11: Introduction of Energy including Underwater Noise. The MSFD consultation document focuses primarily on underwater noise, excluding other energy criteria elements. For example, heat energy, light transparency and light pollution are not addressed. While it is recognised that the document states that climate change is not included as part of the assessment (see Additional Comments section under 'Policy Coherence'), heat transfer is going to be a key impacting factor within the marine environment. Ocean temperatures have been shown to be increasing due to their ability to absorb excess heat from greenhouse gas emissions¹. Increased sea temperatures may play a critical role in the reproduction cycles of some species; will help to drive changes in phytoplankton and zooplankton distributions and community structure; may change the distribution of species, including non-indigenous species; and impacts may be greatest in shallow regions (such as transitional waters) which act as important nursery areas for many fish species.

Light transparency within the water column can also play a critical role in food web dynamics; and this may be impacted due to changes in phytoplankton responding to other population drivers such as changes in nutrient availability (e.g. eutrophication events in transitional waters), changes in suspended sediment loads (e.g. greater sediment loads being deposited by rivers; or increased coastal erosion) and warmer seas. Light transparency can therefore impact on energy transfer within the sea column, and also energy transfer between trophic levels thus affecting food webs.

Additionally, light pollution is not addressed at all. Increased development along our coastline has the potential to impact on a number of species and inshore habitats.

It is therefore concerning that the primary focus of Descriptor 11 is on underwater noise, with other aspects of energy ignored.

Good Environmental Status

Claims of achieving Good Environmental Status (GES) are often based on limited data availability. While it is recognised that further data gathering is often required, An Fóram recommends taking the precautionary approach with regard to claiming GES. Claims of achieving GES cannot be made

¹ International Union for the Conservation of Nature (2017). Ocean Warming. Issues Brief. Available online: https://www.iucn.org/sites/dev/files/ocean_warming_issues_brief_final.pdf

without strong supporting data, and resources need to be allocated towards filling the multiple data availability gaps which are highlighted throughout this public consultation document.

For Descriptor 2 Non-indigenous Species, concluding that GES is achieved because only three NIS have been introduced to Irish marine waters since 2013 fails to account for already established NIS and the proportion of total marine species in Irish waters which are NIS. An Fóram proposes that this proportion of NIS should be included as a criteria for assessment of GES for Descriptor 2.

For Descriptor 6 Sea Floor integrity, the conclusion is that “overall loss calculated to be less than 2,440 km² or 0.5% of the total area, implying that extent of habitat loss is compatible with Good Environmental Status”. This assessment fails to identify the loss of rare sea floor habitat types and their associated biodiversity, such as shallow water (infralittoral) biogenic reefs. These reefs may occupy only a few square kilometres nationally and this habitat could be lost completely without being included under such a broad scale assessment. Assessing loss of habitat types against the total area of Ireland’s marine territory likely completely underestimates the impact of habitat loss on community structures and biodiversity. This proportional assessment approach was also undertaken for Descriptor 5 and Descriptor 7. In all cases it gives rise to an overly simplistic final assessment that might be open to misinterpretation.

For Descriptor 10 Marine Litter, the limitations of OSPAR methodologies used to assess this descriptor means that a precautionary approach should be taken regarding claims that some criteria are compatible with GES.

Environmental Targets

An Fóram is concerned about the lack of clarity provided on environmental targets. Typically, the descriptions of the targets are vague and are not SMART (Specific, Measurable, Achievable, Realistic and Timed). For example, the Proposed Environmental Target D1T1 states:

“The mortality rate per species from incidental by-catch is below levels which threaten the species, such that long-term viability is ensured.”

This statement raises the following questions:

- What are the levels of by-catch which threaten the species?
- What are current by-catch levels and how close are these current levels to those which threaten the species?
- What is meant by long-term viability? Does the Department mean the long-term viability of the species? Or of levels of by-catch?
- Over what time period is ‘long-term’?
- Over what time period is it expected for this target to be achieved?
- Is such a target realistic for each species over the timeframe of this cycle of the MSFD?

Once SMART targets are provided, then a summary table which addresses the lists of indicators, their targets and threshold values under each Descriptor would be useful for clarity and transparency.

Instances where threshold targets have not been developed due to knowledge or data gaps, such as for Descriptor 2 Non-Indigenous Species, are regrettable as it is not possible to comment in these circumstances. It merely highlights the lack of supporting knowledge and data underpinning this MSFD public consultation document.

The threshold for sea floor habitat under Descriptor 6 Sea Floor Integrity appears to be complete loss. Consequently, if specific criteria (i.e. habitat types) have not been completely destroyed and lost then this seems to be considered as meeting GES. There appears to have been no assessment of the quality of habitat which has been lost and the importance and relevance of this loss for that particular habitat within the MSFD area. Using the proportion of habitat lost across the entire MSFD area creates a misrepresentation of the value of specific habitat types. For example, offshore circalittoral sediments (sand and mud combined) represent approximately 70,000km² of the approximately 150,000km² of mapped habitat. Of this 70,000km², only approximately 1,000km² is recorded as being undisturbed. It is therefore likely that some benthic faunal communities have been lost as a result of such high-level disturbance; yet the MSFD consultation document states that Good Environmental Status has been met.

Table 2 on page 15 of the MSFD consultation document uses various shades of blue to depict overall 'compatibility with Good Environmental Status' for the 11 Descriptors. A more divergent set of colours would assist the general public in ascertaining those Descriptors not achieving GES.

Additional Comments

Technical Nature of the Public Consultation Document

An Fóram considers the technical nature and language contained within the document to be unsuitable for public consultation. A public consultation synthesis document would be useful for the non-technical target audience, with a supporting technical document available for detailed scrutiny as required.

Public Consultation Process

The timeframes given to public consultation on this MSFD, the assessment of submissions received, and the subsequent revision of the draft document based on submissions are limiting for effective and inclusive public participation as outlined in Articles 6 and 7 of the Aarhus Convention.

The public consultation period closes on 28 February, a mere 10 weeks after it opened on 20 December. This allows little time for the public to interrogate the claims of the document to truly provide a considered response. This is particularly important due to the technical nature of the public consultation document; and that the first two weeks of the consultation period included the

busy Christmas and New Year holiday period. A longer period for public consultation would be welcomed in the future.

In his presentation on the MSFD public consultation to An Fóram on 14 January 2020, Dónal Cronin of DHPLG stated that following the closure of the public consultation period on 28 February, Ministerial sign-off on the Article 17 Report will occur in March 2020. An Fóram is concerned that there is insufficient time between the closure of the consultation period and the proposed Ministerial sign-off of the Article 17 Report for a full and transparent assessment of public submissions to be undertaken.

In summary, the short-term nature of the public consultation and the short period from when the public consultation closes to Ministerial sign off and submission to the EU raises questions regarding 1) the value of the public participation process to the Department; and 2) whether due account is taken of the outcome of the public participation as per Articles 6 and 7 of the Aarhus Convention.

Policy Coherence

An Fóram is concerned at the general lack of inter-policy coherence presented in the MSFD public consultation document. In particular, the following issues are apparent:

- While An Fóram acknowledges the statement made within the MSFD public consultation document regarding the exclusion of climate change as a human activity affecting the marine environment, An Fóram considers this disappointing in the face of the climate emergency declared by the Irish Government in May of 2019. An opportunity exists for Ireland to take a proactive and strategic approach to future marine strategy, rather than undertaking the minimum requirements of the MSFD, particularly given the threat that climate change poses to the marine environment and its environmental status. As a minimum, the document could highlight the sources of data available to include under a climate change impact assessment, with brief summaries of the data sets available. For example, the Marine Institute have multiple datasets available through their Real Time Observations (<http://www.marine.ie/Home/site-area/data-services/real-time-observations/real-time-observations>).
- While the necessary link between the MSFD and the National Marine Planning Framework (NMPF) is made early in the consultation document, it is not clear how the MSFD will inform the development of the NMPF. Stronger linkages are described in the NMPF consultation document and these would be welcome in the MSFD. For example, climate change is a “central consideration” in the MPFD, yet how can marine planning decisions be made in ignorance of predictable changes in the marine environment due to climate change?
- It is difficult to synergise the NMPF and the MSPF and An Fóram proposes that an additional, holistic report that focuses on the pressures acting on the marine environment is required, to which both the NMPF and MSPF are structurally linked. This lack of synergy is due in part to the MSFD public consultation document not appropriately assessing human impact as required under Article 8 of the MSFD.
- The MSFD identifies that responsibility for environmental status of transitional waters lies under the EU Water Framework Directive and subsequently Ireland’s River Basin

Management Plan. While this is true, there needs to be an integrated approach to managing the interconnectivity of Ireland's river catchments, its transitional waters and its marine waters. Simply deferring responsibility to another legislative process reinforces governance silos, limits mitigating actions and restricts the *integrated and collaborative approach* within which the MSFD can address the environmental status of Ireland's near shore environment.

Governance Structures for Implementation

Clarity on the governance structures for the implementation of the MSFD would be beneficial. Ireland's River Basin Management Plan 2018-2021 clearly identifies the governance structures for implementing the Water Framework Directive, and such an approach would be welcome for the MSFD and other marine Directives.

For example, which body is the lead agency for the control and monitoring of Non-Indigenous Species?

Given the large number of Government Departments, Agencies and Organisations aligned with the multiple areas of assessment included within the MSFD, there is a strong need for a clear, overarching governance structure.

Impacts of Human Activities on the Marine Environment

Article 8 of the Directive requires "an analysis of the predominant pressures and impacts, including human activity, on the environmental status" of our marine waters which includes "...the main cumulative and synergetic effects". However, because pressures are addressed in a fragmented way across Descriptors, it is not clear whether this analysis of the cumulative impacts has been conducted. Consequently, an overall picture of the impacts of significant human activities in the marine environment, including cumulative impacts, is not presented. An Fóram considers that this needs to be addressed in a final report. This will support transparency and more informed consideration of the environmental impacts of sectoral activities during the marine spatial planning process.

Scale

Assessing the Descriptors; and making overarching statements of achieving Good Environmental Status across the whole spatial scale of Ireland's marine area does not work to understand the impact of pressures at a scale sufficient to inform the NMPF.

Socio-Economic Assessment

The socio-economic assessment summary is insufficient. In particular, the lack of identified timeframes for delivering the statement that "further consideration is needed for the cost of degradation calculations" is a concern. It would not be acceptable to delay this until the next MFSD cycle in six years' time. Further questions regarding the socio-economic assessment include:

- How does the socio-economic assessment incorporate climate change factors?
- What are the socio-economic factors impacted by the collapse of individual fisheries?

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- Will the full socio-economic report be completed in time to inform the revised MSFD document prior to Ministerial sign-off?

END