

SUBMISSION TO THE DEPARTMENT FOR HOUSING PLANNING AND LOCAL GOVERNMENT

PUBLIC CONSULTATION ON THE DRAFT NATIONAL MARINE PLANNING FRAMEWORK

23 April 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 Draft National Marine Planning Framework (dNMPF).
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 NMPF public consultation document.
3. An Fóram broadly supports the direction of the dNMPF public consultation document and provides overarching comment on a number of items within the document.
4. The items included in this submission are those to which An Fóram have identified as priority issues for its members and which are within the remit of An Fóram Uisce. These do not preclude the importance of items contained within the dNMPF to which An Fóram has not responded.
5. An Fóram considers the dNMPF public consultation document to be challenging for lay persons to understand and to formulate a submission. An overarching non-technical summary document which clearly outlines the processes proposed to implement the NMPF as well as the opportunities for the general public to engage in the marine planning process would be welcome. An executive summary of this dNMPF would have been very beneficial and is necessary for the final NMPF document.
6. Strong policy coherence is required to deliver the NMPF to allay An Fóram Uisce's concerns that responsibility for implementing actions relating to the marine environment may simply be deferred to another legislative process without overarching governance and an integrated and collaborative approach to managing Ireland's transitional, coastal and marine waters.

7. Consequently, clear and transparent governance is required to deliver the strong policy coherence. While the ambition for delivering the dNMPF in an integrated manner exists, there is little evidence of such an integrated approach being delivered in practice.
8. While it is recognised that the Marine Planning and Development Bill works alongside other legislation to deliver the NMPF, it is nonetheless the primary legislative underpinning for the integrated approach set out in the NMPF. An Fóram Uisce is therefore concerned that the draft Bill is being developed in a separate process to the NMPF. There also appears to be components of the NMPF omitted from the draft Bill such as aquaculture and fisheries, making it unclear how the NMPF can be fully implemented in its current draft.

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Linkages with An Fóram Uisce's submission under the public consultation on the Marine Strategy Framework Directive (2008/56/EC) Article 17

1.1 In response to the public consultation on the Marine Strategy Framework Directive (MSFD) Article 17, a submission was made to the Department by An Fóram Uisce on 26 February 2020. Several items within that MSFD submission have relevance to this submission on the dNMPF, including policy coherence, governance, climate change, biodiversity and public participation. Due to these synergies, An Fóram Uisce's submission under the MSFD public consultation is included here for reference in Appendix 1.

Overarching Comment on the Draft National Marine Planning Framework Public Consultation Document

2.1 While recognising that the technical aspects associated with developing a framework for national marine planning are complex and not easy to communicate in lay terms, An Fóram Uisce has found the dNMPF public consultation document to be problematic in encouraging public participation in the marine planning process. This is due to a lack of clarity on:

- The processes needed to implement the NMPF
- The process for and opportunities for public participation in the marine spatial planning process outside of the public consultation events aligned with the dNMPF

The length and density of the document makes it exceptionally challenging for lay persons to formulate a submission on the dNMPF public consultation document. An Fóram Uisce proposes that

1. An executive summary in the dNMPF public consultation document is necessary.
2. A non-technical, overarching summary document is required to outline the key components of the dNMPF. This should include clarity (for example in the form of diagrams and flow charts) on the governance system and planning processes needed to implement the NMPF, the interactions between various departments and agencies involved, as well as the opportunities for public engagement within the planning process.

An Fóram Uisce's Priority Items within the Draft National Marine Planning Framework

3.1 An Fóram Uisce has identified a number of items within the dNMPF of priority to its members. These do not preclude the importance of items contained within the dNMPF to which An Fóram has not responded.

The items are aligned in this submission under the two themes of the dNMPF: Overarching Marine Planning Policies; and Sectoral Marine Planning Policies.

Overarching Marine Planning Policies

Policy coherence.

- 4.1 An Fóram is concerned that responsibility for implementing actions relating to the marine environment may simply be deferred to another legislative process without overarching governance and an integrated and collaborative approach to managing Ireland's transitional, coastal and marine waters.
- 4.2 The dNMPF identifies that 'Obligations arising under a range of other directives may also be relevant in the context of marine spatial planning, including the Urban Waste Water Treatment Directive, Nitrates Directive, Bathing Waters Directive and Floods Directive' (dNMPF, p.17). However, there is no detailed descriptions as to which obligations of these additional Directives are relevant to the NMPF and how those obligations will be addressed in an integrated manner.
- 4.3 The dNMPF 'has been prepared to have regard to the measures contained in the [second] RBMP, particularly those which relate to coastal waters' (dNMPF, p.18). Planning for the third RBMP for action post 2021 is currently in development, and given the linkages between the two, An Fóram considers it imperative that an integrated approach is taken to both RBMP planning and NMPF development.
- 4.4 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.
- 4.5 While it is recognised that the Marine Planning and Development Bill works alongside other legislation to deliver the NMPF, it is nonetheless the primary legislative underpinning for the integrated approach set out in the dNMPF. An Fóram Uisce is therefore concerned that the draft Bill is being developed in a separate process to the NMPF. There also appears to be components of the NMPF omitted from the draft Bill such as aquaculture and fisheries, making it unclear how the NMPF can be fully implemented in its current draft.

Governance

- 5.1 While the ambition for delivering the dNMPF in an integrated manner exists, there is little evidence of such an integrated approach being delivered in practice.

The governance mechanisms for delivering this NMPF in a transparent manner, integrated with the delivery of many other directives and policies, are unclear. While An Fóram recognises that high level provisions of governance for the NMPF are provided for in the Planning and Development (Amendment) Act 2018, further transparency is required, particularly within a public consultation document.

Dredging and dumping at sea can be used as an example of unclear governance structures within the dNMPF. Dredging and dumping at sea is shown in the dNMPF to be a functional responsibility of the Department of Housing, Planning and Local Government (dNMPF, p.183). However, dredging for maintenance under the Ports, Harbours and Shipping Policy (dNMPF, p.

142) is under the remit of the Department of Transport, Tourism and Sport. Dredging activity and the dumping of dredge spoil at sea is regulated by the Environmental Protection Agency (EPA) which is associated with the Department of Communications, Climate Action and Environment (dNMPF, p.182). To issue a dumping at sea permit, the EPA would take technical and scientific guidance from several bodies, including the Marine Institute (nominally allocated under the Department of Agriculture, Food and the Marine), the National Parks and Wildlife Service and the Underwater Section of the National Monuments Service (both of which are division of the Department of Culture, Heritage and the Gaeltacht, although neither is listed as a State body with responsibility for the marine). Inland Fisheries Ireland and the DCCA would engage regarding estuarine dredging and its potential impact on migratory fish species. The DHPLG would also be involved in capital dredging required for port development and enlargement. Such capital dredging requires planning permission as well as coherence with national strategic planning objectives, however, most dredging activities are undertaken for port maintenance which does not require planning permission. Therefore, while the dNMPF high level objective is to clarify planning procedures for the marine environment, much greater clarity of governance is required across the planning realm. In the case for dredging and dumping at sea, it is unclear which State bodies take pre-eminence in the planning process.

- 5.2 The dNMPF public consultation document identifies that DHPLG is the lead Department for delivering on marine spatial planning. Implementation the NMPF will be delivered through an Intergovernmental Group, chaired by DHPLG and consisting of high-level members of Government Departments, representatives of the local government sector, and one representative of the Marine Institute. In addition, the dNMPF public consultation document identifies that the NMPF Stakeholder Advisory Group, chaired by the Minister of State, is the formal mechanism to facilitate participation of relevant stakeholder groups, non-governmental organisations, professional bodies and technical experts in the planning process (dNMPF, p.12).

The interactions and reporting structures of the Intergovernmental Group and the Stakeholder Advisory Group are not clearly identified. 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 dNMPF.

- 5.3 An Fóram Uisce considers there an opportunity for a statutory body like An Fóram Uisce to be formed for the marine environment. The functions of such a body could include aspects associated with the marine spatial planning process, including the NMPF, as well as aspects associated with the delivery of the MSFD. This could involve a widening of the remit of the Marine Spatial Planning Advisory Group and a review of its operation to include positive learnings from the An Fóram Uisce, including agreeing common objectives in relation protection of the marine environment.

Public Participation

- 6.1 The NMPF Stakeholder Advisory Group is identified in the dNMPF as the formal mechanism to facilitate participation of relevant stakeholder groups, NGOs, professional bodies and technical

experts in the planning process. An Fóram Uisce, as a statutory body, holds a similar role for engaging stakeholders in Water Framework Directive implementation, River Basin Management Planning, Irish Water customer concerns, rural water concerns and other water-related issues as determined by the Minister for DHPLG. While the establishment and ongoing function of the Marine Spatial Planning Stakeholder Advisory Group over the past 18 months is a positive step to fulfil *one aspect* of public participation, An Fóram believes an opportunity exists for a statutory body similar to An Fóram Uisce to be formed for the marine environment as noted under Section 5.3 of this submission.

- 6.2 An Fóram Uisce has developed a Briefing Note on Public Engagement for Managing Ireland's Waters. The briefing note is freely available for download from An Fóram's website, [here](#), along with supporting research into public participation in water management, commissioned by An Fóram, [here](#). The principles included in the briefing note are applicable to public participation undertaken by all Government Departments and are very relevant to the public participation processes undertaken for developing this dNMPF. For example, An Fóram is concerned regarding how the public will be involved in the implementation of the NMPF. At what scale is public participation proposed: local (bay)/regional/national? What will be the mechanisms for the public to access planning applications and associated data? At what stage in the planning process is public participation proposed?

Effective public engagement is not only about 'raising awareness', addressing 'a knowledge deficit' or encouraging behavioural or process change. It also includes a commitment that the public, broadly defined, is involved in decision-making processes and outcomes. An Fóram encourages the Department to examine the content of this briefing note to help inform future public participation processes.

- 6.3 It is recognised that responding to submissions on public consultations is resource intensive. An Fóram considers that the provision of a summary of submission content with appropriate details of how each content summary was incorporated, or not, into the final NMPF document would be beneficial for transparent engagement. Such a summary would also show the impact that taking the time to make a public submission can have. If content is not incorporated into the final NMPF document, rationale for this decision should be given, again promoting transparency in the public participation process.
- 6.4 The monitoring and evaluation of public participation events should go beyond just recording the number of people in attendance or the number of submissions received. For the public participation meetings that were held for this dNMPF process, there is little evidence of an integrated approach to public engagement as separate topics were the subject of individual meetings at disparate locations. In addition, there was no evidence of minutes being taken, or other recording methods at each meeting; and, concerningly, it seems that no Departmental environmental representatives were present at every meeting.

- 6.5 The engagement of school children through a poster competition; and the running of a photography competition are novel public engagement actions for awareness raising of marine planning issues, and these activities are welcomed.

Environmental – Ocean Health

Biodiversity

- 7.1 In its submission under the MSFD public consultation, An Fóram Uisce highlighted its concerns regarding the paucity of data upon which conclusions of achieving Good Environmental Status (GES) are made, while recognising that decisions must be made using the best available data. The dNMPF states that the objective for Environmental – Ocean Health ‘will be achieved through specific environmental policies that are aligned to Ireland seeking to achieve GES in its waters, directed by the descriptors set out in the Marine Strategy Framework Directive (MSFD)’ (dNMPF, p.28). There is concern that planning decisions granted under guidance of the NMPF which are based on MSFD GES will be made with limited supporting scientific evidence given the paucity of data upon which GES decisions are being made under the MSFD.
- 7.2 Clarity on the criteria for determining what is a ‘significant adverse impact’ on ‘species adaptation or migration, or on natural habitat connectivity’ (dNMPF, p.31) is required, with those criteria supported by the best available science.
- 7.3 Strong policy coherence and integrated management and planning is necessary to support and enhance the biodiversity of Ireland’s near-shore habitats and transitional waters as many species present in these areas are sensitive to land use change and water quality from inland waters and catchments.
- 7.4 While reference to incorporating Natural Capital in regulation is welcome, much work is needed to increase stakeholder understanding of the Natural Capital concept and its application and use in guiding planning decisions. Strong guiding documentation across all sectors will be required to incorporate Natural Capital into regulation in the future.

Marine Protected Areas

- 8.1 An Fóram Uisce encourages the implementation of our commitment to conserving, as an absolute minimum, 10% of its marine and coastal waters under the Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources.
- 8.2 The designation of Marine Protected Areas (MPAs) is now expected to take place after the formal finalisation of the NMPF. An Fóram Uisce expresses concern that there is potential for planning applications to be granted within proposed MPAs which would result in the area designated for MPAs to be reduced. Consequently, there is potential for MPAs to be designated in areas ‘left over’ from areas designated for development. An Fóram proposes that legislation for designating MPAs be expedited and that for the period of time until such legislation is in place, a process of sensitivity mapping should be undertaken to allow planners to understand where sensitive marine areas exist and for planning decisions to be as fully informed as possible. Recognising that the planning process should not be delayed by such an action, its

implementation would help to minimise the risk of development taking place in areas later identified as the most suitable sites for MPA designation.

8.3 An Fóram is concerned about the intent to protect both proposed and designated protected areas:

- The dNMPF public consultation document states that ‘Where statutory advice states that a marine protected area site condition is deteriorating or that features are moving or changing due to climate change, a suitable boundary change to ensure continued protection of the site and coherence of the overall network should be considered’ (dNMPF, p.41). An Fóram seeks reassurance that any boundary changes will be undertaken to further protect the delineated area rather than any boundary changes that result in an area reduction of a protected area.
- By stating ‘if it is not possible to mitigate adverse impacts, proposals should state the case for proceeding’ (dNMPF, p.41) provides opportunity for such proposals to proceed. Proposals that will be detrimental to protected areas should only be supported by the final NMPF after undergoing a stringent multi-criteria analysis, with clear reasoning demonstrated for the support of such proposal. This would be a far more rigorous approach than simply requiring that proposals ‘should state the case for proceeding’.

Non-Indigenous Species

9.1 As stated in An Fóram Uisce’s submission under the MSFD public consultation, minimising the introduction and spread of Non-Indigenous Species (NIS) is key to achieving and maintaining Good Environmental Status for this Descriptor. Public consultation and awareness raising is a key component of this, and An Fóram proposes a targeted information campaign across all relevant stakeholders highlighting the actions necessary to minimise introduction opportunities and spread of NIS.

In order to coordinate such a public awareness campaign, clear and transparent governance structures are required for NIS management and to assist in the implementation of actions outlined in the National Biodiversity Action Plan. Such governance structures should include

1. An overarching lead authority/body/agency for the management of NIS in marine, transitional and freshwater environments (recognising that the National Biodiversity Action Plan identifies Inland Fisheries Ireland as the lead agency for aquatic invasive species).
2. Clearly defined roles for all agencies and management working groups/taskforces within the governance structure.
3. Realistic, integrated national action plans aim to minimise the introduction and spread of NIS in marine, transitional and freshwater environments.
4. Strong policy coherence and integrated management across marine, transitional and freshwater environments.

To support the actions undertaken within this governance structure, greater scientific understanding is required to inform public awareness campaigns in terms of:

- The prevalence, distribution and risk of spread of established NIS present in marine waters (with the same information available for transitional and freshwater NIS also, delivered through the governance structure and policy coherence recommended above).
 - The prevalence, distribution and risk of spread of newly introduced NIS (for example the three newly introduced NIS identified in the MSFD public consultation document).
 - An assessment of risk of introduction of NIS not yet present in Irish marine/transitional/freshwater environments, and mitigating actions to prevent their introduction and spread.
- 9.2 The non-native species risk assessments undertaken by IFI and the National Biodiversity Data Centre (<http://nonnativespecies.ie/risk-assessments/>) should be frequently updated, and expanded beyond those undertaken for non-native species which are subject to trade or potentially subject to trade.
- 9.3 Ensuring direct legal provision in Ireland of the Ballast Water Convention should be undertaken as a matter of urgency.
- 9.4 The European Commission Council Regulation 708/2007 concerning the use of alien and locally absent species in aquaculture should be strictly enforced.

Water Quality

- 10.1 Strong policy coherence is required for the integrated implementation of multiple EU legislation (e.g. Water Framework Directive and Ireland's River Basin Management Planning process; Urban Waste Water Directive; Nitrates Directive) with regard to improving water quality, particularly in transitional waters and near-shore environments which serve as vital nurseries for many marine species.
- 10.2 The cumulative impact of planning applications within a locality should be considered, regarding both the addition of new planning applications to the existing number of developments within the locality, and multiple new applications within a locality. For example, aquaculture can have deleterious impacts on water quality and also presents high risk factors associated with the introduction and spread of Non-Indigenous Species. Therefore, cumulative impacts of multiple aquaculture facilities within a locality should be considered.

Underwater Noise

- 11.1 Aiming to contribute to Descriptor 11 of the MSFD, the dNMPF identifies multiple ways energy is delivered to the marine environment and states that 'the primary energy source of concern in an Irish context is underwater noise.' (dNMPF, p. 57). Given that climate change is stated as being 'a central consideration throughout this draft NMPF' (dNMPD, p.21), An Fóram Uisce considers more should be committed within the NMPF to reducing the potential impacts of climate change with regard to energy sources.

As stated in An Fóram Uisce's submission to the MSFD public consultation, under climate change, 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.

Therefore, the NMPF should consider more energy sources and their implications for planning than just underwater noise.

Climate Change

12.1 The dNMPF states that ‘climate change is a central consideration throughout this draft NMPF’ (dNMPD, p.21). An Fóram welcomes this statement, which is in contrast to the consideration given to climate change in the MSFD public consultation. However, An Fóram considers that the final NMPF should state more stringent policy regarding not supporting planning proposals which will result in increased greenhouse gas emissions; and that proposals which will result in reductions in greenhouse gas emission will be viewed favourably.

12.2 The inclusion of climate change as a planning policy is a positive step. However, greater clarity is needed regarding the specific impacts of climate change that proposals must consider.

Stating that ‘Proposals that are likely to result in significant adverse coastal change *should not be supported*’ (dNMPF, p.60, emphasis by An Fóram) creates uncertainty in that it leaves the possibility for such proposals to be supported despite the adverse coastal change expected. A more forceful commitment of stating that such proposals *will not be supported* reduces ambiguity and protects coastal environments from potentially harmful planning decisions.

Clarity on the criteria for determining what is a ‘significant adverse impact’ on ‘habitats that provide a flood defence or carbon sequestration ecosystem service’ (dNMPF, p.60) is required, with those criteria supported by the best available science.

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

12.3 Note: Consensus on the content of Item 12.3 was not achieved by An Fóram Uisce members, with some considering that the topic of emissions from the shipping sector to be out of scope of the response to this public consultation on NMPF.

The international shipping industry is a significant contributor to carbon and greenhouse gas emissions globally. The shipping sector emitted approximately 139m tonnes of CO₂ in 2018, recent analysis has shown that its contribution to air pollution can be larger than those of all passenger vehicles in Europe.² How will the NMPF address any increases in such emissions resulting from any expansions of ports throughout Ireland, and how are greenhouse gas emissions of the shipping handled through Irish ports factored into the Climate Action Plan through the NMPF?

Sectoral Marine Planning Policies

Aquaculture

13.1 An Fóram Uisce recognises that aquaculture is an important component of the Irish coastal economy, providing multiple socio-economic benefits.

13.2 The dNMPF states that increased intensity of storms and the frequency of storm surge ‘will result in damage to vessels and infrastructure including gear loss in inshore and coastal sector of fisheries and aquaculture’ (dNMPF, p. 62). Evidence from Coastwatch shows that aquaculture is becoming an increasing source of marine litter in the Irish environment, yet the OSPAR litter monitoring activities undertaken for the MSFD do not assess litter present in estuarine/transitional waters and no OSPAR marine litter survey locations are close to areas where aquaculture is present. Therefore, the formal reporting of marine litter under the MSFD significantly underestimates the contribution of the aquaculture sector to marine litter.

In addition, aquaculture represents a significant threat to native species – not only, for example, through escaping farmed fish impacting on wild populations; but also through nutrient impacts, disease, marine litter, and 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). Therefore, cumulative impact of aquaculture should be included in the aquaculture licencing system and the aquaculture planning application process. An Fóram welcomes the proposed ecosystem-based approach to the assessment of proposals, but guiding clarification for this approach is necessary.

13.3 The focus of the Department on elimination of the aquaculture licencing backlog following recommendations from the 2016 Review of the Aquaculture Licencing Process is understandable, ‘having an immediate beneficial effect on every individual aquaculture

² European Federation for Transport and Environment AISBL (2019). EU Shipping’s Climate Record. Maritime CO₂ emissions and real-world ship efficiency performance. Available online: https://www.transportenvironment.org/sites/te/files/publications/Study-EU_shippings_climate_record_20191209_final.pdf

operator' (dNMPF, p.92). This elimination process should not be undertaken to the detriment of the environment, and all relevant legislation and enforcement should be adhered to. Again, An Fóram Uisce considers that a cumulative impact assessment in the licencing process is essential.

13.4 Aquaculture appears to not be included in the draft Marine Planning and Development Bill and therefore it is unclear how the NMPF, including provisions regarding aquaculture, will be fully implemented through the Bill.

13.5 The dNMPF states that 'Eutrophication can have an adverse impact on aquaculture...' with land-based sources identified as the causes of this eutrophication. It should also be recognised that aquaculture can be a source of nutrients entering the local environment with, for example, uneaten feed and fish wastes from finfish farms being a source of organic nutrients.

Fisheries

14.1 As is outlined in section 12.24 of the dNMPF, the most significant impact from commercial fisheries is the impact on seafloor habitats particularly by mobile bottom contacting gear (in particular, dredges and trawls). An Fóram Uisce therefore disagrees with the approach of the dNMPF whereby it is proposed that the impacts of fisheries are addressed by the Common Fisheries Policy (CFP) alone. This is because the CFP addresses the maximum sustainable yield for fish populations only and does not address the ecological impacts of fisheries activities on the sea floor. An Fóram Uisce recommends that the NMPF acknowledges that effective, environmentally sustainable management of commercial fishing impacts cannot be addressed through the CFP alone, and that controls to manage the ecological impact on the sea floor (MSFD Descriptor 6 – Seafloor Integrity) also be included.

Seaweed Harvesting

15.1 As naturally occurring seaweeds provide and support multiple ecosystem services and as some key seaweeds are known to be declining in southern Europe and France due to climate change, a seaweed protection and management policy is urgently needed.

15.2 There is significant scope for algae/seaweed farming initiatives on both land and in the sea. This should be developed with careful planning and monitoring, using local native species. Non-native species should only be used if the cultivation is in closed systems such as tanks, with strict policies and enforcement to prevent any release to the natural environment. In all open systems, ecosystem service delivery should be maximised and managed through licensing with full application of Aarhus principles.

15.3 Traditional seaweed harvest rights must be recognised and legally secured for both those registered on folios and those with traditional use rights but no matching folio. The responsibilities which go with traditional rights need to also be given legal clarity in the seaweed protection and management policy proposed in Item 14.1. This includes reporting on take and status to avoid overharvesting, especially in case of commonage areas.

15.4 There is a need to differentiate between harvesting from the wild for (i) own use, (ii) small scale and (iii) large scale harvesting in any forthcoming legislation and policy on seaweed.

- 15.5 The reasons for seaweed collection and harvesting, methods of harvesting, timing of harvesting and proposed end uses of seaweed should be required for any licencing application.
- 15.6 An Fóram Uisce advocates that wild seaweeds should be harvested by traditional methods which are special to Ireland, that are of low ecological impact if managed well, and which support local jobs and promote tourism. In contrast, seaweed aquaculture can utilise mechanical harvesting methods.
- 15.7 A special case of nuisance algae and invasive species removal should also be foreseen, with the former important due to the nutrient enrichment currently observed within many estuarine/transitional waters.

Sport and Recreation

- 16.1 The objectives proposed in the dNMPF public consultation document for sport and recreation are reasonable, but it remains unclear what mechanisms will be used to deliver these objectives. For example, the first objective proposes ‘increased participation in a range of water-based sports and recreation activities for the benefit of public health and wellbeing, as well as developing our tourism offering’ (dNMPF, p.158). While this is an admirable objective, many aquatic sporting and recreation clubs and organisations are facing difficulties surrounding costs of insurance, promotion of sports and activities, and the maintenance of current memberships. It is therefore unclear how increased participation can be facilitated given current scenarios.
- 16.2 Angling is one of the country’s largest sport and recreation activities, providing a large economic value nationally. Yet, it does not feature within this sport and recreation sectoral policy and is only briefly mentioned within the tourism sectoral policy. Further consideration of angling within the dNMPF is required.

Wastewater Treatment and Disposal

- 17.1 An Fóram Uisce agrees with the policy coherence stated in the dNMPF regarding the management of wastewater treatment and disposal, and advocates for a strong *integrated* approach to improving the management, treatment and disposal of wastewater throughout the country. Through Ireland’s second River Basin Management Plan, Irish Water committed to spending €1.7 billion in wastewater projects, programmes and asset maintenance. With only 21 months left to implement the second RBMP, many of the RBMP principle actions under Urban Waste Water and Urban Runoff remain to be achieved. Of the 255 major wastewater treatment projects committed to in the second RBMP, 146 remain to be completed. The DHPLG Significant Water Management Issues (SWMI) public consultation document identifies that urban pressures (which include wastewater treatment and disposal) are ‘significant pressures’ for 24 transitional and four coastal water bodies nationally. According to the EPA report Water Quality in Ireland 2019, Ireland’s compliance with the Urban Waste Water Treatment Directive in 2019 was 88%: an improvement on previous years, but remaining an unacceptable proportion of non-compliance.

17.2 The dNMPF states that ‘while waste water still pollutes some areas from time to time...’ (dNMPF, p.177). Given that raw, untreated effluent is still discharged at 35 locations nationally (many of which are coastal locations), as well as the frequent discharge of Combined Sewer Overflows during periods of high rainfall, the dNMPF understates the pollution events occurring from wastewater discharges.

17.3 Clarity is required within the NMPF regarding the integrated approach necessary to improve wastewater treatment and disposal.

Appendix 1: An Fóram Uisce's submission under the Marine Strategy Framework Directive Public Consultation

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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An Fóram Uisce Public Consultation Submission on the Marine Strategy Framework Directive (2008/56/EC) ARTICLE 17

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 emissions³. 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 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.

³ 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

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

END

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