

Marine Research Sub-Programme
(NDP 2007–'13) Series



National, International and EU Legal Instruments Relevant to the Development of a Marine Spatial Planning Framework in Ireland

Desk Study Report



Lead Partner: MacCabe Durney Barnes



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National, International and EU Legal Instruments Relevant to the Development of a Marine Spatial Planning Framework in Ireland

(DK/ME/13/001)

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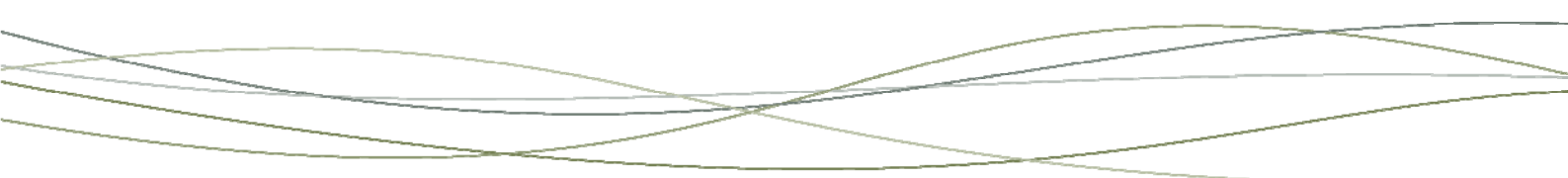
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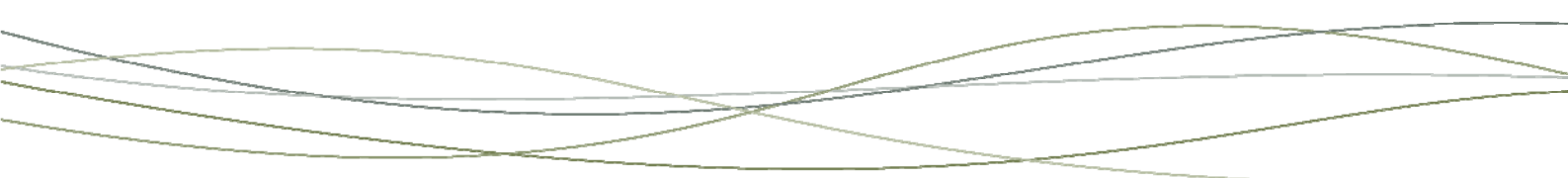
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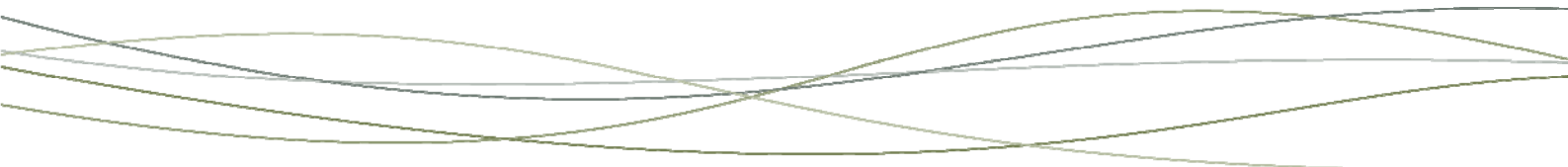
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EXECUTIVE SUMMARY

Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (IMP) (2012) set out a 'roadmap' to secure the sustainable development of Ireland's marine resources. This report is part of a suite of research and initiatives to implement Harnessing Our Ocean Wealth. The study reviewed all international, European and national law relevant for the development of a framework for marine spatial planning (MSP) for Irish waters. The development, implementation and practice of MSP for five key jurisdictions were also considered.

This report details the identification of a range of options for MSP for Ireland and the criteria for testing those options. It explains the process of refining and developing both the options and the criteria in conjunction with the Enablers Task Force (ETF) to form preliminary conclusions. The key provisions in the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 were compared in order to assist with this process. A final recommendation of a framework for MSP has been identified by the research team, with a working title of the minimal parallel system. The forward planning system, however, more accurately describes it.

The forward planning system (minimal parallel system) proposes the introduction of a marine planning system through primary legislation, which would operate in parallel with the existing terrestrial system. While it would be separate from the land based planning system and policies, the MSP system would be coordinated with the terrestrial system, as required. There would be no change to the marine consenting regime, and initially it would have no role in conservation management. The main focus of the legislation would be the statutory requirement for the preparation of a hierarchy of plans, with a statutory role for the plan in the decision making/licensing process. The marine spatial planning system would immediately abut the terrestrial planning system at the high water mark and would extend to the limit of the continental shelf. The hierarchy would consist of a mandatory National Marine Spatial Strategy (NMSS) aligned to the National Spatial Strategy (NSS). There would be mandatory regional sea basin plans for areas of high pressure use and discretionary regional plans for other areas and integrated coastal zone management (ICZM) plans where required. An existing body/ government department or key sections of appropriate bodies/ departments, with the appropriate expertise would be responsible for the preparation of the plans, but could coordinate with regional or local authorities as appropriate, particularly for ICZM plans.

This report is supported by extensive Appendices which detail the research and aspects of the research process.

I. INTRODUCTION

I.1. Background

Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (IMP) (2012) set out a 'roadmap' to secure the sustainable development of Ireland's marine resources. The IMP marked a key milestone, with recognition by government that integrated planning and actions should become the norm for marine and maritime affairs. The IMP is designed to make a valuable contribution to getting the environment right for investment and so stimulate private investment. The IMP will help realise the potential of the marine economy and enable a balance to be struck between protecting the marine environment (and its species and habitats) and maximising the use of its resources as a source of economic growth¹.

This report is part of a suite of research and initiatives to implement Harnessing Our Ocean Wealth. The original call for proposals for this project invited interested parties to:

“... carry out a desk based research study on the national, international and EU legal instruments relevant to, and that could inform, the development of a Marine Spatial Planning Framework for Ireland.”

The objectives of the study were to examine and make recommendations in relation to:

- Constraints and obligations under international conventions, in particular, the geographical extent over which it is possible to implement marine spatial plans;
- Constraints and obligations under EU policies and legal instruments;
- Interactions between marine spatial planning and national legislation and policies including terrestrial planning, foreshore and aquaculture licensing, and offshore energy policies and plans;
- Legislation required for the implementation of marine spatial planning and the subsequent changes that may be required to existing legislation and regulations; and
- Legal options on issues such as forward planning, decision making, enforcement, competent authorities, etc.

¹ I Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p. i

The deliverables were identified as:

- A draft report with recommendations on an appropriate legislative framework for integrated Marine Spatial Planning and co-ordinated implementation for comment and feedback; and
- Based on the feedback on the draft report, a final report with recommendations on an appropriate legislative framework for integrated marine spatial planning and co-ordinated implementation.

1.2. Research Team, Methodology and Project Management

The Legal Research Team consists of Jerry Barnes and Sybil Berne, MacCabe Durney Barnes, planning consultants; Anne-Michelle Slater and Alison Kennedy, University of Aberdeen; and Dr. Berna Grist, University College Dublin.

The research method employed was primarily a desk based study utilising internet resources to review the following:

- International conventions relevant to marine spatial planning;
- European regulations, directives and policies applicable to the marine environment;;
- Relevant national legislation applicable to the licensing and consenting processes for specific sectors identified for economic growth within the IMP and the Atlantic Strategy²;
- Relevant national legislation applicable for terrestrial planning;
- National policies relevant to individual marine sectors; and
- Relevant legislation on the identified case study areas.

The methodology adopted was to use this information to make a preliminary identification of options for a framework for marine spatial planning for Ireland; refine those through an iterative process with the team, the Working Group and the Enablers Taskforce (ETF); thereafter to develop criteria for testing these options, again refined through an iterative process; undertake the testing of the identified options and make initial recommendations; undertake further analysis of initial recommendations, in order to make a final

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Action plan for a maritime strategy in the Atlantic Area: Delivering smart, sustainable and inclusive growth COM (2013) 279 Final

recommendation on an appropriate legislative framework for integrated marine spatial planning and co-ordinated implementation for comment and feedback.

Project management has been undertaken by MacCabe Durney Barnes. The study has been overseen by a Working Group and the the ETF. The management of the project has consisted of:

- An inception meeting to agree objectives, methodology and work schedule;
- A workshop for the ETF to consider background and options;
- A Draft Options Report for consideration and presentation to the ETF;
- An Initial Draft Report detailing the Testing of the Options;
- Liaising with individuals on the ETF;
- Preparation of a Draft Report for review; and
- Preparation of a Final Report.

2. BACKGROUND AND DEFINITIONS

2.1. The Development of Marine Spatial Planning

This section considers the background and context for the development of a framework for marine spatial planning for Ireland. It also reviews key concepts and definitions to inform the process.

The importance of the marine environment and the need to manage it in a co-ordinated way cannot be overstated. It is essential to ensure the continuing productivity of the seas and oceans, plus conservation of the marine environment. A complex web of legal instruments spanning international, regional, European and national levels has evolved in many jurisdictions. The unique character of the marine environment, however, creates particular problems for governance. States have sovereignty over natural resources within their jurisdiction and as 70% of 'the Earth' is made up of oceans, maritime activities are increasingly being promoted as a potential source of economic recovery. Principles, such as the global commons and freedom of navigation, remain, however. New legal frameworks and governance structures are emerging, therefore, to facilitate sustainable development of maritime activities, encouraging private investment while simultaneously meeting international and European legal obligations.

In many jurisdictions, governments are turning to marine spatial planning as a solution. The Commission of the European Union has also recently identified marine spatial planning as "essential...to develop Europe's Blue Economy" and introduced a proposal for a Directive to create a common framework obliging Member States to introduce maritime spatial planning and integrated coastal management³. This study, while acknowledging the recent proposal, developed independently from it.

2.2. Developments in Ireland

Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (IMP) recognises this as its overall vision:

"Our ocean wealth will be a key element of our economic recovery and sustainable growth, generating benefits for all our citizens, supported by

3 COM (2013) 133 final

coherent policy, planning and regulation, and managed in an integrated manner.”

Goal I of the IMP is identified as a thriving maritime economy and aims to promote sustainable economic growth of maritime sectors; increase the contribution of maritime sectors to the national GDP and deliver a business friendly yet robust governance, policy and planning framework. There is no ‘plug and play’ model to achieve this goal, but this report considers the existing legal context for marine spatial planning for Irish waters and examines relevant case studies in order to devise options to implement the IMP for Ireland. The next part of the report considers definitions for marine spatial planning.

2.3. Definitions

2.3.1. The Ecosystem Approach

The ecosystem approach was first employed in the Convention on the Conservation of Antarctic Marine Living Resources (1980).⁴ It integrated the concepts of rational use, scientific study and conservation in the Antarctic marine environment⁵ becoming the:

“first international agreement to incorporate the ecosystem and precautionary approaches into the conservation and management of marine living resources”.⁶

Since then it has been increasingly adopted in other international instruments.⁷ The Conference of the Parties, established by the 1992 Convention on Biological Diversity (CBD),⁸

4 Originating from a conference of the Antarctic Treaty Consultative Parties in 1977 in response to threats to the Antarctic marine ecosystem through increased commercial interest the Convention on the Conservation of Antarctic Marine Living Resources is an integral part of the Antarctic Treaty Series, binding contracting states to provisions within the Antarctic Treaty, whether or not they are signatories of the later. See <<http://www.ccamlr.org/en/organisation/history-convention> > accessed 16 July 2013

5 Commission for the Conservation of Antarctic Marine Living Resources 'History of the Convention' <<http://www.ccamlr.org/en/organisation/history-convention> > accessed 16 July 2013

6 Adriana Fabra and Virginia Gascon 'The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Ecosystem Approach' *The International Journal of Marine and Coastal Law* 23 (2008) 567 – 598 at 574

7 Sue Kidd, Andy Plater, Chris Frid (eds) *The Ecosystem Approach to Marine Planning and Management* (Earthscan 2011)

8 CBD Art 23

and assisted by the CBD Subsidiary Body on Science, Technology and Technical Advice,⁹ has developed the internationally accepted definition of the ecosystem approach:¹⁰

“a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way”,¹¹

and explains that it is based on:

“the application of appropriate scientific methodologies focused on levels of biological organization, which encompass the essential structure, processes, functions and interactions among organisms and their environment. It recognises that humans, with their cultural diversity, are an integral component of any ecosystems”.¹²

The ecosystem approach recognises that the “marine environment is an ecosystem and a network of interlocking ecosystems”¹³ and that all parts, including human interactions with it, form an “integrated network”¹⁴. In order to ensure the continued productive functioning of marine environment ecosystems, to “meet human needs sustainably”¹⁵ and to “restore them when possible”¹⁶ the “long term integrated management of human activities”¹⁷ based on the “best available scientific knowledge”¹⁸ is required.

This is also acknowledged in the IMP which states that Ireland’s marine ecosystems (i.e. offshore, inshore and coastline) are home to a rich and diverse range of species and habitats. This is due to the unique geographical location, where warm southern waters mixed with cold northern waters, resulting in high levels of productivity and a food rich environment. These

9 Established under CDB Art 25

10 Sue Kidd, Andy Plater, Chris Frid (eds) *The Ecosystem Approach to Marine Planning and Management* (Earthscan 2011) 5 - 6

11 Fifth Ordinary Meeting of the Conference of Parties to the Convention on Biological Diversity, 15 – 26 May 2000, Nairobi, Kenya, COP Decision V6 Ecosystem Approach, Section A para 1 < <http://www.cbd.int/decision/cop/?id=7148> > accessed on 16th July 2013

12 *Ibid* (n. 11) para 2

13 First Joint Ministerial Meeting of the Helsinki and OSPAR Commissions, (JMM) Bremen 25 – 26 June 2003, Statement on the Ecosystem Approach to the Management of Human Activities, 'Towards an Ecosystem Approach to the Management of Human Activities' Record of the meeting, Annex 5, para 3 < <http://www.helcom.fi/stc/files/BremenDocs/JointEcosystemApproach.pdf> > accessed on 18th July 2013

14 *Ibid* (n. 13)

15 *Ibid* (n. 13) para 4 a

16 *Ibid* (n. 13) para 4

17 *Ibid* (n. 13) para 4

18 *Ibid* (n. 13) para 5

ecosystems are home to a diverse range of animals and plants, including plankton, cold water corals, fish, seabirds, dolphins and whales. This ocean wealth provides essential non-market goods and services (nationally and globally) often referred to as ecosystem goods and services. The IMP defines ecosystem goods and services as the benefits arising from the ecological functions of healthy ecosystems. Such benefits accrue to all living organisms, including animals and plants rather than humans alone. There is a growing recognition of the importance to society that ecological goods and services provide for health, social, cultural and economic needs¹⁹. This is recognised in Goal 2 of the IMP which provides for the achievement of healthy ecosystems which includes protecting and conserving Ireland's rich marine biodiversity and ecosystems; managing the living and non living resources in harmony with the ecosystem; and implementation and compliance with environmental legislation²⁰.

2.3.2. Marine Spatial Planning (MSP)

Marine spatial planning is widely accepted as the 'tool' for delivering the ecosystem approach in the marine environment.²¹ Although, "there is no universally agreed definition of MSP,"²² it has been described as a:

"strategic plan (including forward looking and proactive) for regulating and managing human uses, while protecting the marine environment, including through allocation of space, that addresses the multiple, cumulative and potentially conflicting uses of the sea and thereby facilitates sustainable development".²³

MSP is an adaptive, map-based zoning approach relying on geographical information systems, for planning in the marine area, balancing the demands for space and the often conflicting activities that are carried out, enabling sustainable economic growth while at the same time preserving and maintaining the ecosystem. Marine spatial planning does not manage the marine environment but facilitates the ecosystem approach to management measures which are then introduced, providing the "potential to guide single sector management toward

¹⁹ Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.17

²⁰ Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p. 25

²¹ Paul M Gilliland and Dan Laffoley 'Key elements and steps in the process of developing ecosystem-based marine spatial planning' (2008) 32 *Marine Policy* 787

²² ABPmer. Marine Spatial Planning. Literature Review

<http://www.abpmer.net/mspp/docs/finals/MSPliteraturereview_Final.pdf> accessed 18th July 2013

²³ Jan Ekebom et al 'Towards Marine Spatial Planning in the Baltic Sea: Balance Technical summary Report 4/4,' May 2008 6, para 2.1 <<http://balance-eu.org/xpdf/balance-technical-summary-report-no-4-4.pdf>> accessed 18th July 2013

integrated sea use”.²⁴ Initially, MSP was regarded by the EU as an environmental policy; however, it is now regarded as a sector neutral approach with the objectives of protecting the marine environment and promoting economic growth in maritime activities.²⁵

2.4. Conclusion

The Legal Research project’s work was informed by the broad definitions set out above of marine spatial planning and the ecosystem-based approach. It was concluded that the vision for Ireland’s marine environment and the development of marine planning as set out in the IMP and in particular Goals 1 and 2 relating to economic development while at the same time protecting the marine environment, could be achieved through a marine spatial planning framework that incorporated the ecosystem-based approach.

This project is tasked with developing options for a marine spatial planning framework for Ireland. The next part of the report details the research findings and conclusions in relation to international, EU and national law. This work, along with the case studies, enables the identification of the options for a marine spatial planning framework, which are set out in sections 4 and 5 of the report.

24 Fanny Douvere 'The importance of marine spatial planning in advancing eco-based sea use management' (2008) 32 *Marine Policy* 762 at 770

25 Anne-Michelle Slater 'What is Marine Spatial Planning?' *Environmental Law Review* (2012) 14 (1)

3. RESEARCH FINDINGS

3.1. International Legal Review

3.1.1. UNCLOS

The first stage of the research was to identify existing constraints and obligations under international law relevant to the development of a marine spatial planning regime. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides Ireland (and other signatory states) with international authority to legislate in the marine environment. UNCLOS seeks to govern all aspects of the ocean; effectively removing 35% of the oceans “as a source of growing conflict between states”.²⁶ Under UNCLOS, the principle of sovereignty extends beyond the land into the marine environment to the exclusive economic zone (EEZ), some 200 nautical miles; and, to a lesser extent, beyond into the outer limits of the continental shelf (CS), which can be up to 350 nautical miles. UNCLOS and the 1994 Agreement²⁷ which implemented Part XI of UNCLOS, providing the governance framework for the 'Area' (i.e. the area beyond national jurisdiction), and established the International Sea Bed Authority, came into force on 16th November 1994. Together, these sought to provide a “comprehensive constitution for the oceans”.²⁸ Ireland ratified UNCLOS and the 1994 Agreement on the 21st June 1996²⁹, however, although Ireland played an instrumental role in the negotiations and the preparation of both UNCLOS and the 1994 Agreement on the implementation of Part XI, only certain areas have been implemented at a national level; for example, in connection with regulating marine scientific research, Ireland has not utilised UNCLOS to its full capacity³⁰. Appendix I provides a detailed tabular analysis of the rights and duties of Ireland under UNCLOS within the various zones established.

26 Report of the World Commission on Environment and Development: Our Common Future (1987) ch 10 para 51 <<http://www.un-documents.net/our-common-future.pdf>> accessed 18th July 2013

27 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea 10 December 1982 (1994)

28 “A Constitution for the Oceans” Remarks by Tommy T.B. Koh of Singapore, President of the Third United Nations Conference of the Law of the Sea. Adapted from the President on 6 and 11 December 1982 at the final session of the Conference at Montego Bay

29 UN Division of Ocean Affairs and Law of the Sea *Chronological list of ratifications of, accessions and successions to the Convention and Related Agreements as at 23rd January 2013* <[http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement relating to the implementation of Part XI of the Convention](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#Agreement%20relating%20to%20the%20implementation%20of%20Part%20XI%20of%20the%20Convention)> accessed 28th April 2013

30 Ronan Long *Marine Resource Law* Thomson Round Hall, Dublin: 2007 chapter 11

Furthermore, although the UK and Ireland have entered into an agreement delimiting the boundaries of the CS between the two countries,³¹ not all of the boundaries with neighbouring countries have been established.³² Ireland has made three submissions to the Commission on the Limits of the Continental Shelf (CLCS). An undisputed claim in respect of an extended continental shelf into the Porcupine Abyssal Plain was resolved in 2007 when the CLCS recommended that the extended continental shelf of Ireland in the area abutting the Porcupine Abyssal Plain be established.³³ A second joint submission with France, Spain and the UK, in respect of an area of the Celtic Sea and the Bay of Biscay was made in 2006 with the CLCS adopting a recommendation in respect of this on 24th March 2009.³⁴ However, the third submission in respect of the Hatton Rockall Area, submitted on 31st March 2009 is still to be determined.³⁵ Figure I illustrates the established legal boundaries.

Conclusion UNCLOS

In conclusion, the extent of Irish jurisdictional authority in each zone identified in Appendix I is determined by the following criteria:

- 1 the area concerned;
- 2 the resources concerned; and
- 3 the activity concerned.

As UNCLOS divides the sea into zones, a plan area is clearly established. Once the issues surrounding the extent of the CS have been resolved in areas beyond 200 nm, there would be

31 Agreement between the Government of Ireland and the Government of the UK concerning the delimitation of areas of the continental shelf between the two countries 7 November 1988 <<http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/GBR-IRL1988CS.PDF>> and Protocol Supplementary to the Agreement between the Government of Ireland and the Government of the UK concerning the delimitation of areas of the continental shelf between the two countries (7 November 1988) 8 December 1992 <<http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRL-GBR1992PCS.PDF>> accessed 22nd July 2013

32 Ronan Long *Marine Resource Law* Thomson round Hall, Dublin: 2007 chapter 3 para 3.84 – para 3.102

33 Recommendations of the Commission of the Limits on the Continental Shelf in regard to the partial submission made by Ireland on 25 May 2005 on the proposed outer limit of its Continental Shelf beyond 200 nautical miles in the area abutting the Porcupine Abyssal Plain <http://www.un.org/Depts/los/clcs_new/submissions_files/irl05/irl_rec.pdf> accessed 22nd July 2013

34 Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Joint Submission made by France, Ireland, Spain and the United Kingdom of Great Britain and Northern Ireland in respect of the area of the Celtic Sea and the Bay of Biscay on 19 May 2006 <http://www.un.org/Depts/los/clcs_new/submissions_files/frgbires06/fisu_clcs_recommendations_summary2009.pdf> accessed 22nd July 2013

35 See: <http://www.un.org/Depts/los/clcs_new/commission_submissions.htm> accessed 23rd July 2013

no legal impediment to any plan adopted under a marine spatial planning system dealing with development rights to the extent of the CS, as either agreed between neighbouring states or as recommended by the CLCS. However, any legislation introducing MSP in Ireland would have to take into account the rights and duties imposed by UNCLOS.

Although UNCLOS is the key Convention relating to the marine environment, others are also crucial. By entering into international conventions, Ireland is provided with the rights conferred, but also accepts the obligations imposed. However, not all conventions necessarily impose obligations, some are framework in nature and establish international bodies empowered to adopt legal instruments to govern specific matters as agreed by the state parties to the convention. The relevant treaty obligations can be divided into four categories:

- **Regional** dealing with particular areas, for example, the Convention on the Conservation of Antarctic Marine Living Resources (1980);
- **Sectoral** focussing on particular activities, for example, preventing pollution as in the 1972 Convention on the prevention of marine pollution by dumping of wastes and other matter;
- **Species specific** preserving particular species or lists of species important for their economic value;³⁶ and
- **Framework in nature** such as the 1948 Convention on the International Maritime Organisation.

The following require further consideration:

- 1948 Convention on the International Maritime Organisation
- 1972 Convention concerning the Protection of World Cultural and Natural Heritage (World Heritage Convention)
- 1992 Convention for the Protection of the North East Atlantic (the OSPAR Convention)
- 1992 Convention on Biological Diversity (CBD)

36 Cyrille De Klemm in collaboration with Clare Shine Biological Diversity Conservation and the Law, Legal Mechanisms for Conserving Species and Ecosystems (IUCN Environmental Policy and Law Paper No 29 IUCN Gland, Switzerland: 1993) p. 7

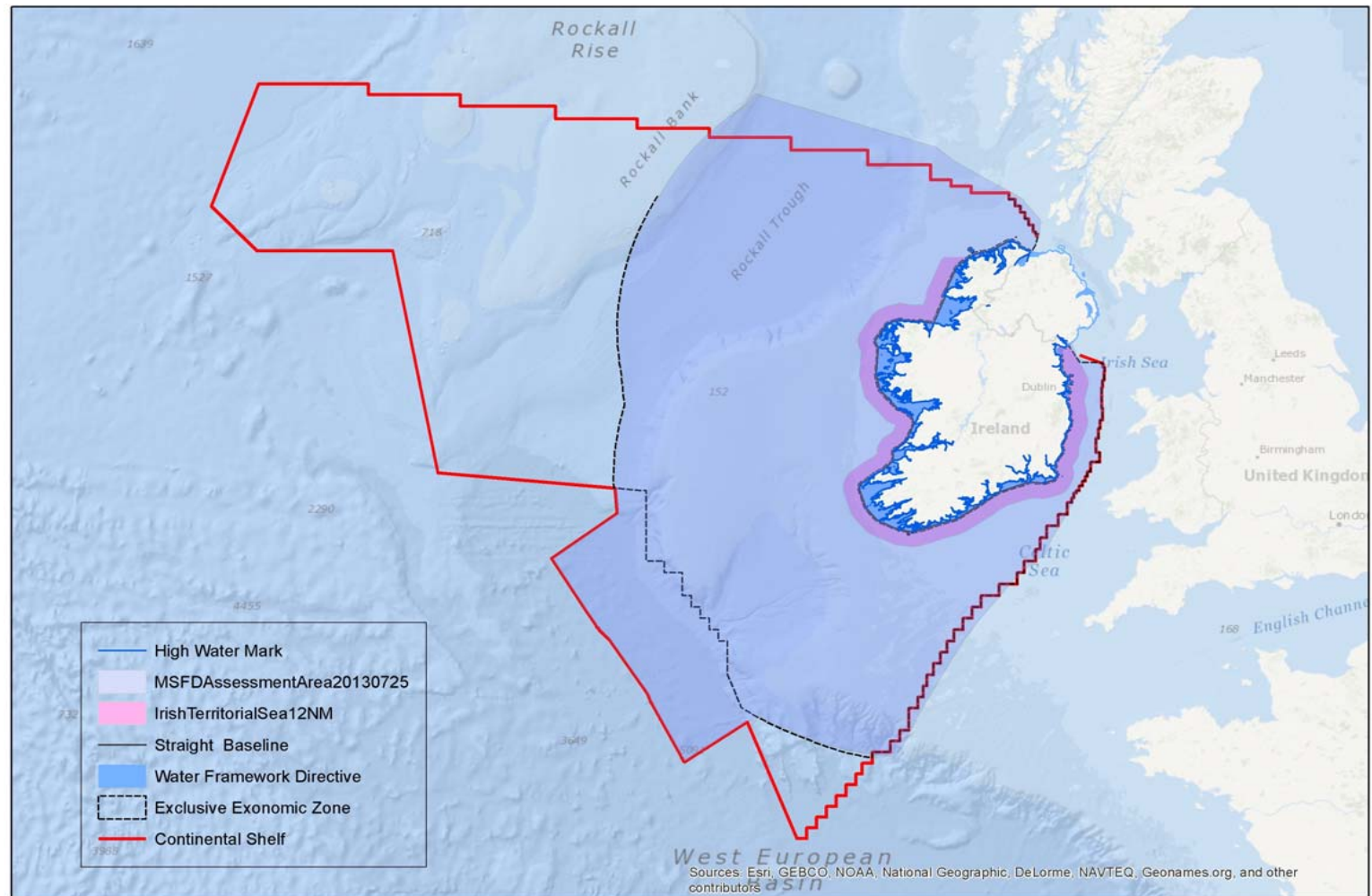


Figure I – Legal Boundaries

3.1.2. A Framework Convention - Securing the Freedoms of Other States

The 1948 Convention on the International Maritime Organisation (IMO) is a framework convention, which formally established the IMO. Ireland signed the Convention in 1948 and accepted it on 26th February 1951.³⁷ The IMO is a UN specialised organisation that deals with safety and security of shipping and the prevention of pollution from ships.³⁸ It is the 'internationally accepted organisation' referred to throughout UNCLOS in connection with shipping standards, shipping lanes, international straights for navigation, etc. Shipping lanes/amendments to existing lanes are proposed by governments, these are then adopted by the IMO³⁹. Numerous conventions have been adopted through the IMO and these are listed in Appendix II. Of particular relevance is the Western European Particularly Sensitive Sea Area (PSSA), designated by the IMO in October 2004, which incorporates the sea adjacent to Ireland. Appendix III provides a copy of the chart that accompanies the designation.

Conclusion IMO

As a result of the above noted designation, there are mandatory reporting requirements within the area on specified ships and ships carrying specified cargo⁴⁰. Furthermore, should any future plan adopted under a MSP system have implications for shipping lanes/international straights currently adopted by IMO, a collaborative process would need to be initiated with the IMO.

3.1.3. A Sectoral Focus - Conserving Specific Sites

The 1972 World Heritage Convention (WHC) aims to identify, protect and conserve cultural and natural heritage sites. It acknowledges property rights and the sovereignty of participating states, however, states undertake not to take any deliberate measures that might damage directly or indirectly cultural and natural heritage sites designated within their territory.⁴¹ Ireland ratified the Convention on 16th September 1991.⁴² There is one marine designated site,

37 Convention on the International Maritime Organisation 1948 Status as at 29/04/2013
<http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-I&chapter=12&lang=en> accessed 29th April 2013

38 The Convention came into force in 1958 with the first meeting held in 1959.

39 For further details see: LEG/MISC.7 January 2012 *Implications of the United Nations Law of the Sea for the International Maritime Organisation* p.31
<<http://www.imo.org/ourwork/legal/documents/implications%20of%20unclos%20for%20imo.pdf>> accessed 30th April 2013

40 IMO Resolution MEPC 121 (52)
<[http://www.imo.org/blast/blastDataHelper.asp?data_id=15724&filename=121\(52\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=15724&filename=121(52).pdf)> accessed 17th July 2013

41 WHC Art 6

42 See <<http://whc.unesco.org/en/statesparties/>> accessed 29th April 2013

Sceilg Mhichil designated 1996.⁴³ The area surrounding Sceilg Mhichil is also the second largest gannet colony in the world.⁴⁴ However, although the area around Sceilg Mhichil is designated as a special protection area under SI No. 74 of 2010⁴⁵, the designation does not reflect the operational guidelines for the World Heritage Convention which states that national legislative and regulatory measures should ensure the “survival of the property and its protection against development and change that might negatively impact the Outstanding Universal Value, or the integrity and/or authenticity of the property”.⁴⁶

Conclusion WHC

In order to fully comply with obligations under the WHC, any future MSP would need to take into consideration why this site was designated and Goal 3 in the IMP, which aims “to increase our engagement with the sea. Building on our rich maritime heritage, our goal is to strengthen our maritime identity and increase our awareness of the value (market and non-market), opportunities and social benefits of engaging with the sea”.⁴⁷

3.1.4. Ensuring Conservation Management Generally

The Convention on Biological Diversity (CBD) entered into force in December 1993, and was ratified by Ireland on 22nd March 1996.⁴⁸ The Convention starts from the position that biological diversity is important in its own right, in addition to the crucial role it plays in sustaining the planet and the value it offers humans.⁴⁹ Biological diversity is the “common concern of humankind” and defined as “the variability among living organisms from all sources including *inter alia* terrestrial, marine and other aquatic ecosystems and ecological complexes of which they are part: this includes diversity within species, between species and

43 See <<http://whc.unesco.org/en/statesparties/ie>> accessed 29th April 2013
Skellig Michael (1996), renamed Sceilg Mhichil in 2012. These are Sea Craggs approximately 12 km (6.48 NM) west of Iveragh Peninsula in Co. Kerry which were the sites of an ancient monastery. Inscribed on the list under categories (iii – that it bears a unique or exceptional testimony to a cultural tradition or to a civilisation which is living or which has disappeared) & (iv - that it is an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates a significant stage in human history)□

44 <<http://mida.ucc.ie/pages/information/information.php?goto=/pages/information/mgmt/protectedAreas/international/overview.htm>> accessed 23rd July 2013

45 SI No 74 of 2010 European Communities (Conservation of Wild Birds (Skelligs Special Protection Area 004007)) Regulations 2010.

46 Operational Guidelines for the World Heritage Convention, WHC 12/01 July 2012 para 98
<<http://whc.unesco.org/archive/opguide12-en.pdf>> accessed 18th July 2013

47 Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) executive summary p.ii

48 See: <<http://www.cbd.int/convention/parties/list/default.shtml>> accessed 18th July 2013

49 CBD Preamble

ecosystems”.⁵⁰ The objectives of the Convention include the “conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources”.⁵¹ Under the Convention, states are obliged to establish (as far as possible) a system of protected areas in order to conserve biological diversity.⁵² Protected areas are defined as “a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives”⁵³. The jurisdictional scope of the Convention is far reaching; it covers areas within national jurisdiction and activities or processes carried out under a state’s jurisdiction or control in areas beyond national jurisdiction.⁵⁴

Conclusion CBD

As already noted above, the diversity of the Irish marine ecosystem is recognised in the IMP⁵⁵. In order to achieve the vision of the IMP, Goal 2 identifies healthy ecosystems as essential to protect and conserve Ireland’s rich marine biodiversity and ecosystems; manage the living and non living resources in harmony with those ecosystems; and implement and comply with environmental legislation. It also acknowledges that healthy ecosystems “should be seen as an essential enabler for a thriving maritime economy”.⁵⁶ To comply with the obligations imposed by the Convention on Biological Diversity, marine protected areas need to be established, with management plans implemented within these. This obligation extends to the outer limits of the CS and in areas beyond national jurisdiction. It is clear that any future MSP system should take account of conservation management and, in particular, the designation of marine protected areas.

3.1.5. A Regional Focus - Incorporating Pollution Controls and Conservation Management

The OSPAR Commission deals with pollution and conservation management. It was established under the Convention for the Protection of the North East Atlantic 1992 (the OSPAR Convention) and places the contracting parties under the obligation to individually and jointly adopt measures and harmonise policies to protect the marine environment not only from pollution, but also from the adverse impacts of human activities in order to “safeguard

50 CBD Art 2

51 CBD Art 1

52 CBD Art 8

53 CBD Art 2

54 CBD Art 4

55 See paragraph 3.3.1 above

56 Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.25

human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected”.⁵⁷ The Convention applies to “the internal waters and the territorial sea under the jurisdiction of the coastal state to the extent recognised by international law, and the high seas, including the bed of all those waters and its subsoil...excluding parts of the Atlantic and Arctic Oceans”.⁵⁸ The 1992 OSPAR Convention is a combination of the 1972 Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (the OSLO Convention) and the 1974 Convention for the Prevention of Marine Pollution from Land-Based Sources (the Paris Convention). However unlike the two earlier Conventions, contracting states enshrined the precautionary principle; the use of best environmental practice and best available technology; and the polluter pays principle into the actual convention.⁵⁹ The OSPAR Convention came into force in 1998, the same year as the first meeting of the OSPAR Commission was held, during which Annex V on the protection and conservation of the ecosystems and biological diversity of the maritime area was added to the Convention and the fifteen contracting states (UK, Belgium, Finland, France, Ireland, Iceland, Norway, the Netherlands, Portugal, Spain, Denmark, the European Community, Sweden, Luxembourg and Switzerland) agreed that a network of marine protected areas (MPAs) would be established. In order to inform the Commission of the conservation measures that need to be adopted, the contracting states are obliged to prepare quality status reports for each of the five marine regions covered by the convention in accordance with Annex IV.⁶⁰ Legally binding decisions on a range of issues including decommissioning offshore installations in the North East Atlantic also come under the legal framework of the OSPAR Convention.⁶¹

Conclusion OSPAR and Ireland

OSPAR integrates all sources of pollutions into the Convention, i.e. land based and marine based pollutions, recognising that activities within the terrestrial environment impact upon the marine environment. Ireland also undertook to create a network of marine protected areas, however there is no specific national legislation underpinning any such designations required

57 OSPAR Art 2 (1) (a)

58 OSPAR Art 1

59 OSPAR Art 2

60 OSPAR Art 6

61 The OSPAR Convention prohibits leaving disused installations in place or partially in place without a permit issued by the appropriate authority of the contracting body, and excludes this from the definition of 'dumping'. Deliberate disposal at sea of offshore installations does come within the definition of dumping, however, again this is prohibited without a permit issued by the appropriate authority of the contracting body. OSPAR Decision 98/3 prohibits the dumping or leaving wholly or partially in place of disused installations, and is binding on all contracting parties. It defines disused offshore installations as those installations which are no longer serving their original purpose or serving another legitimate purpose.

under international law⁶². Notwithstanding this, 19 MPAs were identified in Ireland by the 2011 Status Report on the OSPAR Network of Marine Protected Areas.⁶³ The identification of these areas resulted from OSPAR Recommendation 2010/2, which amended Recommendation 2003/3 on a network of Marine Protected Areas and obliged contracting parties to consider whether any marine sites designated under either the Birds Directive or the Habitats Directive should also be proposed to the OSPAR Commission as a component of the OSPAR Network of Marine Protected Areas.⁶⁴

3.1.6. Overall Conclusion International Conventions

From the above descriptions, it can be seen that Ireland has extensive rights to regulate activities within the marine environment. However, it is also under numerous obligations to conserve the marine environment within its jurisdictional control. The IMP requires the economic development of Ireland's marine resource but at the same time Goal 2 is to protect, preserve and, where possible to restore Ireland's rich marine biodiversity and ecosystems; to manage the living and non-living resources in harmony with those ecosystems; and to implement and comply with environmental legislation. As UNCLOS divides the sea into zones, a plan area is clearly established. Once the issues surrounding the extent of the CS have been resolved in areas beyond 200 nm, there would be no legal impediment to any plan adopted under a marine spatial planning system dealing with development rights to the extent of the CS as either agreed between neighbouring states or as recommended by the CLCS. This review of international legislation highlights that Ireland is not utilising UNCLOS to its full capacity; is not fully compliant with its international obligations in relation to creating a coherent network of marine protected areas under CDB and is struggling in connection with obligations under the WHC. If no action is taken, this situation will continue. The implementation of a marine spatial planning framework could enable compliance with these key international conventions and facilitate achievement of the three high level goals identified within the IMP.⁶⁵

62 OSPAR Sites National Parks and Wildlife Service <<http://www.npws.ie/protectedsites/osparsites/>> accessed 23rd July 2013

63 See <http://www.ospar.org/documents/dbase/publications/p00577_2011%20status%20report%20on%20the%20network%20of%20mpas.pdf> accessed 23rd July 2013

64 OSPAR Recommendation 2003/3 consolidated version paragraph 3.3a

65 Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) executive summary p.ii-iii

3.2. European Context

Ireland has been a Member State of the European Union since 1972 and there is an extensive body of EU law relevant to marine spatial planning. The European Union also participates in the negotiations of international conventions and has signed and ratified numerous International measures. Participation by the EU in an international convention enables it to adopt legally-binding instruments, either directives or regulations, for the implementation of the treaty obligations throughout the EU. However, it is noted that measures adopted to transpose International Conventions into European legal instruments do not always fulfil the obligations imposed, and that the EU can be a party to and approve a Convention when an individual Member State (MS) has not, resulting in the EU being held accountable by the ICJ for alleged failures by Member States.⁶⁶ For this study, the Convention on Environmental Impact Assessments in a Transboundary Context 1991 (ESPOO Convention), the Protocol on Strategic Environmental Assessment thereto (2003, Kiev) and the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998) (The Aarhus Convention) have been reviewed through the measures adopted at a European level. The choice of implementing mechanism adopted by the EU has a bearing on Member States, as directives are binding upon Member States as to the results to be achieved, but leave the choice of form and method to the national authorities, for example, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive) (MSFD). In contradistinction, Regulations are directly applicable in Member States and do not require any transposition into national legislation, for example, Council Regulation (EC) No 2371/2002 of 20 December 2002 on the Conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, which is currently under review (see COM (2011) 425 final, Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy). Furthermore, European legislation takes precedence over Irish law including the Constitution.⁶⁷

66 Findings and recommendations with regard to communication ACCC/C/2010/54 concerning compliance by the European Union ECE/MP.PP/C.1/2012/12
<http://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-39/ece.mp.pp.c.1.2012.12.as_submitted.pdf> accessed 18th July 2013

67 Meagher v Minister for Agriculture and Food [1994] I.I.R. 329

3.2.1. Marine related Obligations under EU Law

The original treaty establishing the European Economic Community (EEC) did not provide direct powers for the Community within the sphere of environmental protection.⁶⁸ However, a programme of action on the environment was adopted in 1973⁶⁹. Since that date, the EU has been active in introducing regulations and directives that directly impact upon the marine environment. Appendix IV provides details of some of the other relevant EU Directives reviewed, the obligations imposed upon MS, together with the spatial application/jurisdictional scope of the directive and relevant deadlines.

In recent years there have been a number of stages in the development of an holistic approach to marine policy and regulation at EU level. The existing legislative framework was recognised in 2005, as insufficient to provide adequate marine protection, therefore, the EU committed to introducing a binding legal framework with the view to achieving good environmental status of Europe's seas⁷⁰. The next stage was the development of An Integrated Maritime Policy for the European Union,⁷¹ which identified the potential for economic development from marine related activities, for the benefit of the European economy generally and especially for coastal communities; it noted that MSP was “a fundamental tool for the sustainable development of marine areas and coastal regions, and for the restoration of Europe's seas to environmental health”.⁷² The most recent stage was the enactment of the Marine Strategy Framework Directive (MSFD) and this is discussed in more detail below.

3.2.2. Marine Strategy Framework Directive

The preamble to the MSFD recognises that in order to promote sustainable use and conserve marine ecosystems, an ecosystem-based approach to ocean governance needs to be adopted to create coherence between different policies and encourage greater cooperation and coordination between different MS. The Directive, places Member States under an obligation to “achieve or maintain good environmental status of the marine environment”.⁷³ Good environmental status (GES) is measured on a regional basis⁷⁴; and mirror the Regional Seas

68 Clare Coffey and Saskia Richartz The EU Habitats Directive: Generating strong responses' Project Deliverable No D 17 Institute for European Environmental Policy (March 2003)
<http://ecologic.eu/download/projekte/850-899/890/in-depth/eu_habitats_directive.pdf> accessed 18th July 2013

69 Official Journal C 112, 20/12/1973 p.1

70 COM (2005) 504 Final

71 COM (2007) 575 Final

72 COM (2007) 575 Final p.6

73 Directive 2008/56/EC Art 1 (1)

74 Directive 2008/56/EC Art 3 (5)

Conventions applicable across EU territory.⁷⁵ In order to achieve 'good environmental status', MS have to adopt and implement marine strategies that apply an “ecosystem-based approach to the management of human activities”.⁷⁶ Good environmental status is defined as “ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and [where] the use of the marine environment is at a level that is sustainable” enabling “ecosystems to function fully and maintain their resilience...” where human activities “support ecosystems...” and “...do not cause pollution effects”.⁷⁷ It requires that “all relevant human activities are carried out in coherence with the requirements of protecting and preserving the marine environment and the concept of sustainable use of marine goods and services by present and future generations”.⁷⁸ Although it is accepted that in certain 'instances' it may not always be possible to achieve the objectives of the Directive and good environmental status, this is worded so as to be exceptional and MS are still required to pursue environmental targets.⁷⁹ It is also recognised that good environmental status may vary throughout Europe. To fulfil the requirements of the Directive, each member state has to carry out a five step process as set out below.⁸⁰

Table 1: The 5 step process to achieving Good Environmental Status

	Step
1	Assess the current status of their waters according to the indicative criteria set. This includes the characteristics of the area, the pressures upon the area and the impacts (Article 8 and Annex III)
2	By reference to this initial assessment, determine what GES is in their waters, on the basis of the descriptors for GES, again taking into account the indicative lists aforementioned (Article 9, Annex I and Annex III)
3	Establish targets and indicators to guide progress towards GES (Article 10)
4	Establish monitoring programmes for ongoing assessment (Article 11)
5	Establish programmes of measures to achieve or maintain GES (Article 13)

To provide a basis for initial assessments, eleven qualitative descriptors for determining good environmental status are provided in Annex I of the Directive. Commission Decision of 1 September 2010 on criteria and methodological standards on good environmental status of

75 Ned Westaway 'Legislative Comment The new European Marine Strategy Directive' (2008) *Environmental Law Review* 218

76 Directive 2008/56/EC Art 1 (2) and Art 1 (3)

77 Directive 2008/56/EC Art 3

78 2010/ 477/EU Annex Part A para 3

79 Directive 2008/56/EC Art 14. In addition see paragraphs 29 – 33 of the preamble to Directive 2008/56/EC

80 Directive 2008/56/EC Art 5

marine waters, elaborated upon these descriptors in connection with the criteria and methodological standards to be applied, providing a common framework across the EU.⁸¹

The analysis of GES under the MSFD incorporates the requirements of other Community legislation and policies, for example the Water Framework Directive (Directive 2000/60/EC), the Environmental Quality Standards Directive (Directive 2008/105/EC), the Common Fisheries Policy, in addition to international and regional commitments.⁸² Following initial assessments and the determination of what constitutes GES within their waters, MS have to establish measurable targets, taking into account an indicative list set out in Annex V⁸³; and set up co-ordinated monitoring programmes.⁸⁴ Crucially, to achieve or maintain GES, programmes of measures have to be introduced, this is the “core substantive provision” of the Directive⁸⁵. These have to adopt an ecosystem-based approach and include “spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, such as special areas of conservation, pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties”.⁸⁶

MSP is widely accepted as the 'tool' for delivering the ecosystem approach in the marine environment and was specifically referred to by the Integrated Maritime Policy for the European Union. The subsequent development of the Marine Strategy Framework Directive⁸⁷ which represents the “environmental pillar of the Integrated Maritime Policy” within the EU88, provides the impetus for MS (although not the obligation) to introduce MSP.

In 2011, the Commission commenced enforcement proceedings against some MSs, including Ireland for failure to transpose the Marine Strategy Framework Directive into national law, which had been required by 15 July 2010. Regulations made later that year, relying on the powers contained in s. 3 of the 1972 European Communities Act, gave the responsibility for developing Ireland's marine strategy to the Minister for the Environment, Community and

81 2010/477/EU

82 2010/477/EU Annex Part A para 2

83 Directive 2008/56/EC Art 10

84 Directive 2008/56/EC Art 11

85 Ned Westaway 'Legislative Comment The new European Marine Strategy Directive' (2008) Environmental Law Review 218

86 Directive 2008/56/EC Art 13 (4)

87 Directive 2008/56/EC

88 2010/477/EU

Local Government (SI 249 of 2011) and stated, in the Explanatory Note, that they provide for the required transposition of Directive 2008/56/EC.

The next dead-lines imposed under the MSFD are approaching fast. By 15th July 2014, Ireland along with other MS has to develop and implement monitoring programmes for ongoing assessments and updating of targets⁸⁹; and programmes of measures to achieve GES have to be developed by 2015 and implemented by 2016 at the latest.⁹⁰ This report has already noted that⁹¹ the EU has introduced a proposed Directive, which if adopted, will introduce an obligation on MS to establish maritime spatial planning systems at a national level⁹². Negotiations on the proposed MSP Directive are ongoing.

Overall conclusion EU laws

Appendix IV of this report demonstrates that Ireland is under numerous obligations relevant to the marine environment. For example, under the MSFD, Ireland, like other MS, shall take the necessary measures to achieve or maintain good environmental status throughout its waters recognised under International law by 2020. Under the Water Framework Directive, Ireland is obliged to identify and assign all river basins within its national territory into river basin districts. Coastal waters (which includes waters up to 1 nm from the baseline used to measure the territorial sea) and ground waters that do not follow a particular river basin are assigned to the nearest or most appropriate river basin districts in order to achieve good ecological and chemical status by 2015. Under the Bathing Waters Directive, Ireland is obliged to classify and to ensure the standard of bathing waters is at a minimum 'sufficient' by 2015. Under both the Birds and Habitats Directives, Ireland is obliged to create protected areas to ensure the species identified within the Directives and their habitats are protected. Whether or not to adopt additional MPAs, over and above those already adopted under the Birds and Habitats Directive, "is at the discretion of member states". However, more MPAs may well be required, as GES under the MSFD is wider in scope than conservation status under the Birds and Habitats Directive. It has also been recognised that MPAs are crucial when adopting an ecosystem approach and a key component of marine spatial planning.⁹³ In order to ensure

89 Directive 2008/56/EC Art 5 (2) (a) (iv)

90 Directive 2008/56/EC Art 5 (2) (b)

91 Paragraph 3.1 above.

92 COM (2013) 133 final

93 Monitoring and Evaluation of Spatially Managed Areas Deliverable 1.1 Review Documents on the Management of Marine Areas with particular regard on Concepts, Objectives, Frameworks and Tools to Implement, Monitor and Evaluate Spatially Managed Areas (August 2010) p.46
<<http://www.mesma.org/default.asp?ZNT=SOTIO-IP25> > accessed 18th July 2013

compliance with existing EU/International legal obligations, assessments are required and targets need to be established. These assessments and targets could be utilised in a statutory framework introducing MSP in Irish waters. Furthermore, by introducing MSP, the system introduced could facilitate effective compliance with EU obligations, in particular, the development of a programme of measures required under the MSFD.

3.3. National Context

This project required a detailed assessment of existing relevant Irish legislation, including interactions between marine spatial planning and national legislation and policies. This included terrestrial planning, foreshore and aquaculture licensing and offshore energy legislation; policies and plans. The study identified the relevant national legislation and a desk study was undertaken on a sectoral basis. The internal sectoral input reports provided a detailed breakdown of the legislation to inform the development of the project. Once a general overview had been provided, it was decided, with agreement of the Working Group, to focus on four key areas: renewable energy, aquaculture, mineral extraction and oil and gas development. It was recognised that these particular marine sectors would have relevance for the design of a framework for marine spatial planning for Ireland, as well as the potential for economic development. Furthermore, these sectors were highlighted as growth areas in the IMP and most recently, in the Atlantic Strategy,⁹⁴ which set out priorities for investment and research to drive forward the blue economy into the Atlantic, while at the same time conserving the Ocean. The Action Plan has a span until 2020 setting out priorities that have the potential to create 7 million jobs by 2020.⁹⁵ The law relating to the foreshore and the links with the terrestrial/ land use planning regime were also considered.

It is clear, however, that the national legislation governing activities within the marine environment is extremely complex.⁹⁶ This is exacerbated by numerous transfers of responsibility between departments; changes of departmental names; the number of

⁹⁴ It should be noted that aquaculture, mineral extraction and renewable energy were highlighted as growth areas in the Atlantic Strategy. COM (2013) 279 final p. 5 and p.7

⁹⁵ COM (2013) 279 final p. 2

⁹⁶ Although there does not appear to be any major issues facilitating the development of the aquaculture industry under national law, the same can not be said for the development of the mineral extraction and the offshore renewable energy sectors. For example under national legislation, minerals are defined as “all substances (other than the agricultural surface of the ground and other than turf or peat) in, on, or under land...” including “all scheduled minerals”. There are approximately 70 scheduled minerals in the Minerals Development Act 1940, however, there is no statutory definition of what constitutes a marine aggregate. For example: Sand and gravel are classed as 'beach materials' with extraction governed under the Foreshore Acts 1933 - 2011

departments involved and a tendency to implement European directives by statutory instrument. Long, for example, notes that “the number of bodies responsible for water management and pollution control has been highly criticised”.⁹⁷ Appendix V identifies the national legislation governing these sectors, (aquaculture, marine aggregates, renewable energy and oil and gas) and national policies where applicable. Where the analysis has identified gaps, these have been highlighted.

Conclusion national legislation

The review of national legislation highlighted that there is an intricate web of relevant sectoral law for the marine area, developed in isolation over many years. It is considered that the current legislative framework does not facilitate economic growth in the areas highlighted (aquaculture, marine aggregates, renewable energy and oil and gas), nor does the current system facilitate coordination between sectors to enable either integration with the land use planning system (where appropriate) or the development of marine spatial planning regime.

3.4. Case Studies

The case studies identified for the project were Germany (North Sea), The Netherlands, USA, Canada and the UK, including the separate arrangements in England and the devolved administrations of Scotland, Wales and Northern Ireland. These case studies were identified in conjunction with the Working Group. The general approach taken was to identify for each case study area the following questions:

- Was primary legislation introduced?
- What was the role of the marine plan?
- Does the system explicitly promote sustainable development (economic, environmental, social)?
- How does it ensure public and stakeholder participation?
- What are the arrangements for the spatial and sectoral integration for the benefit of licensing/consenting and management?
- Does it support an ecosystem-based approach in the management of competing uses/activities?
- Are evidence based policies implemented, monitored and reviewed?

⁹⁷ Ronan Long *Marine Resource Law* Thomson Round Hall: Dublin: 2007 p.598

- Does it effectively ensure compliance with existing EU (if applicable) and International legal obligations?
- Does it provide mechanisms for international coordination of marine plans?
- Does it allow for the coordination of national marine and terrestrial planning systems?

These questions were broadly in line with the testing criteria which had been adopted by the project group to test the emerging options for a framework of marine spatial planning in Ireland.

This work was being undertaken in parallel with the review of the international, EU and national laws, as well as the development of the options for Ireland and the testing of these. It soon became apparent that a detailed comparison of the Marine and Coastal Access Act 2009 (UK) and the Marine (Scotland) Act 2010 was extremely helpful in teasing out the issues that were emerging in the testing of the options and in particular the initial recommendations in relation to the preferred options. This exercise is included at Appendix VI. This area of the case study work has been dealt with in more detail than the others. This approach was agreed with the Working Group. An overview of the case studies is provided in the following sections.

Germany: The North Sea adjacent to Germany is an early example of the successful introduction of MSP. There already existed marine national parks (e.g. Lower Saxon Wadden Sea National Park) supported by legislation. There was also extensive use of local ICZM projects and a national ICZM policy. From 2001, Regional Development Plans created by coastal *landers* were extended to include territorial waters. From 2004, legislation to enable the creation of a spatial plan for the German EEZ was introduced. In relation to the North Sea, the EEZ spatial plan identified the need to coordinate the key sea uses and functions of: shipping; the exploitation of resources; laying of pipelines and submarine cables; scientific marine research; wind power production, fisheries and mariculture, as well as protection of the marine environment. The spatial plan also contributed to the national policy for sustainable use of the seas and protection of the seas.

The Netherlands (The North Sea) created an Integrated Management Plan for the North Sea, initially on a non-statutory basis. The Spatial Planning Act 2008 and the Water Act 2009 extended jurisdiction into the Netherlands territorial sea and EEZ. The use of opportunity mapping is regarded as innovative and inclusive.

The **United States of America** were pursuing a marine planning policy at Federal level primarily through the National Ocean Council when the 2010 oil rig disaster (with the subsequent loss of life and extensive pollution of the Gulf of Mexico) resulted in President Obama's National Policy for the Stewardship of the Ocean, Our Coasts and the Great Lakes. The National Ocean Council has recently (16th April 2013) released the National Ocean Policy implementation plan. This describes specific actions Federal agencies will take to address key ocean 'challenges' and give states and communities greater input in Federal decisions, the process for which will also be streamlined. It is anticipated that this will both save money and promote economic development. In relation to marine planning, the implementation plan specifies that regional stakeholders will determine the scope, scale and content of collaborative marine planning, that participation is voluntary and that regional planning bodies will be established only in regions that want them. The National Ocean Council issued a Marine Planning Handbook (19th July 2013) to support the efforts of regions that choose to engage marine industries, stakeholders, the public and government to advance their economic development and conservation priorities. The handbook provides guidance on how regions can address their priorities through 'bottom up, transparent, science based processes'.

Canada was at the forefront of identifying and addressing problems within the existing approach to marine management and passed the Oceans Act in 1997. This was followed by extensive policy development at national level. The legislation enabled the development of integrated ocean management projects. The Canadian experience is extensively detailed in the Best Practice Study, including the difficulties with the implementation of the project.

United Kingdom : The Marine and Coastal Access Act 2009 introduces statutory framework for marine planning to the United Kingdom. It provides the detail for England and enables the devolved administrations to develop their own system of marine planning. It is noted that the different countries are at different stages, with, for example, Northern Ireland's Assembly having recently passed a Marine Bill. The Marine Policy Statement (2011) set common high level objectives for the United Kingdom as a whole. It is interesting to observe how these are being translated into marine planning regimes in the 'home nations'. Scotland, for example is developing a National Marine Plan, which will align with the National Planning Framework, the third version of this is currently in development. Detailed planning in Scotland will take place at Regional level and the region areas are still in the process of being finalised. These regions will produce regional marine plans in due course. England is most advanced in the process of marine plan development. The emerging plans have been through a sustainability appraisal and an extensive public participation process; however, it is still too early to assess the plans and

their impact. The Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 are therefore compared with regard to the detail of the legislation (Appendix VI).

Conclusion Case Studies

The case studies highlight not only the various ways of introducing MSP, but also how one approach can be replaced by another over time. Ireland has particular challenges to address, as set out in the IMP, and these are not exactly replicated in any of the case studies reviewed. Canada demonstrates that notwithstanding the recognition of particular issues and the passing of legislation to address them, implementation can be difficult. In particular, Canada's approach to sectoral plans has lessons for Ireland. The United States is proposing a voluntary approach at regional level, but in the context of sophisticated advice and guidance at national level. This is not an approach that was considered in any detail for Ireland. No one model emerged from the case study review as an option, but aspects of all them assisted with the development of the options and how they were tested.

The Full MSP was particularly influenced by the experience of the UK and Germany. The overlapping system drew on the approach of The Netherlands. The extended terrestrial system replicates, in part, what happens in Germany to 12 nautical miles. The forward planning system (minimal parallel) drew on aspects of the Canadian regime, but with particular reference to implementation of this option, the detailed comparison of the Marine and Coastal Access Act 2009 and the Marine (Scotland) Act 2010 was very instructive.

The case studies have to be considered in the light of the extent and use of the seas to which they relate. The political and policy background is also important. It is recognised that Ireland has an extensive marine area and a particular set of challenges and opportunities. The Irish Sea will be one area where the case studies will be of most relevance and where there are also the most issues in relation to cooperation, intensity of uses and the need for shared ocean space.

The results of the case study review informed the development of thinking in relation to the role of a marine plan; the licensing of marine activities; conservation of the marine environment; and conflict resolution; as well as the ideas behind place-based management, integrated management and co-ordinated management of marine resources, which are central to many marine spatial planning processes. It assisted with the development of the options and the testing criteria. It also enabled the detail of the preferred option to be developed.

Conclusion Legal Review and Case Studies

The legal review and case studies enabled the next stage of the project, which was to develop a framework for the introduction of marine spatial planning for Irish waters. The options have their foundations in the legal review and in particular the conclusions that were drawn from each study. The detail of the options now follows in the next section.

4. OPTIONS

The current vision and policy objective for marine spatial planning (MSP) in Ireland is that an integrated marine plan (IMP) “will be a key element of economic recovery and sustainable growth”.⁹⁸ It will be “designed to make a valuable contribution to getting the environment right for investment and so stimulate essential private investment” to help realise the potential of the marine economy and will allow a balance to be struck between protecting the marine environment (and its species and habitats) and maximising the use of its resources as a source of economic growth.⁹⁹

The final five options are :

- Do Nothing
- Full MSP regime
- Forward Planning System (Minimal Parallel)
- Overlapping system
- Extended terrestrial system

Each option is considered in turn. A detail consideration of each option is set out in Appendix VII.

4.1. Description of Options

4.1.1. Do Nothing

The existing situation would remain. There would be no specific introduction of marine spatial planning through legislation at national, regional sea basin, territorial sea or intertidal areas. There would be no requirement through legislation to prepare a marine plan or plans for Irish waters. Marine development proposal/activities would be assessed for licensing/permitting against any existing or future sectoral plans. Existing departments and responsibilities for the marine environment would continue as at present or could be reorganised under future arrangements. This was recognised as the base-line option.

⁹⁸ Harvesting Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.ii executive summary

⁹⁹ Harvesting Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.i. Executive summary

4.1.2. Full Marine Spatial Planning Regime

This option would be implemented through primary and secondary legislation. This would guide all marine spatial planning activities for Irish waters extending from the high water mark to the continental shelf. It would define the scope and objectives of an overarching national marine spatial plan with mandatory regional sea basin plans. It would integrate forward marine planning, marine planning/licensing, enforcement and conservation management. A new marine planning body would be established or created from existing departments and bodies. This could take place on a gradual basis, initially it could provide 'front door access' guiding developers through the process, but in time it could take over responsibility for consents, act as the data exchange and a repository for expertise in planning skills and implementation. It would source, coordinate, and share marine data for the purposes of marine planning policy development, decision making and marine conservation.

4.1.3. Forward Planning System (Minimal Parallel)

This option involves the introduction of a Forward Planning System through primary legislation, which would operate in parallel with the existing terrestrial system. While it would be separate from the land based planning system and policies, the forward planning system would be coordinated with the terrestrial system, as required. There would be no change to the marine consenting regime, and initially it would have no role in conservation management. The main focus of the legislation would be the statutory requirement for the preparation of a hierarchy of plans, with a statutory role for the plan in the decision making/licensing process. The forward planning system would immediately abut the terrestrial planning system at the high water mark and would extend to the continental shelf. The hierarchy would consist of a mandatory National Marine Spatial Strategy (NMSS) aligned to the National Spatial Strategy (NSS). There would be mandatory regional sea basin plans for areas of high pressure use and discretionary regional plans for other areas and integrated coastal zone management (ICZM) plans where required. An existing body with the appropriate expertise would be responsible for the preparation of the plans, but could coordinate with regional or local authorities as appropriate, particularly for ICZM plans.

4.1.4. Overlapping System

This option would be a mix of a statutory and non-statutory system and, where there is an overlap between the marine and terrestrial forward planning, there would at least be a requirement that during the preparation of plans (both marine and terrestrial) the other one is

taken into account. The existing permitting/consenting regime would remain in place. It would have a hierarchical system of plans, with a national marine strategy, regional sea basin plans and ICZM plans for the foreshore area/territorial waters. A government department or designated body would be responsible for the preparation of non-statutory national marine strategy and regional sea basin plans which could extend from the continental shelf up to the high water mark, while local and regional authorities would have a statutory overlapping plan making function for the foreshore area (out to the 12nm).

4.1.5. Extended Terrestrial System

This option involves the extension of the existing terrestrial planning system into the marine area. Spatially it would cover all land and the marine area up to the boundaries of the continental shelf. It ensures full integration between the land use planning system and the marine planning regime. It would have a hierarchical system of plans with the NSS covering the marine area, regional sea plans related to terrestrial regions and planning for ICZM plans for areas of high pressure at either the regional or local level. Consenting/licensing and marine conservation are not included in this option, as proposed, although they could be integrated into the system if it was adopted.

4.1.6. Conclusion

Although each is being considered only in overview, it is considered that there is no legal impediment to implementing any of the five identified options, subject to the implementing legislation being drafted with due regard to Article 10 of Bunreacht na hÉireann.

The next stage is to test the options. To do this, test criteria were developed. These were also informed by the legal research and the case studies with augmentation and refinement by the Working Group and the ETF.

4.2. Test Criteria

The final test criteria were identified as follows:

- 1 Ensures effective implementation of the IMP and relevant Government policy
- 2 Promotes sustainable development (economic, environmental, social)
- 3 Ensures public and stakeholder participation
- 4 Secures spatial and sectoral integration for the benefit of licensing/consenting and

- management
- 5 Supports ecosystem-based approach in the management of competing uses/activities
 - 6 Ensures evidence based policies that can be implemented, monitored and reviewed
 - 7 Effectively ensures compliance with existing EU/International legal obligations
 - 8 Provides mechanisms for international coordination of marine plans
 - 9 Allows for the coordination of national marine and terrestrial planning systems
 - 10 Achieves the economic vision of the IMP
 - 11 Time effective in the context of the IMP

It was recognised that these criteria, while identifying essential elements of MSP, were to some extent overlapping and complimentary. Nevertheless, together they made up a comprehensive test for the appropriateness and suitability of the marine spatial planning options.



Figure 2: Essential MSP Elements

It was also recognised that the process was a somewhat blunt and crude device for consideration of the options. Much would be predicated on the detail of subsequent legislation. Nevertheless the process starts to scope out the parameters of a framework for marine spatial planning. It also allows certain proposed options to be discounted.

A preliminary testing of the options is set out in Appendix VII. The matrix below is a representation of the 5 options. The colours used are different shades of blue representing very probable, probable, possible and not probable.

4.3. Testing of Initial Options

Table 2: Preliminary Testing of Options

Test Criteria	Options				
	Do Nothing	Full MSP System	Forward Planning (MP) System	Over-lapping System	Extended Terrestrial Planning System
Ensures effective implementation of the IMP and relevant Government policy					
Promotes sustainable development (economic, environmental, social)					
Ensures public and stakeholder participation					
Secures spatial and sectoral integration for the benefit of licensing/consenting and management					
Supports ecosystem based approach in the management of competing uses/activities					
Ensures evidence based policies that can be implemented, monitored and reviewed					
Effectively ensures compliance with existing EU/International legal obligations					
Provides mechanisms for international coordination of marine plans					
Allows for the coordination of national marine and terrestrial planning systems					
Achieves the economic vision of the IMP					
Time effective in the context of the IMP					

Key:

Very Probable	Probable	Possible	Not Probable
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4.4. Discussion of Matrix and initial Recommendations

In order to achieve the vision identified in the Integrated Marine Plan: ***Our ocean wealth will be a key element of our economic recovery and sustainable growth, generating benefits for all our citizens, supported by coherent policy, planning and regulation and managed in an integrated manner;*** three high level goals have been specified:

- Thriving Maritime Economy
- Healthy Ecosystems
- Engaging with the Sea

A robust marine planning framework, underpinned by primary legislation is considered vital to achieving these goals.

4.4.1. The Do-Nothing Option

The Do-Nothing option does not promote effective implementation of the IMP including achieving its economic vision, or relevant Government policy, as it would rely on a mixture of policy and existing national laws and EU /international obligations and duties to form a framework for marine spatial planning in Ireland. This would be very difficult without a specific legislative requirement and is compounded by the ongoing difficulties identified with some existing requirements under international law and European law relating to the marine environment. The Do-Nothing option does not promote sustainable development (economic, environmental, social) of the marine environment, or support the ecosystem-based approach in the management of competing uses/activities, nor does it ensure public and stakeholder participation. It is recognised that mechanisms do exist already for the promotion of sustainable development and also for public participation, but it is considered that these are insufficient in relation to a new framework for marine spatial planning for Irish waters.

It is considered that specific, tailored legislation would be required to secure spatial and sectoral integration for the benefit of licensing/consenting and management. Legislation is required to ensure that evidence-based policies for marine spatial planning can be implemented, monitored and reviewed. It is also needed to provide mechanisms for international coordination of marine plans with other jurisdictions. It is considered, however, that while the Do-Nothing option does not prevent the coordination of national marine and terrestrial planning systems, neither does it promote it, and therefore for this reason this has been identified as light blue (possible). It is also recognised that the Do-Nothing option is time

effective as far as the IMP is concerned, in that it does not require further implementation. In the long term, however, as the overall objectives of the IMP are not achievable by this option, it would in fact be ineffective. It is for this reason that it is identified as light blue (possible).

The Do-Nothing option was recognised as the base line for the study. This further explanation of what it would in fact entail and the testing of this option have confirmed that the Do-Nothing option is not recommended for further consideration.

4.4.2. The Extension of the Terrestrial System

The Extended Terrestrial System would provide a statutory obligation to prepare a National Marine Spatial Strategy. However, the marine environment is entirely different from the terrestrial environment, as the sea consists of numerous individual ecosystems covering the seabed, water column, water surface and shoreline including the terrestrial area adjacent to it; these combine and create the largest ecosystem on 'the Earth'. The Extended Terrestrial System is considered inappropriate and inadequate to ensure the unique character of the marine environment is preserved. It would not, therefore, ensure effective implementation of the IMP and other relevant government policy. In relation to promotion of sustainable development (economic, environmental, social) due to the complexity of the marine ecosystem, it is questioned whether or not the three pillars would be delivered, especially the environmental pillar. Although extending the terrestrial system would ensure public and stakeholder participation, in relation to the spatial and sectoral integration for the benefit of licensing /consenting regime, even though assessments would be undertaken prior to adoption of a plan and any plan could be taken into account in licensing decisions, the extension of the terrestrial system is considered inappropriate, as the environments are not comparable. This would also impact upon the ability of the system to support an ecosystem-based approach. Furthermore, there would be Constitutional limitations on the components of the terrestrial permission / consent regimes which could be extended to below HWM.

Notwithstanding these issues, extending the terrestrial system could provide a mechanism for international coordination of marine plans, depending on the wording of the legislation. In principle, coordination of the national marine and terrestrial planning systems would be possible by the extension of the terrestrial system. However, this is this option's only advantage. Therefore, it is questioned whether extending a system that is inappropriately equipped to deal with the complexities of the marine environment is a viable solution.

4.4.3. The Overlapping System

The Overlapping System envisages an overlap between the marine and the terrestrial system in the foreshore area. It does not introduce a statutory obligation to prepare a National Marine Spatial Strategy or Regional Sea Basin Plans, as preparation of these are discretionary under this option. The overlap occurs where local and regional authorities would have a statutory obligation to prepare an overlapping plan for the foreshore area (out to the 12nm). In terms of promoting sustainable development, for the Overlapping System, it would depend upon whether or not discretionary sea basin plans were actually made. Furthermore, as the Overlapping System would not provide a statutory obligation to assess current activities, pressures and human impacts prior to making these non-statutory plans over the majority of the marine area, it cannot effectively deliver in terms of the following:

- securing spatial and sectoral integration for the benefit of licensing/consenting and management; supporting an ecosystem-based approach;
- ensuring evidence based policies that can be implemented, monitored and reviewed;
- effectively ensuring compliance with existing EU/international legal obligations.

In connection with co-ordination of marine plans and terrestrial plans in the Overlapping System, this would only cover the 12 nm of the foreshore in respect of which local and regional authorities would be obliged to prepare a plan. It is unlikely that this system would deliver in terms of economic vision of the IMP, as the discretionary regional sea basin plans covering the majority of the marine area might not be made, therefore no investor certainty is provided with this Option. Finally, with regard to the time scales for delivery in terms of the IMP, it would be time effective in the short term for the State as it would be quick to implement, especially as no plans are required for the majority of the marine area. However in the long term, and from the developer's perspective, this Option is not time efficient, especially as advances in technology are made and environmental assessments become more complex and more activities and uses have to be taken into account. Therefore, it potentially becomes more time consuming and more costly for developers and the State, discouraging investment rather than facilitating economic recovery. It is considered that the Overlapping System would not produce a satisfactory marine spatial planning regime for Ireland.

4.4.4. The Forward Planning System (Minimal Parallel)

The Minimal Parallel System has the potential to achieve the vision and goals of the IMP through the creation of a mandatory marine spatial strategy for Irish waters. The legislation

introducing the duty to deliver the strategy could include a requirement that it contributes to the achievement of sustainable development. Public participation and environmental consideration are essential elements of sustainable development, therefore public and stakeholder participation and conservation management could be facilitated by inclusion of appropriate legislative provisions. It is also considered that the coordination of terrestrial and marine planning systems could be effectively achieved through the introduction of the Forward Planning System (Minimal Parallel) regime. Other matters, (including securing spatial and sectoral integration for the benefit of licensing/consenting and management; supporting an ecosystem-based approach; ensuring evidence based policies that can be implemented, monitored and reviewed; and effectively ensuring compliance with existing EU/international legal obligations) can be facilitated by legislation, however these elements will not be dealt with as effectively as under the full MSP system. Nevertheless, they still score highly on the testing matrix. It is concluded, following the testing by the identified criteria that the Minimum Parallel System could achieve a framework for marine spatial planning for Ireland.

4.4.5. The Full Marine Spatial Planning System

The Full MSP System when tested against the criteria scores the most highly with all areas regarded as blue on the matrix. It ensures delivery of the IMP aspirations in all aspects, although in connection with the economic vision, while a full MSP System would deliver in terms of investments, implementing this within current fiscal and budgetary constraints would prove challenging. Furthermore, this system would take the longest to implement as both new planning and licensing systems would be introduced. Although it is considered that it would deliver within the medium term (as defined within the IMP as being between 2014 and 2020¹⁰⁰), it is likely that this would be towards the end of the time-frame identified. It is noted, however, that as with all new systems, once it was developed and implemented these issues would be resolved. It is concluded following the testing by the identified criteria that the Full MSP System could achieve a framework for marine spatial planning for Ireland.

4.4.6. Conclusion

Following subjection of the options to rigorous testing, only two options: the Full MSP System and the Forward Planning System (Minimal Parallel) provide the potential to achieve the vision and goals set in the IMP. The Do Nothing Option scored the lowest with the Overlapping System and Extended Terrestrial System scoring poorly. The IMP envisages the introduction

100 Harvesting Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.31

of a new “planning and licensing framework, underpinned by robust legislation and regulation” that “can support sustainable development and create a degree of certainty, as well as a safe and stable environment for business and consumers”.¹⁰¹ The Do Nothing Option, the Overlapping System and the Extended Terrestrial System do not provide this. The initial conclusion was the recommendation of either the full MSP System or the Forward Planning System (Minimal Parallel System). The next step was to undertake a compare and contrast exercise of the two systems in order to reach a final conclusion.

¹⁰¹Harvesting Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.iii executive summary

5. FURTHER ANALYSIS OF INITIAL RECOMMENDATIONS

The next step was a rigorous analysis of two selected options, by the research team and in discussion with the working group, as part of an iterative process. This further refined the findings of the initial recommendations. The Full MSP System and the Forward Planning System (Minimal Parallel) have the ability to achieve the vision and goals of the IMP through the introduction of new legislation. It is recommended that primary, rather than secondary legislation is utilised and that the 'plan or plans' made are subject to Oireachtas approval, possibly by a requirement that the plan(s) be laid in draft form before both Houses of the Oireachtas and adopted only following a resolution of approval. By introducing primary legislation, rather than secondary, a public debate on the issues raised will be ensured, it will attract more publicity, therefore, it will provide the ability for greater public and stakeholder participation. It will also send out a clear message to potential investors that Ireland is 'open for business'. By subjecting plans to parliamentary approval, the democratically elected TDs would mandate the plan proposed.

5.1. Analysis of Full MSP System and Forward Planning System (Minimal Parallel System)

The IMP envisages a “planning and licensing framework, underpinned by robust legislation and regulation” that “can support sustainable development and create a degree of certainty, as well as a safe and stable environment for business and consumers”.¹⁰² The Full MSP System would provide all of this, as both the forward planning regime and the consenting system are incorporated into this option. The Forward Planning System (Minimal Parallel) only provides the forward planning regime with a **mandatory national marine strategy**, extending from the high water mark to the extent of the continental shelf and **discretionary regional sea basin plans only being required in areas of high pressure**. The legislation introducing this system would require to specifically impose statutory obligations in order to achieve the visions and goals of the IMP.

¹⁰² Harnessing Our Ocean Wealth – An Integrated Marine Plan for Ireland (2012) p.33

Table 3: Final Testing of Options

Test Criteria	Options	
	Full MSP System	Forward Planning (MP) System
Ensures effective implementation of the IMP and relevant Government policy		
Promotes sustainable development (economic, environmental, social)		
Ensures public and stakeholder participation		
Secures spatial and sectoral integration for the benefit of licensing/consenting and management		
Supports ecosystem-based approach in the management of competing uses/activities		
Ensures evidence based policies that can be implemented, monitored and reviewed		
Effectively ensures compliance with existing EU/International legal obligations		
Provides mechanisms for international coordination of marine plans		
Allows for the coordination of national marine and terrestrial planning systems		
Achieves economic vision of the IMP		
Time effective in the context of the IMP		

Key:

Very Probable	Probable	Possible	Not Probable
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In order to secure spatial and sectoral integration for the benefit of licensing/consenting and management; support the ecosystem-based approach in the management of competing uses/activities; ensure evidence based policies that can be implemented, monitored and reviewed; and effectively ensure compliance with existing EU/International legal obligations, a statutory obligation would need to be imposed upon the plan making authority, to “assess the condition of the area at the time of preparation, prepare a summary of significant pressures and impacts of human activities and set economic, social and ecosystem objectives”.¹⁰³ These assessments and objectives would require to be kept under review and the marine planning body should be placed under an obligation to prepare reports within a prescribed timeframe, make these reports publicly available and submit them to the Oireachtas for debate.

¹⁰³ This obligation is included in the Marine Scotland Act 2010 see s.5 (4)

The plan making authority would not have to source this information from scratch as a statutory obligation could be placed on all departments that exercise a function within the marine environment and local authorities to provide the plan making authority with the necessary data. The requirement to create a marine knowledge and data exchange could be included in the legislation or be developed through policy. This could include details of consents/licenses/leases issued; environmental assessments and appropriate assessments; statutory and non statutory designations, plus scientific and local knowledge. This research has not considered the issues surrounding knowledge exchange, but it is clear that this is a particular issue for marine planning and development and should be addressed in implementing MSP and working towards the IMP vision.¹⁰⁴ The plan making authority could then assess any gaps identified through the public consultation process. As this assessment procedure would identify areas of high pressure use, the legislation could impose a statutory obligation for a regional plan to be prepared for the areas identified. In order to clarify this obligation, clear criteria would have to be set out in the legislation to identify precisely how 'high pressure use' is defined. For example, would this be due to the amount of activities ongoing within the area, the health of the ecosystem/environmental assessments, the potential for as-yet unexplored activities (such as extraction of marine aggregates) or a combination of such considerations? This is an additional requirement to the original proposed Forward Planning System (Minimal Parallel) , incorporated and refined as a result of detailed analysis and iterative process. Existing consenting authorities would also be placed under a statutory obligation to take marine plans into account during the decision making process. The obligation could be worded in such a way that if a consenting authority identified reasons why the plan should be disregarded for a particular application, the consenting body would have to provide a written explanation of the reasons for this. This could be similar to the legislation introduced in Scotland where a “public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise. If a public authority makes an authorisation or enforcement decision otherwise than in accordance with the appropriate marine plans, it must state its reasons”¹⁰⁵ This would facilitate transparency in the decision making process. The legislation could provide a statutory procedure for material contravention of a marine plan, as is the case with terrestrial planning.

104 Slater, A. *et al* 'An Examination of the Viability and Appropriateness of a Marine Planning Exchange for UK Waters', A final report to The Planning Exchange Foundation, April 2012
<http://www.planningexchangefoundation.org.uk/reports/> accessed 4th August 2013

105 Marine Scotland Act 2010 s. 15 (1) and s. 15 (2)

Both the full MSP and the Forward Planning System (Minimal Parallel) options could promote sustainable development by creating a statutory obligation for this objective to be incorporated into the plans created. The legislation could also place a general duty on all public authorities, when exercising any function capable of impacting on the marine environment and other marine users, to have regard to relevant marine plans and create a statutory obligation to further the objectives of sustainable development. Relevant marine plans would be defined in the legislation, for example in the forward planning system (minimal parallel) these would include the National Marine Spatial Strategy, relevant Regional Sea Basin Plans and Regional High Pressure Use Plans, these last two requirements would be determined by the precise location of the proposed development. Public and stakeholder participation would be ensured in both options during the plan making process. Like the statement of public participation system introduced in Scotland and across the UK, they could invite “interested parties” to propose or make recommendations as to what should be included in the plan. “Interested parties” could be defined to include anyone affected by the policies proposed to be included in the plan and the general public. This would also ensure the co-ordination of national marine plans and terrestrial plans by creating the statutory obligation for the marine planning body to inform the adjacent terrestrial planning authority that they are considering preparing a marine plan and again invite the authority to make representations as to what should be included. A similar provision should be inserted into the terrestrial planning system to ensure that this is a mutual obligation and the marine planning body is informed of changes to/new terrestrial plans at the earliest opportunity. This also facilitates the 'buy in' to the system from all parties.

In terms of providing mechanisms for international co-ordination of marine plans, both systems could include this in the legislation. This could be worded in such a way that, where the plan making authority considers a proposed marine plan could impact upon another jurisdiction, or that at a national local level it could affect another planning area, the plan making authority would be obliged to notify that jurisdiction or the appropriate authority of its intention to prepare a marine plan. For example, under the Marine (Scotland) Act 2010, when Scottish Ministers decide to prepare a national marine plan they must, before starting to prepare the plan, give notice of their intention to do so to (a) any planning authority the district of which adjoins the Scottish marine area, (b) to the Secretary of State, and (c) to the Department of the Environment in Northern Ireland (MSA 2010, Schd I, para. 1). This notification procedure provides a mechanism for co-ordination and participation from an international perspective albeit the jurisdictions notified are also part of the UK. It is noted however, other mechanisms are available for international co-ordination, for example through the OSPAR Commission or the Atlantic Forum.

If the Forward Planning System (Minimal Parallel) is introduced as described above, it will facilitate achieving the vision of the IMP. To further facilitate in this regard, the plan making body could also have a statutory role in guiding developers through the consent system providing 'front door access' - directing investors to the relevant departments that need to be consulted and providing information on assessments that have to be carried out and licenses/consents that have to be obtained. In this connection, to ensure equivalence of treatment of developers and the community, there would have to be a legislative requirement separating the facilitating and decision-making functions, as has been developed by An Bord Pleanála with regard to its functions under the 2006 Strategic Infrastructure Act.¹⁰⁶ Pre-application consultations, which are mandatory for strategic infrastructure development (SID), are conducted at meeting(s) with at minimum two members of the Board's staff (an inspector and an administrator). Advice may be given on a range of matters, which are set out in the legislation. The Board itself has introduced a Protocol ensuring *inter alia* that consultation requests are published on its website; the inspector's report is published as soon as the Board has decided if the proposal constitutes SID; and the consultation file, which contains the record of all meetings, is then opened to the public. Thereafter, the inspector who conducted the consultations has nothing further to do with any subsequent application for the project in question. Decisions are made by Board Members, who do not take part in any consultations and never meet developers.

Finally, in terms of the time-frames identified within the IMP, the Forward Planning System (Minimal Parallel) could be delivered quicker than the Full MSP System, as it initially regulates only the forward planning process and leaves the current consenting regime in place. It is recognised, however, that the consenting regime could be transferred, in due course to the new marine consenting body or an existing designated department.

5.2. Recommended Approach

The research has demonstrated that the Forward Planning System (**Minimal Parallel**), implemented through primary legislation, would achieve the coordinated vision and goals for Irish waters set out in the IMP, in a realistic timeframe with administrative efficiency. The full MSP system could also achieve this vision, but the time scales and costs involved preclude it from being recommended at this time. In due course, it is considered that a full MSP system would work well for Ireland.

¹⁰⁶ Berna Grist *An Introduction to Irish Planning Law*. Institute of Public Administration: Dublin. 2nd edition 2012, pp. 69-70.

APPENDIX I: JURISDICTIONAL CAPACITY OF IRELAND UNDER UNCLOS

Internal or inland waters:

National definition: “extend to all sea areas which lie on the landward side of the baseline of the territorial seas and all such sea areas shall be subject to the jurisdiction of the State to the same extent in all respects as its ports and harbours, bays, lakes and rivers, subject to any right of innocent passage for foreign ships in those sea areas which previously had been considered as part of the territorial seas or of the high seas” (Sea Fisheries and Maritime Jurisdiction Act 2006 s.86).

UNCLOS Definition/ distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
Waters landward of the baseline (Article 8)	These form part of the land territory of Ireland and as such the state enjoys exclusive jurisdiction to legislate and control all activities therein; and the exclusive right to utilise and exploit all living and non-living resources.		Where straight-line baselines have been used with the effect that it extends the limit of internal waters into an area not previously considered as such, the right of innocent passage remains in the area so enclosed (Article 8 (2)).

Territorial seas :

National definition: “is that portion of the sea which lies between the baseline and the outer limit of the territorial seas...The outer limit of the territorial seas is the line every point of which is at a distance of 12 nautical miles from the nearest point of the baseline” (Sea Fisheries and Maritime Jurisdiction Act 2006 s.82 & s.83).

UNCLOS Definition/ distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
The area beyond and adjacent to internal waters to a maximum of 12 nm from the baseline (Article 3 and 4).	<p>The rights of Ireland in the territorial sea are the same as those in internal waters, with the exception of 'innocent passage'.</p> <p>Sovereignty is stated to cover the air space above the sea, the sea bed and the sub-soil thereof (Article 2).</p> <p>Innocent passage can be temporarily suspended in specific areas of the territorial sea for the protection of Ireland's security provided any suspension is duly published (Article 25 (3)).</p>	Ireland can not impose requirements that are discriminatory or have the effect of impairing innocent passage and has a duty to ensure publicity is given to any navigational danger that it is aware of (Article 21).	<p>All states must provide 'innocent passage' through the territorial sea albeit coastal states can regulate innocent passage for: navigational purposes; safety purposes; to protect cables and pipelines; conserve living resources; protect the environment and control pollution; prevent infringement of fisheries, fiscal, immigration and sanitary laws; and regulate scientific research and hydrographic surveys (Article 21). This includes designating sea lanes and traffic separation schemes (Article 22).</p> <p>Passage is defined as “continuous and expeditious” and “innocent passage” is defined as passage “not prejudicial to the peace, good order and security of the coastal state” (Articles 18 and 19).</p> <p>Submarines and under water vehicles must navigate on the surface and fly their country of origin's flag (Article 21).</p>

Exclusive economic zone:

National definition: this is the area beyond and adjacent to the territorial seas, as defined in Part V of UNCLOS; with an outer distance of 200 nm from baseline except where that distance cannot be applied then it is the “equitable equidistant line between the State and the other state” (Sea Fisheries and Maritime Jurisdiction Act 2006 s.87).

UNCLOS Definition/distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
Covers the seabed, subsoil and waters superjacent to the sea bed (Article 56 (1) of the area beyond and adjacent to the territorial sea (Article 55) to a maximum distance of 200 nm from the baseline of which the territorial sea is measured (Article 57).	<p>Ireland has the sovereign right to explore, exploit, conserve and manage natural resources whether living or non living in the water column, the seabed and subsoil thereof. (Article 56 (1)(a)).</p> <p>Ireland has jurisdiction to regulate marine scientific research and protect and preserve marine environment (Article 56 (1) (b)(ii) & (iii)</p> <p>Producing energy from water currents and winds is specifically mentioned as economic exploitation and exploration permitted (Article 56 (1) (a) & (b)) and exclusive jurisdiction is given to establish artificial islands, installations and structures and authorise the same (Article 56 (1)(b)(i) and 60 (1) and 60 (2)).</p> <p>Safety zones of up to 500 metres can be established around these structures (article 60 (4) and (5)).</p> <p>Determine allowable catch of living resources to obtain maximum sustainable yield (Article 61).</p> <p>Take measures to maintain or restore these resources in order to obtain the maximum sustainable yield (Article 61).</p>	<p>Duty to exercise rights in accordance with the convention and give due regard to the rights and duties of other states (Article 56 (2)).</p> <p>Notice has to be given of construction of installations with permanent means of warnings maintained and disused structures removed to ensure navigational safety (Article 60 (3)).</p> <p>Installations and safety zones around them can not be established where they will interfere with recognised sea lanes essential to international navigation (Article 60 (7)).</p> <p>Duty to promote optimum utilisation of living resources and if coastal state can not harvest then duty to enter into agreements with other states over catching surplus stock (Article 62)</p> <p>Duty to give due notice of conservation and management laws and regulations (Article 62)</p> <p>Duty to ensure living resources are not over-exploited (Article 61 (2)).</p> <p>Duty to negotiate with neighbouring states in regard to the management of shared/ straddling fish stocks (Article 63).</p>	All states enjoy freedoms of navigation, overflight, laying of submarine cables and pipelines and associated activities (Article 58). See also Art 87

Continental Shelf

National definition: Under s. 2 of the 1968 Continental Shelf Act, the Government is empowered to designate by order any area as an area within which certain rights are exercisable. The rights referred to are “any rights of the State outside territorial waters over the sea bed and subsoil for the purpose of exploring such sea bed and subsoil and exploiting their natural resources”. Any such order made may be revoked or varied. The current orders are: SI No. 63/2009 Continental Shelf (Designated Area) Order 2009; SI No. 657/2001 Continental Shelf (Designated Area) Order 2001; SI No. 92/1993 Continental Shelf (Designated Area) Order 1993. However, these do not have accompanying maps.

UNCLOS Definition/ distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
<p>The CS comprises of seabed and subsoil to a distance of 200 nm or to the outer edge of the continental margin to an extended maximum of 350 nm from the baseline. Extended CS submissions are determined by the Commission on the Limits of the Continental Shelf and their decision is binding. (Article 76).</p> <p>Jurisdiction does not cover the water column, water surface (by implication) or airspace above (Article 78).</p>	<p>Ireland has the right to explore and exploit natural resource – mineral and other non living resources of the seabed and subsoil including living organisms belonging to sedentary species at harvesting stage (Article 77).</p> <p>Ireland can take measures to prevent, control and reduce pollution from pipeline (Article 79 (2)).</p> <p>It has authority to erect artificial islands, installations and structures and authorise the same (Article 80). Article 80 applies Article 60 in its entirety to CS, as Art 60 (1) (b) says that artificial structures can be constructed for the purposes provided in Art 56 and other economic purposes and Art 56 (1) (a) enables the production of energy from water, currents and winds this entitles renewable energy production from wave, tidal and turbines on the CS.</p> <p>Ireland has the exclusive right to authorise and regulate drilling for all purposes on CS (Article 81).</p>	<p>Duty to lodge charts showing limits of CS (Article 84).</p> <p>Duty not to infringe navigation and other rights of states provided in the convention e.g. laying of cables (Article 78 (2)).</p> <p>Duty to make payments to the Authority on exploitation beyond 200 nm after first 5 years at the rate of 1% raising to 7 % of the value or volume of production (Art. 82).</p>	<p>All states have a right to lay and maintain submarine cables and pipelines on CS BUT this is subject to the coastal states right to exploit resources (Article 79).</p>

Areas beyond national jurisdiction

UNCLOS Definition/ distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
<p>High Seas - Areas not included in internal waters, territorial sea or exclusive economic zone (Article 86)</p> <p>Part XI applies to 'the Area', which is defined as the seabed, ocean floor and subsoil thereof beyond national jurisdiction (Article I (1)).</p>		<p>All states have duties to conserve and manage the living resources of the high seas and to co-operate with each other in doing so (Articles 117, 118, 119)</p>	<p>All states enjoy</p> <ul style="list-style-type: none"> (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Coastal States provisions regarding CS; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Coastal States provisions regarding CS; (e) freedom of fishing, subject to interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area; (f) freedom of scientific research, subject to Coastal States provisions regarding CS and XIII. <p>(Article 87)</p>

Marine environment in general

UNCLOS Definition/ distance	Rights under UNCLOS	Duties under UNCLOS	Exceptions within UNCLOS
	<p>Sovereign right to exploit resources under their jurisdiction in accordance with own environmental policies and in accordance with their duty to protect (Article 193).</p> <p>Right to take all measures necessary (individually or in co-operation with other states) to prevent, reduce and control pollution (Article 194)</p> <p>Right to take all measures necessary to protect and preserve rare or fragile ecosystems, habitat of depleted, threatened or endangered species and other forms of marine life (Article 194 (5)).</p>	<p>Obligation to protect and preserve marine environment in general (Article 192)</p> <p>Duty to co-operate on global and/or regional basis (Article 197).</p> <p>Duty to notify other states of damage to marine environment or imminent danger of pollution (Article 198).</p> <p>Duty to monitor and assess activities they permit, (ie under their jurisdiction or control) monitor risk of pollution and publish reports (Article 204, 205 and 206)</p>	

APPENDIX II: CONVENTIONS MADE BY THE IMO AS AT 2011

1. 1991 amendments to the IMO Convention which were adopted by the Assembly of the Organization on 7 November 1991 by resolution A.724(17) (IMO AMENDS -91) (in force);
2. 1993 amendments to the IMO Convention which were adopted by the Assembly of the Organization on 4 November 1993 by resolution A.735(18) (IMO AMENDS-93) (in force);
3. International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974) (in force);
4. Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978) (in force);
5. Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (SOLAS PROT 1988) (in force);
6. Agreement concerning specific stability requirements for ro-ro passenger ships undertaking regular scheduled international voyages between or to or from designated ports in North West Europe and the Baltic Sea (SOLAS AGR 1996) (in force);
7. Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972) (in force);
8. Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL 73/78);
9. Annex III to MARPOL 73/78 (in force);
10. Annex IV to MARPOL 73/78 (in force);
11. Annex V to MARPOL 73/78 (in force);
12. Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL PROT 1997) (in force);
13. Convention on Facilitation of International Maritime Traffic, 1965, as amended (FAL 1965) (in force);
14. International Convention on Load Lines, 1966 (LL 1966) (in force);

15. Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988) (in force);
16. International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969) (in force);
17. International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969) (in force);
18. Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended (INTERVENTION PROT 1973) (in force);
19. International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969) (in force);
20. Protocol to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976) (in force);
21. Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992) (in force);
22. Special Trade Passenger Ships Agreement, 1971 (STP 1971) (in force);
23. Protocol on Space Requirements for Special Trade Passenger Ships, 1973 (SPACE STP 1973) (in force);
24. Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971 (NUCLEAR 1971) (in force);
25. Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992) (in force);
26. Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1972 (FUND PROT 2000) (in force);
27. Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND PROT 2003) (in force);
28. International Convention for Safe Containers, 1972, as amended (CSC 1972) (in force);
29. Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 1974) (in force);
30. Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL PROT 1976) (in force);

31. Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL PROT 1990) (not yet in force);
32. Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL PROT 2002) (not yet in force);
33. Convention on the International Mobile Satellite Organization, as amended (IMSO C 1976) (in force);
34. Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976) (in force);
35. Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC PROT 1996) (in force);
36. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978) (in force);
37. 2010 Manila amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and the Seafarers' Training, Certification and Watchkeeping (STCW) Code (2010 MANILA STCW AMDTS);
38. International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995 (STCW-F 1995) (not yet in force);
39. International Convention on Maritime Search and Rescue, 1979 (SAR 1979) (in force);
40. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) (in force);
41. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT) (in force);
42. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 2005) (in force 28 July 2010);
43. Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT 2005) (in force 28 July 2010);
44. The International COSPAS-SARSAT Programme Agreement (COS-SAR 1988) (in force);
45. International Convention on Salvage, 1989 (SALVAGE 1989) (in force);
46. International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, as amended (OPRC 1990) (in force);

47. Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS 2000) (in force);
48. Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV PROT 1993) (not yet in force);
49. International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996) (not yet in force);
50. Protocol of 2010 to amend the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS PROT 2010) (opens for signature from 1 November 2010 to 31 October 2011);
51. International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001) (in force);
52. International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 2001) (in force);
53. International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM 2004) (not yet in force);
54. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended (LC1972) (in force);
55. 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (LC PROT 1996) (in force);
56. Nairobi International Convention on the Removal of Wrecks, 2007 (NAIROBI WRC 2007) (not yet in force); and
57. Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (HONG KONG SRC 2009) (not yet in force).

Instruments which are in force or applicable but which are no longer fully operational because they have been superseded by later instruments

1. International Convention for the Safety of Life at Sea, 1948 (SOLAS 1948)
2. International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended (OILPOL 1954)
3. International Convention for the Safety of Life at Sea, 1960 (SOLAS 1960)

4. International Regulations for Preventing Collisions at Sea, 1960 (COLREG 1960)
5. Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1976)

Instruments not yet in force and not intended to enter into force

1. International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 1973)
2. Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (SFV 1977)
3. Protocol of 1984 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1984)
4. Protocol of 1984 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1984)

The above list was obtained from:

< <http://www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx> >

accessed 23rd July 2013

APPENDIX III: PSSA CHART

WESTERN EUROPEAN WATERS

PARTICULARLY SENSITIVE SEA AREA MEPC 52/24/Add.1 ANNEX 10 Page 3



obtained from:

< [http://www.imo.org/blast/blastDataHelper.asp?data_id=15724&filename=121\(52\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=15724&filename=121(52).pdf) >

accessed 18th July 2013

APPENDIX IV: EU DIRECTIVES REVIEWED

This appendix only summarises a few of the European Directives reviewed. These were chosen specifically due to their application within the marine environment, ongoing reporting requirements and/or forthcoming deadlines.

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) MSFD¹⁰⁷

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Forthcoming obligation deadlines
<p>To achieve or maintain good environmental status (GES).</p> <p>MS have to adopt and implement marine strategies that apply an “ecosystem based approach to the management of human activities” (MSFD Art I (2) & (3)).</p> <p>In order to do this they have to:</p> <ol style="list-style-type: none"> 1. Assess current environmental status 2. Determine what GES means for their waters 3. Establish targets 4. Establish monitoring programmes 5. Devise and implement programmes to maintain/achieve GES 	<p>The obligation applies to the seabed, subsoil from the baselines to the extent of the States jurisdiction under UNCLOS and to coastal waters defined in (Water Framework Directive) WFD. (MSFD Art 3(1)).</p> <p>Good environmental status (GES) is measured on a regional or sub-regional basis that mirrors the Regional Seas Conventions applicable across EU territory. (MSFD Art 3 (5)).</p>	<p>Good Environmental Status: 2020</p> <p>Implement programmes of measures: 2016</p> <p>Devise programmes of measures: 2015</p> <p>Establish and implement monitoring programmes: July 2014</p>

¹⁰⁷ A full analysis of the MSFD is provided in section 4.2.2 of the main report.

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (Water Framework Directive (WFD))

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Forthcoming obligation deadlines
<p>To achieve good ecological and chemical status (WFD Art 4).</p> <p>Good status incorporates ecological status, chemical status, quantitative status and the ability to meet the objectives of specific areas defined as protected areas (Annex V).</p> <p>In order to do this MS have to:</p> <ol style="list-style-type: none"> 1. Identify and assign all river basins within their national territory into river basin districts. 2. Each river basin district is then analysed. This includes analysis of the characteristics, the impact of human activity and an economic analysis. 3. Monitoring programmes have to be established measuring specific criteria. If monitoring highlights that objectives may not be achieved the Member State has to investigate the cause of the failure, review authorisations and/or licenses within the area concerned and adopt additional measures as necessary. 4. Programmes of measures must be adopted. 5. River basin management plans must be established for each district. 	<p>Applies to inland surface waters, transitional waters, coastal waters (up to 1 nm from the baseline used to measure the territorial sea) and groundwater (WFD Art 2).</p>	<p>Good ecological and chemical status by 2015.</p>

Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (Bathing Waters Directive)

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Obligation Deadlines
<p>To identify, classify and ensure the standard of bathing waters is at a minimum 'sufficient'.</p> <p>In order to do this MS have to:</p> <ul style="list-style-type: none"> Identify all bathing waters, define the length of the season annually and establish a monitoring calendar for each bathing waters identified; although contiguous bathing waters may be taken together if they have received the similar sampling within the preceding four years. Carry out water quality assessments in accordance with scientific criteria fixed in Annex I and the handling requirements in Annex V. The first sample has to be taken prior to the start of the season and continued during the season with at least four taken (Annex IV). The assessments have to be carried out at either the place where most bathers are expected or where the risk of pollution is greatest. Classify bathing waters, create bathing water profiles and adopt realistic measures with a view to increasing the amount of classifications to excellent or good. Provide information to the public 	<p>Bathing waters are identified by MS however these are defined as "any element of surface water where the competent authority expects a large number of people to bathe" excluding swimming or spa pools, confined waters subject to treatment or for therapeutic use or artificially created waters which are separated from surface waters and ground waters (Bathing Waters Directive Art I (3)).</p>	<p>The quality of bathing waters identified has to be sufficient by 2015.</p>

Directive 2006/113/EC of the European Parliament and of the Council of 12 December 2006 on the quality required of shellfish waters (codified version)

Obligation imposed/objective	Spatial Application/Jurisdictional scope of the obligation	Obligation Deadlines
<p>To reduce pollution and improve water quality to support shellfish life and growth to assist in producing high quality shellfish products for human consumption.</p> <p>MS have to:</p> <ul style="list-style-type: none"> • Designate areas important for shellfish life and growth and fix chemical limits within specified guidelines set out in Annex I of the Directive. • Monitor areas designated on an ongoing regular basis. The amount of samples taken depends on the substance being sampled. 	<p>Applies to coastal and brackish waters needing protection or improvement (Shellfish Directive Art. 1).</p>	<p>Ongoing reporting requirements.</p>

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Obligation Deadlines
<p>To conserve biodiversity and maintain habitats and species of Community interest at favourable conservation status.</p> <p>MSs have to</p> <ul style="list-style-type: none"> • Designate special areas of conservation (SACs) for particular habitats listed in Annex I and for the habitats of particular species listed in Annex II, in order to create a network of protected areas (Natura 2000 network) that also includes SPAs set up under the Birds Directive. Designation involves (i) identification of sites according to specific scientific information and criteria laid down in Annex III; and (ii) transmission of the list of national sites to the Commission, which thereafter adopts the list in agreement with the MS in question. Designation as an SAC is then a function of the MS. • Establish the necessary conservation measures within SACs, including the adoption of management plans • Ensure that plans or projects not directly connected with or necessary to the management of a SAC but likely to have a significant effect on it, either individually or in combination with other plans or projects, are subject to an appropriate assessment of their implications for the site in view of the site's conservation objectives. This applies to plans & projects within SACs and also out-with 	<p>SACs have to be designated in direct proportion to the amount of habitats or habitats of the particular species found within their own territory.</p> <p>Applies to the limit of state sovereignty (i.e. the outer limits of the continental shelf) Case C6/04 Commission v UK [2005] ECR-I 9017</p>	<p>Ongoing reporting obligations</p>

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Obligation Deadlines
<p>SACs if likely to have <i>ex-situ</i> effect(s) thereon.</p> <ul style="list-style-type: none">• Take steps to ensure the species of animals and plants listed in Annex IV are strictly protected. These steps include prohibiting deliberate killing/picking or uprooting, monitoring incidental capture, prohibiting transport, sale or exchange.		

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (Wild Birds Directive)

Obligation imposed	Spatial Application/Jurisdictional scope of the obligation	Obligation Deadlines
<p>MS have to adopt measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all species of naturally occurring birds.</p> <p>All birds are subject to general protective measures prohibiting deliberate killing, capture or disturbance; deliberate damage or destruction of nests and eggs; the taking or removal of eggs and nests; the keeping of eggs; and the keeping, transport or sale of live or dead birds or of readily recognisable parts or derivatives thereof.</p> <p>MS have to adopt measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds. Measures adopted have to include the creation of protected areas (SPAs).</p> <p>In areas designated MS have to take steps to prevent pollution, deterioration of habitats and prevent any disturbance significantly affecting the birds.</p>	<p>Applies to all species of wild birds occurring in member state territories. This covers land and marine areas to the extent that states exercise sovereign rights, ie. to the edge of the continental shelf.</p> <p>SPAs have to be designated by MSs for both native and migratory species of wild birds and “the most suitable territories in number and size” are required to be so designated.</p>	<p>Ongoing reporting obligations.</p>

APPENDIX V: NATIONAL LAW AND POLICY APPLICABLE TO SPECIFIC GROWTH SECTORS

Marine Aggregates

National Law	National Policy	Gaps identified
Foreshore Acts 1933 – 2011 Minerals Development Acts 1940 – 1999 Petroleum and other Minerals Development Acts 1960 Continental Shelf Act 1968 Planning and Development Acts 2000 - 2011	<p>Although, there is no national policy for marine aggregates, marine aggregate resource potential is outlined in <i>Policy Report – Issues and Recommendations for the Development and Regulation of Marine Aggregate Extraction in the Irish Sea</i> (Sutton et al 2008). It identifies areas off the east coast (e.g. Kish and Arklow Banks) which have both sand and gravel marine aggregate potential.</p>	<p>There is no definition of what constitutes marine aggregates in Ireland. The term aggregate generally means sand, gravel and associated materials used in the construction industry but these are classed as beach materials in the Foreshore legislation, although the 1965 Mines and Quarries Act includes them in the definition of ‘minerals’.</p> <p>There is no depth limitation on removal of beach material (sand, gravel etc) on the foreshore.</p> <p>Clarification for mineral extraction on or under the foreshore beyond 30 feet is required. Potentially this could be authorised by obtaining consent under Mineral Development Acts from the Department of Energy, Communications and Natural Resources (Exploration and Mining Division) and obtaining a foreshore lease/licence from the Department of Environment, Community and Local Government.</p> <p>Clarification on extraction of sand and gravel beyond the foreshore is required (even if currently not technically possible) as the Continental Shelf Act 1968 simply extended the land based measures of the Mineral Development Acts out beyond the territorial sea. Sand and gravel are excluded from the definition of mineral under that Act, so extraction on the CS is purely governed by authorisations under the CSA 1968.</p> <p>Statutory EIA requirements are non-existent for sand and gravel extraction on CS (if possible) or any other minerals not within the list of scheduled minerals with the exception of petroleum extraction which requires and EIA under various statutory instruments. The requirement for an EIA appears discretionary under the CSA 1968 as SI 349 of 1989 amended numerous pieces of legislation transposing the EIA Directive into national law however the Continental Shelf Act 1968 was not amended.</p>

Renewable Energy

National Law	National Policy	Gaps identified
<p>Electricity Regulation Act 1999 (ERA 1999)</p> <p>Foreshore Acts 1933 – 2011</p> <p>Foreshore Regulations 2011</p> <p>Continental Shelf Act 1968</p> <p>Sea Fisheries and Maritime Jurisdiction Act 2006</p> <p>Planning and Development Acts 2000 – 2011</p> <p>Planning and Development Regulations 2001 - 2013</p>	<p>Draft Offshore Renewable Energy Development Plan (2010)</p>	<p>Offshore renewable energy beyond the territorial sea has not been developed.</p> <p>The process for obtaining the required licences and authorisations for electricity generation do not distinguish between onshore renewable energy projects and offshore projects although offshore projects are required to submit marine charts in order to identify the location (Ronan Long p.495). The Guidance for Developers applies to the limit of the EEZ and defines offshore as being the foreshore and the waters between the 12 nm limit and the outer limit of the EEZ. However, it is unclear whether guidance issued by DCMNR is still being used.</p> <p>Foreshore aspects of the development have 2 stages:</p> <ol style="list-style-type: none"> 1. Licence – to allow investigations in the area to commence 2. Lease - to allow development to commence. <p>The licensing/authorisation processes are not aligned – for example authorisations are obtained from the Commission for Energy Regulation (CER) to construct generation stations but developers then have to obtain a foreshore licence, conduct investigations and thereafter apply for lease in order to even start building. Once built there are then grid connection issues. Furthermore, there are no time limits within this process. For example 16 offshore wind-farms are under construction with a further 52 fully consented although to date foreshore leases have only been granted at two sites.</p> <p>The EIA process for foreshore renewable energy projects only notes EIAs for turbine developments – what about tidal/wave developments?.</p> <p>SI 349 of 1989 amended various Acts including the 1960 Petroleum Act in order to transpose the EIA Directive. However, s. 13A contains the obligation for “A plan submitted to the Minister under the terms of a lease under section 13 of this Act seeking his approval for working of petroleum” to be accompanied by an EIS. The reference to ‘under the terms of a lease’ is unclear but if the EIS is only to be submitted after the decision has been made to grant a lease and allow minerals to be worked, the transposition does not meet the requirements of the Directive because EIA must be carried out prior to the giving of a consent – see Case C-215/06 <i>Commission v Ireland</i>.</p> <p>A further issue arises in that s. 13A merely requires the Minister to have regard to the submitted EIS, not to carry out an environmental impact assessment. The ECJ in case C-50/09 <i>Commission v Ireland</i> has held that requiring a planning authority or ABP to establish the completeness of a submitted EIS does not correspond to the obligations of the EIA Directive. The competent authority must carry out the assessment itself and the transposing legislation must incorporate this requirement.</p>

Aquaculture

National Law	National Policy	Gaps identified
<p>Fisheries Amendment Act 1997</p> <p>Fisheries and Foreshore Amendment Act 1998</p> <p>Fisheries Amendment Act 2001</p> <p>Sea-fisheries and Maritime Jurisdiction Act 2006</p> <p>Aquaculture Licence Applications Regulations 1998 – 2012</p> <p>Foreshore Acts 1933 – 2012</p> <p>Foreshore Regulations 2011</p> <p>Planning and Development Act 2000 – 2011</p> <p>Planning and Development Regulations 2001 – 2012</p>	<p>There is no specific spatial plan for the future development of aquaculture.</p>	

Oil and Gas

National Law	National Policy	Gaps identified
<p>Petroleum and other Mineral Development Act 1960</p> <p>Continental Shelf Act 1968</p> <p>Natural Gas Acts 1976 – 2009</p> <p>Energy (Miscellaneous Provisions) Act 1995 as amended</p> <p>Dumping at Sea Act 1996</p>		<p>The planning and the regulatory regime have been identified as one of the issues that needs to be addressed in order to develop the full potential of oil and gas in Ireland. Although improvements have been made, a report issued in 2013 stated “ the general industry perception is that the regulatory and planning process is still overly complex, needs to be streamlined, requires more technical expertise, and lags behind countries such as the UK and Norway in terms of transparency and timeliness. A clear communication strategy for improvements effected to date, as well as a future development road map could succeed in substantially addressing these issues.” (see pwc oil and gas report May 2013 p.7). Having regard to the 2006 Strategic Infrastructure Act, which imposes an 18 week objective for decision-making on An Bord Pleanála and the Board’s record of meeting this objective in 50% of these cases; and to the provisions contained in the planning code and the Board’s protocols for public access to proposals and decision documentation, the research team considers this critique not well grounded in all respects.</p> <p>Licensing terms and conditions supplement the statutory framework and provide details on the application process. (see Licensing Terms 2007 available from the DCENR website.) These do not have a statutory basis like the UK model clauses. The terms and conditions vary for each type of authorisation as do the activities a company is able to undertake and the procedures for obtaining them.</p>

APPENDIX VI: COMPARE AND CONTRAST MACCA AND MSA

Case studies analysis against testing criteria

The following case studies were identified by the Legal Research Team in collaboration with the ETF and the Best Practise Research Team for legislative review: UK (including devolved administrations) Denmark, Germany, Netherlands, Canada and USA (paragraph 5 Marine Legal Study Progress Report 6th June 2013). The tables below test the regimes introduced within England and Scotland against the following testing criteria:

1. Complies with existing EU/International legal obligations (for the purposes of the case studies this criteria has been divided into two)
2. Ensures effective implementation of the IMP and relevant Government policy (n/a for case studies)
3. Promotes sustainable development (economic, environmental, social)
4. Ensures public and stakeholder participation
5. Secures spatial and sectoral integration for the benefit of licensing/consenting and management
6. Supports ecosystem based approach in the management of competing uses/activities
7. Ensures evidence based policies that can be implemented, monitored and reviewed
8. Provides mechanisms for international coordination of marine plans
9. Allows for the coordination of national marine and terrestrial planning systems
10. Promotes administrative and cost efficiency
11. Is time effective

In order to assist with applying the analysis of the case studies to the options outlined for Ireland, additional criteria is included in the case study analysis:

- Was legislation introduced
- Validity of plans/public accountability

To aid interpretation of the tables a separate table has been made for each jurisdiction. The third column in both tables only details the marine planning provisions of the legislation, other sections of the legislation may however appear in the middle column if they are relevant to achieving the objective of the testing criteria. A traffic light system as detailed below has been applied to the tables to enable the visual identification of areas of concern quickly. A summary of findings for the marine planning provisions only for both jurisdictions appears on page 32.

Red = definite issues identified when applying testing criteria.

Orange = potential for issues to arise when applying testing criteria.

Green = no issues identified when applying testing criteria.

Black text simply states the position.

Table 1 – The United Kingdom in general and England

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
Test Criteria		
Was legislation introduced?	<p>Yes</p> <p>Marine and Coastal Access Act 2009 (MACAA 2009)</p> <p>Applies to the UK marine area which is the sea area within the limits of</p> <ol style="list-style-type: none"> 1. the territorial sea, 2. the EEZ and 3. the CS not within the EEZ (provided that consideration of the area as such does not contravene any International obligation binding upon the UK applicable in the area concerned) <p>and includes the bed and subsoil of the sea within those areas, areas submerged at MHWST and rivers and estuaries or channels so far as the tide flows at MHWST (MACAA 2009 s.42).</p> <p>N.B. Due to devolution agreements in place for Scotland and N.I the territorial sea adjacent to these jurisdictions is already (with the exception of specific sectors for example defence, oil and gas, etc) under the jurisdictional control of the devolved</p>	<p>MACAA 2009</p> <p>Part 3 (s.44 - 64) introduces marine planning:</p> <p>The Marine Policy Statement (MPS) (MACAA 2009 s.44) is the overarching policy document governing the UK marine area. (Potentially) prepared by representatives from all four jurisdictions (i.e. the Secretary of State, the Scottish Ministers, the Department of the Environment for Northern Ireland and the Welsh Ministers).</p> <p>8 Marine Planning Regions have been established. These represent waters in the inshore (up to 12 nm) and offshore (beyond 12nm) marine area for each jurisdiction (MACAA 2009 s.49). There are 4 identified Marine Planning Authorities (PA) responsible for 6 of the regions, (i.e. the Secretary of State, the Scottish Ministers, the Department of the Environment for Northern Ireland and the Welsh Ministers) (MACAA 2009 s.50).</p> <p>Planning authorities can delegate marine planning functions (this includes preparing plans and monitoring/implementing plans) to a public authority (MACAA 2009 s.55).</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
	governments.	<p>However, it is not mandatory that a MPS is prepared and although all four jurisdiction <u>can</u> participate in the preparation of it, the Secretary of States is empowered to prepare a MPS acting alone, provided he has first of all invited the other PA to participate (MACAA 2009 s 45 (2)). Furthermore, a Planning Authority can withdraw from the MPS provided it informs the other PAs first of its intention to do so and publishes a notice in the appropriate Gazette. If a PA withdraws, the MPS remains valid for the remaining jurisdictions, except if the Secretary of State withdraws, in these circumstances the entire MPS is withdrawn (MACAA 2009 s.48).</p> <p>The development of regional marine plans is discretionary as the PA <u>may</u> adopt and prepare <u>marine plans</u> for <u>all</u> or just <u>part</u> of their region (MACAA 2009 s.51(1)).</p>
Complies with existing EU legal obligations	<p>In overview Part 5 of MACAA 2009 deals with nature conservation and imposes a duty on authorities to designate marine conservation zones (MCZs) (s. 123 (1)).</p> <p>An appropriate authority must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment when designating MCZs (s.123 (5)).</p> <p>MCZs are areas (identified by reference to MHWST) and designated under s. 116 by order. The procedures for designation include publication, consultation with other bodies</p>	<p>There is no specific mention of complying with EU legislation in Part 3 of MACAA 2009 and no provisions to enable this through the planning system.</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
	<p>and the public, as well as the possibility of holding public hearings (s.118 – s.121).</p> <p>MCZs are designated for the purpose of conserving (a)marine flora or fauna; (b)marine habitats or types of marine habitat; (c)features of geological or geomorphological interest (s.117 (1)).</p> <p>The objective for the creation of MCZs is that MCZs designated under the 2009 Act and other marine sites (including those designated to comply with the Habitats Directive and Birds Directive, Ramsar sites and SSSIs designated under the Wildlife and Countryside Act 1981) form a coherent network (s.123 (3) and (9)).</p> <p>Duties are imposed on <u>any</u> public authority having <u>any</u> function the exercise of which is capable of affecting (other than insignificantly) the MCZ to: (1) exercise functions in a compatible manner with protected features of an MCZ and ecological or geomorphological processes; and (2) to make decisions in a particular manner (MACAA 2009 s. 125 and 126).</p> <p>Although these duties are imposed, discretion is left with the authorities as the authorities have to decide if the function or decision would impact upon (other than insignificantly) the objectives of the MCZs (see s. 125 (1) and s.126 91)(b)). If <u>they</u> decide it does then they have to notify specified conservation agencies and wait 28 days until exercising the function/making the</p>	

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
	<p>decision (s. 125 (3) and (5) and s. 126 (2). However in cases of urgency the public authority can exercise the function/make the decision. The conservation agencies can issue general advice or specific advice and the public authority has to have regard to this advice. If a public authority fails to perform the duties imposed upon it or fails to follow advice given by the conservation agency, the conservation agency may ask for an explanation and the public authority is obliged to provide this in writing (MACAA 2009 s.125 – s.127).</p> <p>The obligation to create additional MCZs and create a coherent network should contribute to obligations under the MSFD and Birds and Habitats Directives. However the obligations imposed are weak (Appleby and Jones 'The Marine and Coastal Access Act – a hornets nest?' <i>Marine Policy</i> 36 (2012) 73 - 77) and in practise are proving difficult to implement.</p> <p>Notwithstanding this, when making a decision about a marine licence application (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to</p> <ul style="list-style-type: none"> (a) the need to protect the environment, (b) the need to protect human health, (c) the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant (MACAA 2010 s.69 (1)) 	

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
	Although this provision is capable of ensuring compliance with EU legal obligations if no assessments are required regarding current activities, pressures and the current status of the marine area and no objectives/targets are set can compliance with other EU legislation be ensured?	
Complies with existing International legal obligations	<p>Beyond the EEZ within the CS there is a requirement that International obligations binding on UK can not be contravened (MACAA 2009 S. 42 (2)).</p> <p>However, there is no specific mention of ensuring compliance with International obligations within the EEZ or territorial sea.</p> <p>Notwithstanding this, when making a decision about a marine licence application (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to</p> <ul style="list-style-type: none"> (a) the need to protect the environment, (b) the need to protect human health, (c) <u>the need to prevent interference with legitimate uses of the sea</u>, and such other matters as the authority thinks relevant (MACAA 2010 s.69 (1)). <p>Although s.69 (1)(c) above is capable of ensuring compliance with International legal obligations, if no assessments are required regarding current activities, pressures and the current status of the marine area and no objectives/targets are set can compliance be ensured?</p>	As above, there is no mention of complying with International legal obligations in the marine planning provisions and no mechanisms to ensure this is achieved.

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
Promotes sustainable development	The MMO is under an obligation to exercise its functions with the objective of making a contribution to the achievement of sustainable development" (MACAA 2009 s.2 (1)(a)).	<p data-bbox="1330 363 2024 491">MPS "policy authorities that prepare and adopt its state general policies of theirs (however expressed) for contributing to the achievement of sustainable development in the UK marine area" (MACAA 2009 s.44(1)(a)).</p> <p data-bbox="1330 547 2024 643">Regional Marine Plans "states the authority's policies (however expressed) for and in connection with the sustainable development of the area" (MACAA 2009 s. 51(3)(b)).</p>
Ensures public and stakeholder participation		<p data-bbox="1330 722 2024 1185">MPS - MACAA 2009 s.44(1)(b) states that MPS has to comply with schedule 5, this lays down requirements for public participation including the production of a Statement of Public Participation. This is a statement detailing the policies for or in connection with the involvement of interested persons in the preparation of the document and includes details of <i>inter alia</i> timetables, public meetings, length of time given for consultation and methods of responding to consultation. (MACAA sched 5). Interested persons are defined as "(a)...persons... likely to be interested in, or affected by, policies proposed to be included in the relevant document, and (b)members of the general public" MACAA 2009 schd 5 paragraph 4). This should ensure the ability for stakeholders and the general public to participate. Further details are provided below under consideration of the Marine Scotland Act 2010.</p> <p data-bbox="1330 1249 2024 1345">However, the authorities determine the timetable (see: Schd 5 para 5 (2)) and decide who 'interested persons' are. The legislation states "the timetable must include such provision as the</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>relevant authorities consider reasonable”, this leaves potential for non-compliance with International Law for example Aarhus as what an authority considers a reasonable time frame may not be considered a reasonable time frame under International Law (see: Mr Swords case). In respect of interested persons it states “any persons appearing to the relevant authorities to be likely to be interested in, or affected by...” Therefore a lot of discretion is left to the authorities.</p> <p>Marine Plans MACAA 2009 s. 51 (3)(b) states that a marine plan has to be prepared and adopted in accordance with schedule 6, this lays down requirements for public participation and co-ordination between planning authorities and marine planning regions.</p> <p>Issues regarding time-frames for the MPS and participation also relate to marine plans.</p>
Secures spatial and sectoral integration		<p>Spatial integration:</p> <p>An adopted MPS applies to the entire marine area of the jurisdiction for each policy authority that adopted the plan.</p> <p>A marine plan must identify (by means of a map or otherwise) the marine plan area for which it is a marine plan (MACAA 2009 s. 51 (5)) and must be in conformity with any MPS which governs the area unless relevant considerations indicate otherwise (MACAA</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>2009 (s.51 (6)). What will relevant considerations be?</p> <p>Sectoral integration</p> <p>The MPS and regional marine plans set out the relevant authorities policies and may include statements or information relating to the policies (MACAA 2009 s. 44 (1) and (2) and s.51 (3) and (9)).</p> <p>Marine plans must be in conformity with any MPS in effect unless relevant considerations indicate otherwise (MACAA 2009 s. 51(6). Again what are relevant considerations?</p> <p>If there is conflict between policies in an adopted MPS or in a marine plan and a statement or information relating to the policies then it has to be resolved in favour of the policy stated in MPS or marine plan (MACAA 2009 s. 44 (1)(3) and s.51 (10)) .</p> <p>Any decisions (this includes authorisations of any kind for example licenses and consents, except specific ones for development consent under planning acts and includes conditions to attach thereto) enforcement decisions and any act or omission capable of impacting on the marine area have to be made in accordance with relevant marine policy documents unless relevant consideration indicate otherwise (MACAA 2009 s.58). Again what are relevant considerations?</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>The MPS sets out the UK and devolved governments sectoral/activity specific objectives however, there is no requirement for assessment/mapping of current activities or pressures, or for an assessment of the current status. Therefore is it truly achieving spatial and sectoral integration because if it is unknown what goes on and the impacts of the various activities how can true integration be achieved?</p>
<p>Supports ecosystem based approach to the management of human activities</p> <p>I have broken this down into consideration of the following:</p> <ol style="list-style-type: none"> 1. conservation management 2. sustainable development 3. public participation <p>The reasoning behind breaking it down like this is given below at page ? within a general analysis of the two pieces of legislation</p>		<p>1. There is no mention of conservation management in part 3 of the legislation detailing marine planning.</p> <p>2. sustainable development</p> <p>MPS "policy authorities that prepare and adopt it state general policies of theirs (however expressed) for contributing to the achievement of sustainable development in the UK marine area" (MACAA 2009 s.44(1)(a)).</p> <p>Regional Marine Plans "states the authority's policies (however expressed) for and in connection with the sustainable development of the area" (MACAA 2009 s. 51(3)(b)).</p> <p>3. public participation</p> <p>MPS - MACAA 2009 s.44(1)(b) states that MPS has to comply with schedule 5, this lays down requirements for public participation including the production of a Statement of Public Participation. This is a statement detailing the policies for or in connection with the involvement of interested persons in the</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>preparation of the document and includes details of <i>inter alia</i> timetables, public meetings, length of time given for consultation and methods of responding to consultation. (MACAA sched 5). Interested persons are defined as “(a)..persons... likely to be interested in, or affected by, policies proposed to be included in the relevant document, and (b)members of the general public” MACAA 2009 schd 5 paragraph 4). This should ensure the ability for stakeholders and the general public to participate. Similar provisions regarding public participation are provided for regional plans(see MACAA 2009 s. 51 and schd 6). Further details are provided below under consideration of the Marine Scotland Act 2010.</p>
Evidence based policies – Review, amendment, monitoring, implementation and reporting.		<p><u>MPS</u></p> <p><u>Review</u> of the MPS is discretionary as although the authorities (Sec of State, Welsh ministers, Scottish Ministers and Department of Environment in NI) that adopted the MPS “ <u>must review</u> the MPS” this is only “<u>whenever they consider it appropriate to do so</u>” MACAA s. 46.</p> <p>A MPS may be <u>amended</u> from “time to time” by authorities who adopted it (MACAA s.47). Again very discretionary as it isn’t obliged to amend it under specified circumstances or during a specific period.</p> <p>Any policy authority that adopted an MSP can <u>withdraw</u> from it provided it informs the other policy authorities first, publishes</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>notice of its intention to withdraw in the London, Belfast and Edinburgh Gazette and “takes such further steps as it considers appropriate to secure that its withdrawal from the MPS is brought to the attention of interested persons”, including members of the public (MACAA s.48).</p> <p>Implementation</p> <p>Any decisions (this includes authorisations of any kind for example licenses and consents, except specific ones for development consent under planning acts and includes conditions to attach thereto, enforcement decisions) and any act or omission capable of impacting on the marine area have to be made in accordance with a relevant marine policy documents unless relevant consideration indicate otherwise (MACAA 2009 s.58 (1)). Under the Planning Act 2008 authorities must have regard to any appropriate marine policy documents in deciding applications for development consent (MACAA 2009 s. 58 (5) inserting a new section into s.104 (2) of the Planning Act 2008).</p> <p>A MPS is a relevant marine policy document if it is in effect in respect of any decisions/acts undertaken by the following public authorities:</p> <p>“(a) any Minister of the Crown; (b) any government department; (c) if a devolved policy authority has adopted the MPS, the devolved policy authority and any primary devolved authority related to it; (d) any non-departmental public authority, so far as carrying out functions in relation to the English inshore region or the English offshore region; (e) any non-departmental public</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>authority, so far as carrying out retained functions in relation to a devolved marine planning region; (f) any non-departmental public authority, so far as carrying out secondary devolved functions in relation to a marine planning region whose marine plan authority is a policy authority which adopted the MPS.(MACCA s. 59 (5).</p> <p>Again what are relevant considerations? Furthermore, the provisions that enable devolved authorities to withdraw from the MPS do not support effective implementation.</p> <p>There is no monitoring obligation or reporting obligation imposed in respect of the MPS.</p> <p><u>Marine Plans</u></p> <p><u>Review/Monitoring</u></p> <p>PA <u>must</u> keep matters which may effect their functions under review, including identification of areas for marine plans, preparation, adoption and review of marine plans and other specific matters relating to them (MACAA s.54). Matters to be incorporated into this review include:</p> <p>1. "the physical, environmental, social, cultural and economic characteristics of the authority's region (this includes historic and archaeological characteristics) and of the living resources which the region supports;</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>2. the purposes for which any part of the region is used;</p> <p>3.the communications, energy and transport systems of the region;</p> <p>4. any other considerations which may be expected to affect those matters.</p> <p>5. any changes which could reasonably be expected to occur in relation to any such matter;</p> <p>6.the effect that any such changes may have in relation to the sustainable development of the region, its natural resources, or the living resources dependent on the region” (MACAA 2009 s. 54 (2) & (3))</p> <p>Where a planning authority has adopted a marine plan it <u>must</u> keep under review the following:</p> <p>“(a) the effects of the policies in the marine plan;</p> <p>(b)the effectiveness of those policies in securing that the objectives for which the marine plan was prepared and adopted are met;</p> <p>(c)the progress being made towards securing those objectives;</p> <p>(d)if an MPS governs marine planning for the marine plan authority's region, the progress being made towards securing that the objectives for which the MPS was prepared and adopted are met in that region.” (MACAA 2009 s.61 (3).</p> <p>Amendments to marine plans are discretionary but must follow</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>public participation and adoption procedures for the original marine plan (MACAA s.52).</p> <p><u>Monitoring/Reporting:</u></p> <p>Marine planning authorities have to publish reports periodically. Where it has a marine plan it must report every 3 years commencing from when the plan was adopted and in any case it has to report every 6 years on marine plans adopted, intentions to amend and intention to prepare and adopt further plans. Where marine plans have been adopted, reports have to include the following information:</p> <p>“(a) the effects of the policies in the marine plan;</p> <p>(b) the effectiveness of those policies in securing that the objectives for which the marine plan was prepared and adopted are met;</p> <p>(c) the progress being made towards securing those objectives;</p> <p>(d) if an MPS governs marine planning for the marine plan authority's region, the progress being made towards securing that the objectives for which the MPS was prepared and adopted are met in that region.” (MACAA 2009 s.61 (4)). Reports are laid before the appropriate legislature.</p> <p><u>Implementation</u></p> <p>As above, any decisions (this includes authorisations of any kind for example licenses and consents, except specific ones for development consent under planning acts and includes conditions</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		to attach thereto) enforcement decisions and any act or omission capable of impacting on the marine area have to be made in accordance with relevant marine policy documents unless relevant consideration indicate otherwise (MACAA s.58). A marine plan that is in effect for any area including devolved marine areas is a relevant marine policy document (MACAA s.59 (3) and (4).
Mechanism for international co-ordination		No mechanisms are included in the planning requirements introduced by Part 3 of MACAA 2009.
Co-ordination of land and marine plans		<p><u>MPS</u></p> <p>There is no specific obligation for the policy authorities to consult/notify terrestrial planning authorities when preparing the MPS other than under the provisions dealing with consultation generally, the exception is the Department of Environment for Northern Ireland which must consult other Departments that have a function in the marine area during the preparation of the MPS (MACAA 2009 schd. 5 paragraph 3).</p> <p>Notwithstanding the above, under the Planning Act 2008 authorities must have regard to any appropriate marine policy documents in deciding application for order granting development consent (MACAA 2009 s. 58 (5) inserting a new section into s.104 (2) of the Planning Act 2008).</p> <p>A MPS is an appropriate marine policy document if it is in effect in</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p data-bbox="1335 363 2018 419">respect of any decisions/acts undertaken by the following public authorities:</p> <p data-bbox="1335 443 2018 467">“(a) any Minister of the Crown; (b) any government department;</p> <p data-bbox="1335 491 2018 826">(c) if a devolved policy authority has adopted the MPS, the devolved policy authority and any primary devolved authority related to it; (d) any non-departmental public authority, so far as carrying out functions in relation to the English inshore region or the English offshore region; (e) any non-departmental public authority, so far as carrying out retained functions in relation to a devolved marine planning region; (f) any non-departmental public authority, so far as carrying out secondary devolved functions in relation to a marine planning region whose marine plan authority is a policy authority which adopted the MPS. (MACCA 2009 s. 59 (5)).</p> <p data-bbox="1335 898 2018 1042">Although this raises similar issues to those highlighted above under evidence based policies – review, amendment monitoring, implementation and reporting, this drafting could be due to the fact that the responsible authorities for the preparation of the MPS are (with the exception of Northern Ireland) the legislature.</p> <p data-bbox="1335 1161 1469 1185"><u>Marine Plans:</u></p> <p data-bbox="1335 1209 2018 1329">Marine planning authorities have to notify the Secretary of State, relevant terrestrial planning authorities and adjacent/adjoining marine planning authorities of their intention to prepare a marine plan (MACAA 2010 Schedule 6 para 1).</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>Marine Planning Authorities must “take all reasonable steps” to ensure that marine plans adopted within its area are compatible with related marine plans and Planning Act plans related to the area (development plans and Wales Spatial Plan). An area is related to another if it adjoins or is adjacent to it, if it lies wholly or partly within another or the whole or any part of one area affects or is affected by the whole or part of the other (Schd 6 para 3).</p>
Administrative efficiency	Through the creation of and transfer of functions to the MMO established under part I of MACAA 2009.	
Time effective	The new licensing system was in operation on 6 th April 2011 a month after the MPS was published.	<p>The MACAA 2009 received royal assent on 12th November 2009 and specific provisions dealing with marine planning came into force that day with other provisions coming into force on 12th January 2010 (MACAA 2009 s.324). The MPS was in place and published by March 2011 with all four jurisdictions participating and adopting the final document.</p> <p>Regional marine plans are still being developed in England, the aim is that the MMO will complete two plans every two years. English waters (inshore and offshore) have been divided into 11 plan areas although published maps only identify 10 areas to reflect stakeholder recommendations that inshore and offshore North West plan areas should be covered by a single plan. The East inshore and offshore planning process commenced in April 2011. Draft plans have been submitted to the UK Government for approval and to enable the 12 week public consultation stage to commence. This was submitted in June 2013 however to date</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>(10th July) formal consultation has not started. The planning process for the South inshore and offshore areas commenced in early 2013 (see. Marine Planning Newsletter Issue – 14 June 2013 available from: http://www.marinemanagement.org.uk/marineplanning/news/newsletter/14.htm)</p> <p>Additional MCZs are still being agreed. The Department for Environment, Food and Rural Affairs (Defra) launched a consultation on the proposal to designate 31 MCZ on 13 December 2012. Public consultation on the proposal ran until 31st March 2013 and responses are currently being analysed (obtained from: https://www.gov.uk/government/consultations/marine-conservation-zones-consultation-on-proposals-for-designation-in-2013).</p> <p>The proposed sites cover a total sea area of 10,900 square kilometres in English waters.</p>
Validity of Plans/Public accountability		<p>MACAA 2009 s.62 provides that the courts can not question the validity of MPS and marine plans except on the grounds of judicial review, ie:</p> <p>(1) the document is not within the appropriate powers;</p> <p>(2) that a procedural requirement has not been complied with.</p> <p>Any such action must commence within 6 weeks of publication of the document concerned. This helps provide investor certainty.</p>

Case study Jurisdiction	UK (Generally)	England (Marine Planning Provisions)
		<p>The appropriate court (the High Court or the Court of Session) may upon an application make an order suspending the operation of all or just part of a MPS or (in connection with inshore plans for England and Wales, a marine plan). Suspension can cover the entire area or a specific area and lasts until the case is concluded. If the court is satisfied that the document is (a) “..to any extent outside the appropriate powers, (b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement”, the Court may quash the document or remit it back to the appropriate authority “with a function relating to its preparation, adoption or publication” with or without directions as to the actions to be taken in relation to the document (MACAA 2009 s.62 and s.63).</p> <p>This helps provide investor certainty. However, the expense of judicial review procedures may place it beyond the reach of individuals/NGOs. The expense of judicial review procedures may place it beyond the reach of individuals/NGOs.</p> <p>As noted above, it is not mandatory that a MPS is prepared and although all four jurisdictions can participate in the preparation of it, the Secretary of State is empowered to prepare a MPS acting alone, provided he has first of all invited the other PA to participate (MACAA 2009 s 45 (2)). Furthermore, a PA can withdraw from the MPS provided it informs the other PA first of its intention to do so and publishes a notice in the appropriate Gazette. If a PA withdraws, the MPS remains valid for the remaining jurisdictions, except if the Secretary of State withdraws, in these circumstances the entire MPS is withdrawn (MACAA 2009 s.48).</p>

Table 2 – Scotland

The Scottish legislation introducing MSP is broadly similar to the UK legislation, however, there are subtle and distinct differences. The variances between the two pieces of legislation are highlighted when applying the test criteria.

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
Test Criteria		
Was legislation introduced?	Yes: Marine Scotland Act 2010	<p>MACAA 2009 part 3 governs marine planning in areas beyond 12nm to the extent of continental shelf (this is known as the offshore Scottish Marine Region). The Scottish Ministers are the designated planning authority for the Scottish offshore marine area (MACAA 2009 s.50 (2)(c)) and may prepare a marine plan (MACCA 2009 s.51 (1)).</p> <p>Marine Scotland Act 2010 (MSA 2010) part 3 governs marine planning in areas within 12 nm (ie the territorial sea).</p> <p>This can be confusing as two pieces of legislation govern the Scottish marine area and although these are similar there are also distinct differences. For example the requirement to prepare a marine plan in the offshore area is discretionary (MACAA s.51 (1)), but it is compulsory in respect of the territorial sea to prepare a National Marine Plan (NMP) (MSA 2010 s. 5 (1)) and discretionary in respect of any Scottish Marine Region designated by the Scottish Ministers as a Scottish Marine Region (MSA 2010 s.5(2) and (5).</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<u>However this is a consequence of devolution and not MSP.</u>
Complies with existing EU legal obligations	<p>As noted above for the Scottish offshore area, MACAA 2009 does not specifically mention compliance with EU legislation. However, nature conservation sections identified above apply in the Scottish offshore area but MCZs in Scotland are known as MPAs (marine protected areas) (MACAA 2009 s. 116 (7), however the Scottish ministers can not designate areas as MPAs in the offshore area without the agreement of the Secretary of State (MACAA 2009s. 116 (6)).</p> <p>General duties have been placed on Scottish Ministers and public authorities when exercising any function in the Scottish marine area to act in a way best calculated to :“further the achievement of sustainable development, including the protection and, where appropriate, enhancement of the health of that area, so far as is consistent with the proper exercise of that function” (MSA 2010 s.3); and when exercising any function under <u>any enactment</u> that affects the Scottish marine area, to act in a manner “best calculated to mitigate, and adapt to, climate change so far as is consistent with the purpose of the function concerned” (MSA 2010 s.4).</p> <p>Part 5 of MSA 2010 (s. 65 – s.106) deals with marine protection and enhancement. Scottish ministers may designate three types of marine protected areas (MPA) (MSA 2010 s.67). These are:</p> <p>1. Nature Conservation MPA (MSA 2010 s. 68 – s.70)</p>	<p>In preparing the NMP and regional marine plans (if appropriate), Scottish Ministers must set economic, social and marine ecosystem objectives, and objectives relating to the mitigation of, and adaptation to, climate change; they must also assess the condition of the area concerned and identify a summary of significant pressures and the impact of human activity on the area or region (MSA 2010 s. 5 (4)).</p> <p>National and regional plans state the Scottish Ministers' policies (however expressed) for and in connection with the Scottish Ministers' policies on the contribution of specified MPAs to the protection and enhancement of the area to which the plan applies (MSA 2010 s.5 (3) (b)). The specified MPA sites for which plans must include details are:</p> <ol style="list-style-type: none"> 1. Nature Conservation MPAs (designated under Part 5 of the Act) 2. European sites (SACs and SPAs) 3. Offshore European sites 4. Ramsar Sites <p>In my opinion, these provisions are capable of ensuring compliance with EU obligations under various Directives including the MSFD (and the obligation to achieve GES by 2020), WFD (and the obligation to identify and assign all river basins within their national territory into river basin districts in order to achieve good</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
	<p>2. Demonstration and Research MPA (MSA 2010 s. 71 & s. 72)</p> <p>3. Historic MPA (MSA 2010 s.73). Nature conservation MPAs must be designated in order to contribute to the creation of a coherent network across the UK. Scottish Ministers must have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment (MSA 2010 s.79).</p>	<p>ecological and chemical status by 2015), Habitats and Birds Directives (and the obligation to conserve biodiversity and maintain habitats and species of Community interest at favourable conservation status by designating special areas of conservation (SACs) and protect all species of Birds by designating SPAs) and the Bathing Waters Directive (and the obligation to classify and to ensure the standard of bathing waters is at a minimum 'sufficient' by 2015) because the provisions in MSA require assessments of the current status, identification of pressures, setting objectives and designating conservation areas.</p>
Complies with existing International legal obligations	<p>Beyond the EEZ within the CS there is a requirement that International obligations binding on UK can not be contravened (MACAA 2009 S. 42 (2)). However, there is no mention of ensuring compliance with International obligations within the EEZ.</p> <p>As noted above general duties have been placed on the Scottish Ministers. They must also have regard to any obligations under EU or international law that relate to the conservation or improvement of the marine environment when designating Nature Conservation MPAs under Part 5 of the Act (MSA 2010 s. 79 (5)).</p>	<p>Although there is no specific mention of ensuring compliance with international obligations in the territorial sea under Part 3 MSA 2010, the general duties placed on Scottish Ministers under MSA 2010 s.3 and s.4 (noted above), the fact that when preparing the NMP and regional marine plans (if appropriate), the Scottish Ministers must set economic, social and marine ecosystem objectives, and objectives relating to the mitigation of, and adaptation to, climate change; together with the fact that they must also assess the condition of the area concerned and identify a summary of significant pressures and the impact of human activity on the area or region (MSA 2010 s. 5 (4)), along with public participation (noted below) and the obligation to have regard to any obligation under EU or international law that relates to conservation of marine environment (noted opposite) should be capable of ensuring compliance with International obligations for example CBD, Aarhus, SEA.</p>
Promotes sustainable	As noted above, a general duty is placed on Scottish Ministers	National and regional plans must state the Scottish Ministers'

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
development	<p>and public authorities to act in a manner best calculated to further sustainable development (MSA 2010 s.3).</p> <p>Demonstration and Research MPAs are designated in order to demonstrate and/or research sustainable methods of marine management or exploitation (MSA 2010 s.71 (1)).</p>	<p>policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies (MSA 2010 s.5 (3) (a)).</p> <p>Scottish Ministers must keep under review specific matters that may affect the exercise of their functions. These include <i>inter alia</i> the physical, environmental, social, cultural and economic characteristics of the Scottish marine area and of the living resources which the area supports, the purposes for which any part of the area is used, the communications, energy and transport systems for the area and any changes that may have an effect in relation to the sustainable development of the Scottish marine area, its natural resources, or the living resources dependent on the area (MSA 2010 s.11 (2) and (3)).</p> <p>Scottish Ministers have to monitor and report on the effects of the national marine plan and the progress it has made towards achieving the policy objectives noted in the plan, this includes monitoring and reporting on sustainable economic development of the marine area (MSA 2010 s. 16 read with s.5).</p>
Ensures public and stakeholder participation		<p>National marine plans and regional marine plans have to be prepared and adopted in accordance with the provisions set down in schedule 1 (MSA2010 s.5 (1) and (2)). Schedule 1 states that before starting to prepare a national marine plan notice has to be given to any public authority with a coastline, the secretary of state and the Department of environment for NI and a statement of public participation (SPP) has to be prepared and published (Schd 1 para 1 and para 4). A SPP sets out the Scottish Minister's policies</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>“as to when consultation is likely to take place and with whom, its likely form, and the steps to be taken to involve the general public in the stages of preparation or review of the proposed national marine plan” (Schd I para 4(2)). The SPP must contain a timetable setting out a schedule for preparing a draft, consultation of this, time allocated for representations, parliamentary consideration and adoption (Schd I para 5). It must also invite representations as to what should be in the plan (Schd I para 4 (3), how these representations should be made and the time allocated for this (Schd I para 5 (4) and (5)). It may also contain details on the holding of public meetings (Schd I para 5 (3)). The SPP must be kept under review (Schd I para 6 (1)), Scottish Ministers are under an obligation to take all reasonable steps to comply with the SPP (Schd I para 4 (5)) and it must be published in a manner the Scottish Ministers consider that will most likely bring it to the attention of interested parties (Schd I para 4(4)). Interested parties are identified as “persons appearing to the Scottish Ministers to be likely to be interested in, or affected by, policies proposed to be included..and...members of the general public” (Schd I para 2). To facilitate development of the plan, Scottish Ministers can convene groups for the purposes of developing proposals for inclusion in the plan and facilitating consultation on these proposals (Schd I para 7). In preparing the plan/draft plan, they have to have regard to representations made as to what should be included in it (Schd I para 8 (2)(e)), publish a draft consultation plan and take steps to ensure that it's contents are brought to the attention of interested parties (Schd I para 9). Anyone can make representations on the consultation draft and Scottish Ministers must have regard to responses received when preparing the final text (Schd I para 10). Consideration has to be given about whether to appoint an independent investigation into the details contained in the</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>consultation draft taking into account responses received to the invitation as to matters to be included in the plan and responses to proposals contained in the draft. If an independent investigation is conducted, the individual has to make recommendations and give reasons for these, and the Scottish Minister's must publish this (Schd I para 11). These provisions apply to regional plans as well.</p> <p>However, as above in relation to the MACAA 2009, the Scottish minister's determine the timetable and decide who 'interested persons' are. The legislation states "the timetable must include such provision as the relevant authorities consider reasonable", this leaves potential for non-compliance with International Law for example Aarhus as what an authority considers a reasonable time frame may not be considered a reasonable time frame under International Law (see: Mr Swords case).</p>
Secures spatial and sectoral integration		<p>Scottish Ministers may by order designate any area in the Scottish marine area as a Scottish marine region, the order must identify the boundaries of the area concerned (MSA 2010 s. 5(5)).</p> <p>In preparing either a NMP or a regional marine plan, Scottish ministers must set assess the condition of the area at the time of preparation, prepare a summary of significant pressures and impacts of human activities and set economic, social and ecosystem objectives, and objectives relating to mitigating climate change (MSA 2010 s.5 (4)).</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>National and regional marine plans must be in conformity with any MPS in effect unless relevant considerations indicate otherwise. A MPS is in effect if it has been adopted by Scottish ministers, published, if it hasn't been replaced, the Scottish Ministers haven't withdrawn and it hasn't been withdrawn by the Secretary of State. Regional plans must also be in conformity with the National plan unless relevant considerations indicate otherwise (MSA 2010 s.6).</p> <p>A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise. If it is not in conformity the authorities have to state their reasons for this. A public authority that exercises any functions capable of impacting upon the Scottish marine area must have regard to marine plans (MSA 2010 s.15).</p> <p>In preparing the summary of pressures and human activities the various sectoral activities will be identified and assessed in order to set objectives – in theory this should ensure sectoral and spatial integration. However, as above what will 'relevant considerations' be? Furthermore what happens if the Scottish Minister's don't adopt an MSP or withdraw from it?</p>
Supports ecosystem based approach to the management of human activities I have broken this down into consideration of the following:		<p>I. Conservation management</p> <p>In preparing either a NMP or a regional marine plan, Scottish ministers must set assess the condition of the area at the time of preparation, prepare a summary of significant pressures and impacts of human activities and set economic, social and ecosystem objectives, and objectives relating to mitigating climate change (MSA</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
<p>1. conservation management</p> <p>2. sustainable development</p> <p>3. public participation</p>		<p>2010 s.5 (4).</p> <p>National and regional plans state the Scottish Ministers' policies (however expressed) for and in connection with the Scottish Ministers' policies on the contribution of specified MPAs to the protection and enhancement of the area to which the plan applies (MSA 2010 s.5 (3) (b)). The specified MPA sites for which plans must include details are:</p> <ol style="list-style-type: none"> 1. Nature Conservation MPAs (designated under Part 5 of the Act) 2. European sites (SACs and SPAs) 3. Offshore European sites 4. Ramsar Sites <p>2. Sustainable development:</p> <p>National and regional plans <u>must state</u> the Scottish Ministers' policies (however expressed) for and in connection with the sustainable development of the area to which the plan applies (MSA 2010 s.5 (3) (a)).</p> <p>Scottish Ministers must keep under review specific matters that may affect the exercise of their functions. These include <i>inter alia</i> the physical, environmental, social, cultural and economic characteristics of the Scottish marine area and of the living resources which the area supports, the purposes for which any part of the area is used, the communications, energy and transport systems for the area and any changes that may have an effect in relation to the sustainable</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>development of the Scottish marine area, its natural resources, or the living resources dependent on the area (MSA 2010 s.11 (2) and (3)).</p> <p>Scottish Ministers have to monitor and report on the effects of the national marine plan and the progress it has made towards achieving the policy objectives noted in the plan, this includes monitoring and reporting on sustainable economic development of the marine area (MSA 2010 s. 16 read with s.5).</p> <p>3. Public participation</p> <p>National marine plans and regional marine plans have to be prepared and adopted in accordance with the provisions set down in schedule 1 (MSA2010 s.5 (1) and (2)). (full details above).</p> <p>Preparation of regional marine plans can be delegated to a 'delegate'. A delegate must include a person nominated by the Scottish Ministers and either a local authority or a person nominated by the local authority with an interest in the marine region for which the plan applies (MSA 2010 s.12).</p> <p>In my opinion the initial assessments, together with the public participation elements and delegation of preparation of regional plans to 'delegates' ensures that all the principles of the ecosystem approach identified by the CBD Conference of Parties (noted below) are incorporated into Scottish marine planning.</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		Furthermore as noted in column 2 at the promotes sustainable development test, demonstration and research MPA, are designated for the purposes of investigating sustainable methods of marine management or exploitation (MSA 2010 s.71 (1)).
Evidence based policies – Review, amendment, monitoring, implementation and reporting.		<p>These points have already been noted above in various sections but they are:</p> <p>Evidence based policies:</p> <p>In preparing either a NMP or a regional marine plan, Scottish ministers must assess the condition of the area at the time of preparation, prepare a summary of significant pressures and impacts of human activities and set economic, social and ecosystem objectives, and objectives relating to mitigating climate change (MSA 2010 s.5 (4)).</p> <p>Review:</p> <p>Scottish Ministers must keep under review specific matters that may affect the exercise of their functions. These include <i>inter alia</i> the physical, environmental, social, cultural and economic characteristics of the Scottish marine area and of the living resources which the area supports, the purposes for which any part of the area is used, the communications, energy and transport systems for the area and any changes that may have an effect in relation to the sustainable development of the Scottish marine area, its natural resources, or the living resources dependent on the area (MSA 2010 s.11 (2) and</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>(3)).</p> <p>Monitoring:</p> <p>Scottish Ministers have to monitor and report on the effects of the national marine plan and the progress it has made towards achieving the policy objectives noted in the plan, this includes monitoring and reporting on sustainable economic development of the marine area (MSA 2010 s. 16 read with s.5).</p> <p>Amendments:</p> <p>Following publication of a report the Scottish Minister's have to consider whether to amend or replace the plan (MSA 2010 s.16 (4)). Any amendments have to be adopted in accordance with schedule 1 (noted above) (MSA 2010 s.8).</p> <p>Reporting:</p> <p>The first report has to be made within 5 years following the adoption of a plan and every 5 years thereafter. (MSA s.16)</p> <p>Withdrawal</p> <p>The Scottish Minister's can (when they consider it appropriate to do so) withdraw marine plans (regional and national) and must publish notice of the withdrawal in the Edinburgh Gazette and take steps to bring it to the attention of 'interested persons'. When they withdraw the national plan they must prepare a new one in</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>accordance with schedule 1 (MSA 2010 s.9).</p> <p>Implementation</p> <p>A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise. If it is not in conformity the authorities have to state their reasons for this. On the one hand it can be questioned whether this really holds authorities to account, however, the fact that they have to state why also enables decisions to be challenged. A public authority that exercises any functions capable of impacting upon the Scottish marine area must have regard to marine plans (MSA 2010 s.15).</p>
Mechanism for international co-ordination		<p>When Scottish Ministers decide to prepare a national marine plan they must, before starting to prepare the plan, give notice of their intention to do so—</p> <p>(a) to any planning authority the district of which adjoins the Scottish marine area,</p> <p>(b) to the Secretary of State,</p> <p>(c) to the Department of the Environment in Northern Ireland (MSA 2010 schd 1 para 1). This notification procedure provides a mechanism for co-ordination and participation from an international perspective albeit the jurisdictions notified are also part of the UK.</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
Co-ordination of land and sea plans	Both systems have to take into account the other when considering applications.	<p>Before the Scottish Ministers start to prepare a national marine plan (or regional plan), they must give notice of their intention to do so to planning authorities the district of which adjoins the Scottish marine area (or areas) for which the marine plan is proposed (Schd 1 para 1 (1) and (2)). They must also invite representations to be made to them as to matters to be included in the proposed marine plan (Schd 1 para 4 (3)) and ensure that any regional marine plan is compatible with the development plan for any area which adjoins the area (Schd 1 para 3 (2)).</p> <p>Preparation of regional marine plans can be delegated to a "delegate". A delegate must include a person nominated by the Scottish Ministers and either a local authority or a person nominated by the local authority with an interest in the marine region for which the plan applies (MSA 2010 s.12).</p> <p>A public authority must take any authorisation or enforcement decision in accordance with the appropriate marine plans, unless relevant considerations indicate otherwise. If it is not in conformity the authorities have to state their reasons for this. A public authority that exercises any functions capable of impacting upon the Scottish marine area must have regard to marine plans (MSA 2010 s.15).</p>
Administrative efficiency	Marine Scotland provides 'front door access' and guides developers through the licensing process.	

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
Time effective		<p>Scotland's National Marine Plan has not been adopted yet although it was originally anticipated that preparation would take around 2 years. The consultation on the proposed marine regions is still ongoing. The proposed timetable has been amended at least once. The details below represent the current timetable available from http://www.scotland.gov.uk/Topics/marine/seamanagement/national/Timetable</p> <p>The process involved to create a National Marine Plan will follow 9 stages as set out below:</p> <p>Stage 1: Initial meetings to consult stakeholders on the scope and content of the National Marine Plan: June - December 2010. *Completed*</p> <p>Stage 2: Preparation of pre consultation draft National Marine Plan and undertaking Sustainability Appraisal (SA), which includes Strategic Environmental Assessment (SEA) : October 2010 - March 2011. * Completed*</p> <p>Stage 3: Pre consultation of the draft national marine plan and draft SA/SEA (12 weeks): March 2011- June 2011. * Completed*</p> <p>Stage 4: Revision of the pre consultation draft National Marine Plan in response to comments made during the pre consultation and the SA/SEA preconsultation: July 2011- Summer 2013.</p> <p>Stage 5: Consultation on the Draft National Marine Plan (12 - 16 weeks). Consultation on the SA, SEA and partial BRIA(12 - 16 weeks): Summer 2013.</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>Stages 6 - 8 may be subject to change:</p> <p>Stage 6: Revision of the Draft National Plan (including a statement on inclusion of retained functions and that the plan is in conformity with MPS) in response to comments made during the Plan consultation and the SA/SEA consultation: October 2013 - April 2014.</p> <p>Stage 7: Laying draft National Marine Plan before Parliament and Parliamentary consideration of the proposed National Marine Plan: Summer 2014</p> <p>Stage 8: Final considerations, adoption and publication of the National Marine Plan. Publication of the SEA Post-Adoption Statement: End 2014.</p> <p>Stage 9: Keep National Marine Plan under review and report in line with the appropriate legalisation.</p> <p>However, how much of this delay is due to the political environment and the prospect of independence?</p>
Validity of Plans/Public accountability		<p>The validity of the NMP and any regional marine plans or amendments to these, can not be questioned except on the grounds of judicial review, ie:</p> <p>(1) the document is not within the appropriate powers;</p>

Case study Jurisdiction	Scotland Generally	Marine Planning Provisions
		<p>(2) that a procedural requirement has not been complied with, Any such action must commence within 6 weeks of publication of the document concerned (MSA 2010 s.17).</p> <p>The Court of Session <u>may</u> upon an application under MSA s.17, make an order suspending the operation of all or just part of the document and can cover the entire area or a specific area. Suspension lasts until the case is concluded. If the satisfied that the document is (a) “..to any extent outside the appropriate powers, (b) that the interests of the applicant have been substantially prejudiced by failure to comply with a procedural requirement”, the Court may quash the document or remit it back to the Scottish Ministers with or without directions as to the actions to be taken in relation to the document (MSA 2010 s.18)).</p> <p>This helps provide investor certainty. The expense of judicial review procedures may place it beyond the reach of individuals/NGOs.</p>

Analysis

Although the two pieces of legislation are similar, the above review emphasises the differences between the provisions that introduced marine planning in England and Scotland. The fact that assessments are made of the status of Scottish waters and summaries prepared of significant pressures and impacts of human activities before plans are made; and economic, social and ecosystem objectives are set at the plan making stage, is crucial when the test criteria is applied.

For the purpose of analysing the ecosystem approach, it has been divided into three criteria:

- conservation management
- sustainable development
- participation

The reasoning behind this stems from the CBD and the internationally accepted definition of the ecosystem approach provided in the main report. As it recognises that the objectives of land, water and living resource management are a matter for societal choice, which will vary between societies,¹⁰⁸ but should be managed at the lowest appropriate level.¹⁰⁹ Although the ecosystem approach is not spatially defined,¹¹⁰ it is recognised that it should be undertaken in appropriate spatial scales,¹¹¹ taking into consideration actual and potential impacts on the surrounding ecosystems,¹¹² it requires an adaptive management system,¹¹³ where managers recognise that change is inevitable.¹¹⁴ Other management practices are not excluded,¹¹⁵ as conservation of the ecosystem structure and functioning should be a priority,¹¹⁶ so that ecosystems are managed within their limits,¹¹⁷ striking the appropriate balance between and integration of conservation and use.¹¹⁸ Managers

108	COP 5 Decision V6 principle 1
109	COP 5 Decision V6 principle 2
110	COP 5 Decision V6 paragraph 3
111	COP 5 Decision V6 principle 7
112	COP 5 Decision V 6 principle 3
113	COP 5 Decision V6 paragraph 4
114	COP 5 Decision V6 principle 9
115	COP 5 Decision V6 paragraph 5, principle 4
116	COP 5 Decision V6 principle 5
117	COP 5 Decision V6 principle 6
118	COP 5 Decision V6 principle 10

should recognise potential gains and manage the system from an economic perspective with cost benefit analysis,¹¹⁹ taking into consideration all relevant information,¹²⁰ including scientific and local knowledge involving all sectors of society and science,¹²¹ while recognising that the objectives should be set for the long term perspective.¹²² It is my opinion that the provisions in part 3 of the Marine Scotland Act dealing with assessments and setting objectives, the incorporation of nature conservation policies into marine plans (something that is not in Part 3 of the Marine and Coastal Access Act 2009) and the public participation processes enable Scotland to achieve the test criteria.

119 COP 5 Decision V6 principle 4
120 COP 5 Decision V6 principle 11
121 COP 5 Decision V6 principle 12
122 COP 5 Decision V6 principle 7

APPENDIX VII: PRELIMINARY TESTING OF OPTIONS

Each option was broken down in detail in order to enable comparisons to be made. Thereafter, each option was looked at in turn before turning to the testing of the MSP Options. This was part of the research process and aspects of the options and the testing criteria changed and developed into the options and conclusions of the main body of the report. It should be particularly noted that the Minimum Parallel System was not referred to at that time as the Forward Planning System. This contents of this Appendix are included only to explain the research process.

Do-Nothing Option in detail

- Legislation required: **No**
- Extent of MSP jurisdiction: **potentially high water mark to continental shelf but activity continues to be demand-driven not plan-led**
- Plans required: **no new plans but obligation to develop a marine strategy under Directive 2008/56/EC remains**
- Role and status of plans: **not applicable**
- Consent/licensing/marine development process: **continues unchanged**
- Competent/relevant department(s): **continues unchanged**
- Marine conservation/management: **none**
- Relationship to sectoral plans: **none other than coincidental**
- Relationship to terrestrial planning: **none other than coincidental**
- Fulfil goal in IMP: **No**

Any gaps identified if the **Do Nothing option** implemented: **Yes - no implementation of marine spatial planning for Irish waters; issues regarding compliance with international and EU legislation**

BENEFIT(S) : requires no work other than addressing international obligations and is therefore cost efficient for the State in the short term but may not be in the long term due to the loss of opportunities and potential for litigation.

DISADVANTAGE(S) : will not secure the vision and goals identified in the IMP.

Full(y) (integrated) MSP Regime in detail

- Legislation required: **yes primary and secondary**
- Extent of MSP jurisdiction: **high water mark to continental shelf**
- Plans required: **an overarching national marine spatial plan (NMSP); mandatory regional sea basin (RSB) plans and ICZM plans**
- Role and status of plans: **statutory requirement for plans to be created and inform decisions on future development**
- Consent/ licensing/ marine development process: **to be integral to the MSP process**
- Competent/Relevant department(s): **. A new marine planning body would be established or created from existing departments and bodies. This could take place on a gradual basis, initially it could provide 'front door access' guiding developers through the process but in time it could take over responsibility for consents, act as the data exchange and a repository for expertise in planning skills and implementation. It would source, coordinate, and share marine data for the purposes of marine planning policy development, decision making and marine conservation.**
- Marine conservation /management: **to be included**
- Relationship to sectoral plans: **marine plans to cover all marine activities and therefore sectoral plans act as guidance only, would input into marine plans as with terrestrial plans at present**
- Relationship to terrestrial planning: **about terrestrial regime with a requirement for marine and terrestrial systems to have regard to each other.**
- Fulfil the IMP : **YES**

Any gaps if the **Full MSP Regime** implemented: **Make sure that there is appropriate and effective integration between the terrestrial and marine system**

BENEFIT(S) : introduction of the new system : 'headline news', a game changer, requires buy in from all stakeholders and relevant departments, NGOs and sets out an expectation that things will change

DISADVANTAGE(S) : does not use existing tools, management systems and laws to best effect, expects MSP regime to do it all; possibly introduces unrealistic expectation of what the MSP regime can do.

Minimal Parallel System in Detail

- Legislation required : **YES primary and secondary**
- Extent of MSP jurisdiction: **The marine spatial planning system would immediately abut the terrestrial planning system at the high water mark and would extend to the continental shelf**
- Plans required: **A mandatory National Marine Spatial Strategy (NMSS) aligned to the National Spatial Strategy (NSS). There would be discretionary regional sea basin plans and ICZM plans.**
- Role and status of plans: **The main focus of the legislation would be the statutory requirement for the preparation of a hierarchy of plans,**
- Consent/ licensing/ marine development process: **There would be a statutory role for the plan in the decision making/licensing process.**
- Competent/Relevant department(s): **An existing body with the appropriate expertise would be responsible for the preparation of the plans, but could coordinate with regional or local authorities as appropriate, particularly for ICZM plans**
- Marine conservation /management: **no role for marine conservation / management initially**
- Relationship to sectoral plans: **marine plans to cover all marine activities and therefore sectoral plans role as guidance only**
- Relationship to terrestrial planning: **While it would be separate from the land based planning system and policies, the MSP system would be coordinated with the terrestrial system, as required**
- Fulfil goals of the IMP: Probably

Any gaps if the **Minimal Parallel System** option implemented: Relationship to terrestrial system; marine conservation; identity and characteristics of the body who oversees the process

BENEFIT(S) : a definite change by the introduction of marine plans but potential perceived advantage of maintaining much of the old regime

DISADVANTAGE(S) : the introduction of a parallel system may be confusing and fail to grasp the opportunity of revising the whole system in order to streamline and improve it for real long term benefits, for example by failing to address conservation management.

Overlapping System in Detail

- Legislation required **YES but some aspects of the overlapping system would be implemented without legislation**
- Extent of MSP jurisdiction: **HWM to extent of the CS**
- Plans required: **A hierarchical system of plans, with a national marine strategy, regional sea basin plans and ICZM plans for foreshore area/territorial waters.**
- Role and status of plans: **An existing government department or designated body would be responsible for the preparation of a non-statutory national marine strategy and regional sea basin plans which could extend from the continental shelf up to the high water mark, while local and regional authorities would have a statutory overlapping plan making function for the foreshore area**
- Consent/ licensing/ marine development process: **this would remain the same (or as amended as part of a separate exercise)**
- Competent/Relevant department(s): **An existing government department or designated body**
- Marine conservation /management: **No**
- Relationship to sectoral plans: **marine plans to cover all marine activities and therefore sectoral plans act as guidance only**
- Relationship to terrestrial planning: **a requirement that during the preparation of plans (both marine and terrestrial) the other one is taken into account.**
- Fulfil the goals of the IMP: Possible but highly unlikely

Any gaps if the **Overlapping System** option implemented: The relationship between the non statutory national marine strategy and regional sea basin plans and the statutory plan making functions of the local authority for the foreshore/territorial waters. How would conservation management be addressed? Which government department or designated body would be allocated the non statutory marine plan making function ?

BENEFIT(S) : It could be implemented quickly as the non statutory elements (the national marine strategy and regional sea basin plans) could be introduced under Government Policy.

DISADVANTAGE(S) : Non statutory elements of the planning hierarchy could result in plans not being made. Conservation management not being addressed.

Extended Terrestrial Planning System in Detail

- Legislation required : **Yes**
- Extent of MSP jurisdiction: **All land and marine area to extent of CS**
- Plans required: **NSS extended to cover the marine area**
- Role and status of plans: **The NSS covering the marine area, regional sea plans related to terrestrial regions and planning for ICZM for areas of high pressure at either the regional or local level**
- Consent / licensing / marine development process: **Consenting/licensing and marine conservation are not included in this option as proposed but could be integrated into the system.**
- Competent/Relevant department(s): **An existing government department or designated body**
- Marine conservation /management: **No not as proposed but could be included**
- Relationship to sectoral plans: **close relationship**
- Relationship to terrestrial planning: **fully integrated**
- Fulfil the goals of the IMP: **Possibly but highly unlikely, furthermore extension of the terrestrial system not expected or anticipated by the IMP**

Any gaps if the **Terrestrial System** option implemented: unlikely to be sufficient focus on marine development and management to be effective

BENEFIT(S) : co-ordination of forward planning on land and in the marine

DISADVANTAGE(S) : complexities of the marine environment give rise to fundamentally different considerations than those appropriate to terrestrial spatial planning; permission / consent process could not be simply extended to area below HWM because of different Constitutional provisions regarding terrestrial and marine ownership (Articles 40.3.2° and 43 vrs Article 10) and implications for compensation arising therefrom.

Test criteria

The options were then tested against criteria which can be categorised under the three main subject headings of spatial planning principles; governance; and international (including EU) law and policy.

The 11 criteria have been drawn from the legal research and case studies:

- Complies with existing EU/International legal obligations
- Ensures effective implementation of the IMP and relevant Government policy
- Promotes sustainable development (economic, environmental, social)
- Ensures public and stakeholder participation
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management
- Supports ecosystem-based approach in the management of competing uses/activities
- Ensures evidence based policies that can be implemented, monitored and reviewed
- Provides mechanisms for international coordination of marine plans
- Allows for the coordination of national marine and terrestrial planning systems
- Promotes administrative and cost efficiency
- Is time effective

The subject headings and criteria have been used to test each option.

Testing of Do Nothing Option

Spatial planning principles

- Promotes sustainable development (economic, environmental, social) **No**
- Ensures public and stakeholder participation **No**
- Ensures evidence based policies that can be implemented, monitored and reviewed **No**
- Secures the spatial and sectoral integration for the benefit of licensing/consenting and management **No**
- Provides mechanisms for international coordination of marine plans: **No**
- Allows for the coordination of national marine and terrestrial planning systems: **No**
the present system does not prevent coordination although it does nothing to promote or encourage it.

Governance

- Ensures effective implementation of the IMP and relevant Government policy: **No**
- Promotes sustainable development (economic, environmental, social) **No**
- Ensures public and stakeholder participation: **No**
- Secures the spatial and sectoral integration for the benefit of licensing/consenting and management: **No**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **No**
- Provides mechanisms for international coordination of marine plans: **No**
- Promotes administrative and cost efficiency: **Yes it is cost effective for the State but only in the short term. The lack of coordination means it is not cost effective for developers. Therefore in the long term it is not cost effective for the state due to lost opportunities and the potential for compliance litigation from the EU and International bodies for failing to implement obligations.**
- Is time effective: **YES**

International (including EU) law and policy

- Complies with existing EU/International legal obligations: **No**
- Promotes sustainable development (economic, environmental, social): **No**
- Ensures public and stakeholder participation: **No**
- Supports ecosystem-based approach in the management of competing uses/activities:
No

Testing of Full MSP Regime

Spatial planning principles

- Promotes sustainable development (economic, environmental, social) **YES can be included in legislation**
- Ensures public and stakeholder participation **YES include mechanisms in legislation**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management **YES by the use of the plans to inform decision making**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Yes : evidence based plans : best practice monitoring and review included in legislation**
- Provides mechanisms for international coordination of marine plans: **Yes : included in legislation**
- Allows for the coordination of national marine and terrestrial planning systems: **Yes included in legislation**

Governance

- Ensures effective implementation of the IMP and relevant Government policy: **YES**
- Promotes sustainable development (economic, environmental, social) **YES**
- Ensures public and stakeholder participation: **YES**
- Secures the spatial and sectoral integration for the benefit of licensing/consenting and management: **YES**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **YES**
- Provides mechanisms for international coordination of marine plans: **YES**
- Promotes administrative and cost efficiency: **No not initially for the State.**
Although a full MSP has the potential to be administratively efficient, as it streamlines the system, reduces overlap and coordinates marine development; there will be costs associated with the full MSP system, but it could be phased in and be the most cost and administratively effective for

the **State and Developers** in the long term.

- Is time effective: **NO**, but could be relatively time effective if phased in, starting as 'front door access'.

International (including EU) law and policy

- Complies with existing EU/International legal obligations: **YES an effective and appropriate mechanism for achieving this. (SEA to be undertaken if required)**
- Promotes sustainable development (economic, environmental, social): **YES**
- Ensures public and stakeholder participation: **YES**
- Supports ecosystem-based approach in the management of competing uses/activities: **YES: an effective and appropriate mechanism of achieving this**

Testing of Minimal Parallel System

Spatial planning principles

- Promotes sustainable development (economic, environmental, social): **Yes if all elements are included in legislation however this changes where one of the elements is omitted**
- Ensures public and stakeholder participation: **Yes if included in legislation in relation to the development of the plans**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Yes implementation, monitoring and reviewing of the plan can be included in the legislation; evidence based plans: best practice**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management: **Partial through the development of the plans**
- Provides mechanisms for international coordination of marine plans: **Yes if included in the legislation**
- Allows for the coordination of national marine and terrestrial planning systems: **Yes if included in the legislation**

Governance

- Ensures effective implementation of the IMP and relevant Government policy **YES**
- Promotes sustainable development (economic, environmental, social): **Yes if all elements included in the legislation**
- Ensures public and stakeholder participation: **Yes if included in the legislation**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management: **Partial through the development of the plans**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Yes implementation, monitoring and reviewing of the plan can be included in the legislation; evidence based plans : best practice**
- Provides mechanisms for international coordination of marine plans: **Yes if included in the legislation**

- Promotes administrative and cost efficiency : **potentially administrative and cost effective, but must ensure streamlining achieved by the partial system as there is a danger of having an old and a new system running together which may be ineffective.**
- Is time effective: **YES although the preparation of plans will take time, but more time efficient than the Full MSP regime**

International (including EU) law and policy

- Complies with existing EU/International legal obligations: **partially but could secure compliance if included in the legislation; SEA to be undertaken as required**
- Promotes sustainable development (economic, environmental, social): **Yes if all elements included in the legislation**
- Ensures public and stakeholder participation: **Yes if included in the legislation**
- Supports ecosystem-based approach in the management of competing uses/activities: **will assist with this but as a partial system may not be as effective as the Full MSP system. Requires effective coordination of other regimes and laws, but this may be beneficial if there is a real will to work together compared with the Full MSP system where there may be unrealistic expectations of what might be done.**

Testing of the Overlapping System

Spatial planning principles

- Promotes sustainable development (economic, environmental, social): **Possibly however, it would depend upon whether or not a Plan was actually made**
- Ensures public and stakeholder participation: **Yes in plan making**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Possibly if included in legislation**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management : **Possibly if included in legislation**
- Provides mechanisms for international coordination of marine plans: **Possibly if included in legislation**
- Allows for the coordination of national marine and terrestrial planning systems: **Probably, designed as an overlapping system**

Governance

- Ensures effective implementation of the IMP and relevant Government policy: **Possibly**
- Promotes sustainable development (economic, environmental, social): **Probably if included in legislation**
- Ensures public and stakeholder participation: **Probably**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management: **Possibly if included in legislation**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Possibly if included in legislation**
- Provides mechanisms for international coordination of marine plans: **Possibly if included in legislation**
- Promotes administrative and cost efficiency : **Possibly**
- Is time effective **YES as can be implemented quite quickly**

International (including EU) law and policy

- Complies with existing EU/International legal obligations **Possibly but not guaranteed**
- Promotes sustainable development (economic, environmental, social): **Possibly if included in legislation**
- Ensures public and stakeholder participation: **Probably**
- Supports ecosystem based approach in the management of competing uses/activities **Possibly but not guaranteed**

Testing of Extended Terrestrial Planning System

Spatial planning principles

- Promotes sustainable development (economic, environmental, social): **Possibly but unlikely even if included in legislation due to complex nature of marine environment**
- Ensures public and stakeholder participation: **yes**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Possibly but unlikely due to marine environment**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management: **Possibly**
- Provides mechanisms for international coordination of marine plans **Possibly if included in legislation**
- Allows for the coordination of national marine and terrestrial planning systems **YES but the terrestrial system is the main focus of this option**

Governance

- Ensures effective implementation of the IMP and relevant Government policy: **Possibly**
- Promotes sustainable development (economic, environmental, social): **Possibly**
- Ensures public and stakeholder participation: **yes**
- Secures spatial and sectoral integration for the benefit of licensing/consenting and management : **Possibly, but transferring functions below the HWM to local authorities would give rise to extensive issues regarding alignment of terrestrial and marine unit boundaries; expertise and competence. Issues also arise with regard to the Constitutional provisions on terrestrial and marine ownership (Articles 40.3.2° and 43 vrs Article 10).**
- Ensures evidence based policies that can be implemented, monitored and reviewed: **Possibly but unlikely**
- Provides mechanisms for international coordination of marine plans: **Probably if included in legislation**

- Promotes administrative and cost efficiency **NO there is a concern that there would be no administrative and cost efficiencies**
- Is time effective : **No although there could be some efficiencies in the long term extending the terrestrial system into the marine environment is not a viable option as the ecosystems are not comparable**

International (including EU) law and policy

- Complies with existing EU/International legal obligations: **Possibly but unlikely due to differences in the ecosystems**
- Promotes sustainable development (economic, environmental, social): **Possibly but unlikely**
- Ensures public and stakeholder participation: **yes**
- Supports ecosystem-based approach in the management of competing uses/activities: **Possibly but unlikely even for the coastal straddle between terrestrial and marine as the ecosystems are not comparable and this option may lack the necessary focus on the marine environment**

APPENDIX VIII - ANALYSIS OF MARINE PLANNING PROVISIONS WITHIN THE MARINE AND COASTAL ACCESS ACT 2010 AND THE MARINE SCOTLAND ACT 2010

Case study Jurisdiction	England	Scotland
Test Criteria	Marine and Coastal Access Act 2009 Part 3	Marine Scotland Act 2010 Part 3
Was legislation introduced?	Green	Green
Complies with existing EU legal obligations	Orange	Green
Complies with existing International legal obligations	Orange	Green
Promotes sustainable development	Green	Green
Ensures public and stakeholder participation	Green	Green
Secures spatial and sectoral integration	Orange	Green
Supports ecosystem based approach to the management of human activities	Orange	Green
Evidence based policies – Review, amendment, monitoring, implementation and reporting.	Orange	Green
Mechanism for international co-ordination	Red	Orange
Co-ordination of land and marine plans	Orange	Green
Administrative efficiency	Green	Green
Time effective	Orange	Orange
Validity of plans/public accountability	Green	Green

Key

Red – does not meet the criteria

Orange – problems have been identified in achieving the test criteria

Green – meets the test criteria (**For a full written explanation please refer back to Appendix VI**).

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1979 Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention)

1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)

1979 Convention on Long Range Transboundary Air Pollution

1982 United Nations Convention on the Law of the Sea (UNCLOS)

1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.(Basel Convention)

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