

Guidance for Marine Protected Area Assessments in the Northern Ireland inshore region

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Department of
**Agriculture, Environment
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The Marine Protected Area Network

The sea around Northern Ireland is environmentally important and diverse, and is fundamental to our economic prosperity. It is important that it is managed sustainably and promoted as a valuable social and economic asset. The Department of Agriculture, Environment and Rural Affairs (DAERA) is committed to the vision of a clean, healthy, safe, productive and biologically diverse marine and coastal environment, that meets the long term needs of people and nature. Marine nature conservation is an integral component of how this can be achieved.

The Department's '*Strategy for Marine Protected Areas in the Northern Ireland inshore region*' (May 2013) sets out the aims and key objectives to which marine conservation policy can contribute. Site protection is an important element of marine and coastal conservation. We currently have five types of Marine Protected Areas (MPAs) in Northern Ireland:

1. Special Areas of Conservation (SACs) are sites of national importance designated to protect habitats and species listed in the Habitats Directive. The sites are designated under the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (as amended);
2. Special Protection Areas (SPAs) are sites of national importance designated to protect birds listed in the Birds Directive. The sites are designated under the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 (as amended);
3. Areas of Special Scientific Interest (ASSIs) for nationally important habitats and species declared under the Environment Order (Northern Ireland) 2002;
4. Ramsar sites for internationally important wetlands, designated under the Ramsar Convention; and
5. Marine Conservation Zones (MCZs) to protect rare, threatened or nationally important marine habitats, species and geological features, designated under the Marine Act (Northern Ireland) 2013.

In combination, these five types of designation constitute the Department's MPAs and assist in achieving an ecologically coherent network of well managed sites.

MCZs are relatively new to the MPA network and were introduced with The Marine Act (Northern Ireland) 2013 and the UK Marine and Coastal Access Act 2009, which contains new powers to designate MCZs (in the Northern Ireland inshore and offshore regions respectively) as part of a range of measures to manage and protect our seas for current and future generations.

Requirement for Assessments

The documents referenced below provide the policy framework for both planning and marine licensing authorities in making their decisions:

- The UK Marine Policy Statement (MPS)
- The Draft Marine Plan for Northern Ireland (April 2018)
- Integrated Coastal Zone Management Strategy for Northern Ireland 2006-2026

The UK MPS and the draft Marine Plan are material considerations in all decisions where proposals will impact (directly or indirectly) or potentially impact (directly or indirectly) the marine area. All public authorities are responsible for implementing the UK MPS and the draft Marine Plan through existing regulatory and decision-making processes. Applicants, third parties, their advisors and statutory consultees should also give consideration to the UK MPS and draft Marine Plan. Proposals should be in accordance with all relevant UK MPS and draft Marine Plan policies, taking account of economic, environmental and social considerations, unless other relevant considerations indicate otherwise.

If a decision is not made in accordance with the UK MPA and draft Marine Plan policies, reasons for not doing so must be stated.

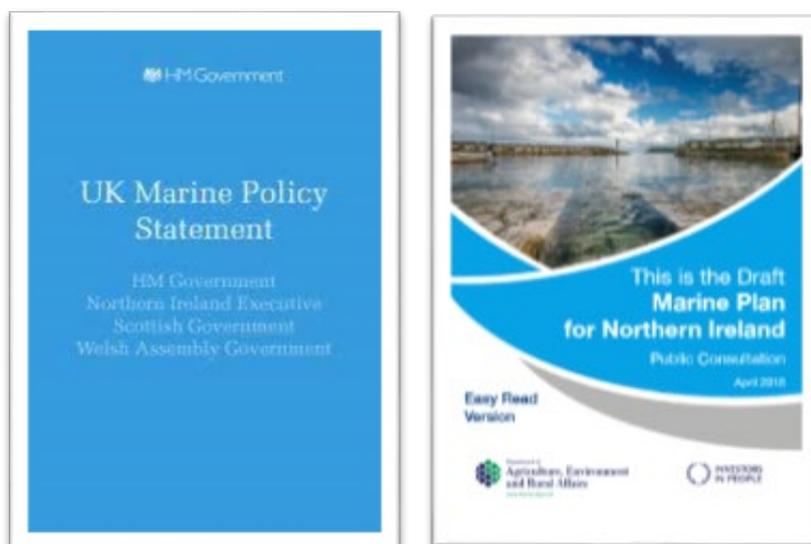
According to the UK MPS (section 3.1.8) decision makers should take account of the regime for MPAs and comply with obligations imposed in respect of them. This includes the obligations to ensure that the exercise of certain functions contribute to, or at least do not hinder, the achievement of the objectives of the MPAs.

A core policy of the draft Marine Plan relates to natural heritage, where it states that public authorities must comply with the legal requirements of designated areas. The draft Marine Plan states how public authorities must consider any potential adverse impacts on

natural heritage through the decision making processes and in doing so will need to make an assessment of the impacts, taking account of the appropriate statutory provisions for their protection.

The Strategic Planning Policy Statement (SPPS) is the main piece of terrestrial planning policy. The UK MPS and the draft Marine Plan are the current marine policy documents. Planning decisions (authorisations and enforcement) that affect or might affect the whole or any part of the Northern Ireland marine area, must be made in accordance with appropriate marine policy documents, unless relevant considerations indicate otherwise.

The marine area includes the sea (below mean high water spring tide); and estuaries, rivers or channels so far as the tide flows at mean high water spring tide (tidal waters).



The aim of this document is to outline to public authorities the various assessments that must be undertaken to meet the above obligations for MPAs.

1. Habitats Regulations Assessment

In accordance with Regulation 43(1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended), the Competent Authority must consider whether the project, plan or proposal either alone or in combination (neither being directly connected with or necessary to the management of the site) is likely to have a significant effect on the European site. For this purpose a Habitats Regulations

Assessment (HRA) should be completed to assess impacts on SACs, SPAs and Ramsar Sites.

2. Area of Special Scientific Interest Assessment

Section 38 of The Environment (Northern Ireland) Order 2002 states that a public body shall have the duty in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological, physiographical or other feature by reason of which an Area of Special Scientific Interest (ASSI) is of special scientific interest. The duty to take reasonable steps, consistent with the proper exercise of the body's functions, to further the conservation and enhancement of the features by reason of which the ASSI is of special scientific interest. Within the Department the Northern Ireland Environment Agency (NIEA) undertakes the assessment for ASSIs to ensure compliance with Section 38.

3. Marine Conservation Zone Assessment

Section 23 of the Marine Act (Northern Ireland) 2013 places specific duties on public authorities with respect to authorisation of an act that is capable of affecting (other than insignificantly):

- the protected features of a MCZ;
- any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

DAERA has introduced a MCZ assessment process to guide the implementation of section 23. The development of the assessment has been based on the Marine Management Organisation's (MMO's) guidance on the assessment process and furtherance of the conservation objectives of MCZs – "*Marine conservation zones and marine licensing*" (MMO, 2013). In line with the MMO, the DAERA MCZ assessment follows a two-stage assessment.

Further details on the requirements for each assessment are provided in the relevant sections.

Guidance for Public Authorities undertaking Habitats Regulations Assessment

Background - the UK national site network

Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) were designated in response to the requirements of the EU Habitats and Birds Directives, to form part of the Europe-wide *Natura 2000* network of protected nature conservation areas. Ramsar sites are also included in this network and have been designated under the Ramsar Convention on Wetlands.

Changes following EU Exit

The UK has committed to maintaining environmental standards and international obligations following EU Exit. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (hereafter referred to as ‘the NI 1995 Conservation Regulations (as amended)’) transposed the requirements of the EU Habitats and Birds Directive and some ‘operability’ changes have been made to ensure that existing EU laws will continue to operate in UK law. These changes have been made through The Conservation (Natural Habitats, etc.) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

SACs and SPAs in the UK now form a national site network and are no longer part of the EU *Natura 2000* network (although will continue to be referred to as European sites). Competent authorities are still required to undertake an HRA for any plan or project likely to have a significant effect on a European site but the European Commission no longer provides an opinion on whether the reason why a plan or project must be carried out is an imperative reason of overriding public interest (IROPI). The Department is now responsible for providing this opinion after consulting with JNCC and the other UK administrations.

The HRA Process

Any plan or project likely to have a significant effect on a European site must be rigorously assessed and the competent authority can only legally agree to a plan or project going ahead after having ascertained that it will not adversely affect the features of the designated site/s concerned or the integrity of the network.

In order to make this assessment a Habitats Regulations Assessment (HRA) must be completed. This is in accordance with Regulation 43(1) of the NI 1995 Conservation Regulations (as amended), where the Competent Authority must consider whether the project, plan or proposal either alone or in combination (neither being directly connected with or necessary to the management of the site) is likely to have a significant effect on the European site.

In broad terms the HRA should seek to inform the design of the proposal and is legally required to ensure the protection of European sites against adverse impacts on their integrity.

The European Commission has produced updated guidance on the HRA process and this should still be referred to following EU Exit – “*Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC*”.

https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN_art_6_guid_e_jun_2019.pdf

The HRA is recognised as a step by step process which helps determine likely significant effects and (where appropriate) assess adverse impacts on the integrity of a European site, examines alternative solutions, and provides justification for imperative reasons of overriding public interest.

There is a four stage process to the HRA, as summarised in the table below.

Table 1 HRA process

STAGE 1:	Screening	The process to identify the likely impacts of a project upon a European site, either alone or in combination with other plans and projects, and consider whether the impacts are likely to be significant.
STAGE 2:	Appropriate assessment	The consideration of the impacts on the integrity of the European site, either alone or in combination with other plans and projects, with regard to the site’s structure and function and its conservation objectives. Where there are adverse impacts, an assessment of mitigation options is

		carried out to determine adverse effect on the integrity of the sites. If these mitigation options cannot avoid adverse effects then development consent can only be given if stages 3 and 4 are followed.
STAGE 3:	Assessment of alternative solutions	Examining alternative ways of achieving the objectives of the project to establish whether there are solutions that would avoid or have a lesser effect on European sites.
STAGE 4:	Imperative reasons of overriding public interest (IROPI)	This is the assessment where no alternative solution exists and where adverse impacts remain. The process to assess whether the development is necessary for IROPI and, if so, the potential compensatory measures needed to maintain the overall coherence of the site or integrity of the national site network.

It should be noted, as a result of recent case law (People Over Wind, case C-323/17), measures intended to avoid or reduce the harmful effects of a plan or project on a European site should not be taken into account during stage 1 of the screening (i.e. the test of likely significance), in order to determine whether the plan or project would be likely to have a significant effect on the site. Consequently, the incorporation of measures which are considered to be necessary and specifically intended to avoid or reduce the harmful effects on a European site, effectively predetermines the outcome of stage 1, because if the measures are necessary, but cannot be taken into account, the competent authority has to make an appropriate assessment (stage 2).

Duties of competent authorities

Under the NI 1995 Conservation Regulations (as amended) public authorities are referred to as 'competent authorities'. It is the duty of the competent authority to ensure that the requirements of the NI 1995 Conservation Regulations (as amended) are met before deciding whether to undertake or give any consent that would allow a project to proceed. To this end an HRA is required to be undertaken prior to carrying out or issuing any form or permission or authorisation. All the checks and assessments under the NI 1995 Conservation Regulations (as amended) must be undertaken by the competent authority.

The competent authority is also required to consult with the relevant nature conservation bodies before deciding on an authorisation.

Anyone applying for a permission/authorisation must provide the competent authority with such information as may reasonably be required for the purpose of the HRA. For example, it is the responsibility of the developer to carry out the necessary preparatory work and assemble evidence in support of the application, to enable the competent authority to carry out its duties. It is recommended that the developer shadow the HRA process at the pre-application stage so that the developer is able to compile all the information necessary for the competent authority.

Under the Habitats Regulations, where a plan or a project will have an adverse effect on a site's integrity, or where an adverse effect cannot be ruled out, and there is no alternative solution; then the competent authority can consider whether the plan or project should nevertheless be agreed to for imperative reasons of over-riding public interest (IROPI). The competent authority must consider and decide whether the public interest sufficiently outweighs the likely harm that is likely to be caused to the conservation interest.

In cases concerning a priority habitat or species (as defined in Article 1 of the Habitats Directive), the imperative reasons of overriding public interest should normally relate to human health, public safety or beneficial consequences of primary importance to the environment. However other reasons may also apply. A Division within DAERA, the Regulatory and Natural Resources Policy Division (RNRPD), will undertake the role of the Appropriate Authority, in forming an opinion relating to "other" potential IROPI cases in detail. Similar procedures apply in all four countries of the UK.

The Precautionary Approach

The UK MPS advises the consideration of the precautionary approach. Section 2.6.8.4 states:

"...Marine plan authorities should be satisfied that activities and developments will themselves be resilient to risks of coastal change and flooding and will not have an unacceptable impact on coastal change. A precautionary and risk-based approach, in

accordance with the sustainable development policies of the UK Administrations, should be taken in terms of understanding emerging evidence on coastal processes.”

This approach is also reflected in the draft Marine Plan for Northern Ireland under paragraph 119 of the Coastal Processes policy, which required public authorities to apply a precautionary approach in assessing proposals, including when considering the impact of proposals on national and international natural heritage resources (paragraph 228).

European Marine sites which should be considered in the HRA

1. Marine Special Areas of Conservation

The HRA must consider all European sites that could be impacted by the plan or project, including marine SACs.

Marine SACs in Northern Ireland

- Murlough SAC
- Rathlin Island SAC
- Red Bay SAC
- Skerries and Causeway SAC
- Strangford Lough SAC
- The Maidens SAC
- North Channel SAC

2. Marine Special Protection Areas

The HRA must consider all European sites that could be impacted by the plan or project, including marine SPAs.

Marine SPAs in Northern Ireland

- Belfast Lough SPA
- Belfast Lough Open Water SPA
- Carlingford Lough SPA
- Killough Bay SPA
- Larne Lough SPA
- Lough Foyle SPA

- Outer Ards SPA
- Rathlin Island SPA
- Strangford Lough SPA
- East Coast Marine pSPA

3. Marine Ramsar Sites

The HRA must consider all Ramsar sites that could be impacted by the plan or project, including marine Ramsar sites.

Marine Ramsar Sites in Northern Ireland

- Belfast Lough
- Carlingford Lough
- Killough Bay
- Larne Lough
- Lough Foyle
- Outer Ards
- Strangford Lough
- Dundrum Bay (proposed Ramsar site)

Information on each of the designated sites can be found at the following address. This includes site details and conservation objectives.

[European Marine Sites - Marine Special Areas of Conservation and Special Protection Areas | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](#)

Screening ranges for marine mobile species

When screening for European sites which have marine mobile species as a site selection feature, specific ranges must be taken into consideration. For example, recent advice from the Sea Mammal Research Unit (SMRU) relating to SACs which have seals as a site selection feature, recommends the following ranges should be used when screening for either Grey or Harbour Seals:

- all SACs within 135 km of the project should be screened for Grey Seals

(*Halichoerus grypus*) and

- all SACs within 50 km should be screened for Harbour Seals (*Phoca vitulina*).

Certain marine mobile species have also been placed within Management Units. This has been done for the seven most common cetacean species in UK waters. The management units provide an indication of the spatial scales at which impacts of plans and projects alone, cumulatively and in-combination, need to be assessed for the key cetacean species, with consistency across the UK. Information on management units can be found as follows:

http://jncc.defra.gov.uk/pdf/Report_547_webv2.pdf

Guidance for Public Authorities undertaking an Area of Special Scientific Interest (ASSI) Assessment

Duties in relation to Areas of Special Scientific Interest and Licensing

Areas of Special Scientific Interest (ASSIs) are protected areas in Northern Ireland that represent the best of our wildlife and geological sites; they make a considerable contribution to the conservation of our most valuable natural places. We all need to conserve our natural environment as it provides our essentials in life - such as our food, clean air and water and our places for recreation. To do this we have to prevent loss of biodiversity (which is the great variety of plants and animals that support life on earth) and geodiversity (the rocks, minerals, fossils, soils and landforms that have been formed over millions of years and determine our landscapes and the species that live there).

How we protect ASSIs

The best way of protecting our plants and animals is to protect the land, the freshwater and the seas where they live. It is essential, especially in light of the pressures of modern development, to ensure that the most important areas are protected and managed to form a network of natural areas that are capable of supporting our plants, animals and geological heritage into the future.

The law relating to ASSIs is contained in the Environment Order (Northern Ireland) 2002 (hereafter referred to as the 'Environment Order'). Article 38 of the Environment Order places general duties on public bodies relating to ASSIs and decision making.

According to the Environment Order, it is the public body's duty, when carrying out its functions, to take reasonable steps, consistent with the proper exercise of the body's functions, to further the conservation and enhancement of the flora, fauna or geological, physiographical or other features by reason of which the ASSI is of special scientific interest.

Under this legislation a public body is defined as:

- 1) a Northern Ireland department;
- 2) a Department of the Government of the United Kingdom;
- 3) a district council;

- 4) a statutory undertaker (within the meaning of the Planning (Northern Ireland) Order 1991; or
- 5) any other body established or constituted under a statutory provision.

Duties where a Public Body proposes to carry out operations

Where a public body proposes to carry out any operation(s) likely to damage the features of an ASSI, Article 39 requires the public body to submit an application for assent to the Department. This requirement applies whether the operation(s) in question will take place within the boundary of the ASSI or outside it and is irrespective of distance from the site.

In response to an application, the Department can either issue assent (with or without conditions) or refuse to issue assent. Where a response is not issued by the Department within 28 days, the public body should assume refusal to assent.

Duties where a Public Body proposes to authorise or permit operations/activities

Similar to the above duties associated with carrying out an operation, where a public body is required to issue any form of permission or authorisation for any works that would be likely to damage an ASSI, Article 40 requires the public body to provide notification to the Department.

A response from the Department will be issued within 28 days as required under legislation. In determining whether to issue its permission or authorisation the public body is required to consider the advice of the Department in its decision process.

If the Department advises against permitting the operations, or advises that certain conditions should be attached, but the public body does not follow that advice, the body shall:

- a) Impose conditions that are sufficient to ensure that the operations are carried out in such a way as to cause as little damage as reasonably practicable, and that the site will be restored to its former condition, so far as reasonably practical, if any such damage does occur;
- b) Shall give notice of the permission, and its terms, to the Department. This notice

should include a statement of how the body has taken account of the Department's advice;

- c) The permission shall not allow the operation to commence until at least 21 days after the notice has been given to the Department.

Assessing likelihood of damage

The Department provides a list of operations that it considers will likely cause damage to the ASSI features. These are referred to as 'notifiable operations', and public bodies should consider these when undertaking the ASSI assessments required in sections 38 to 40. Further information can be found at the following link:

[ASSI notifiable operations | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/assessing-likelihood-of-damage)

Notifying the Department

The public authority is required to notify the Department whenever it is undertaking or authorising any operation likely to damage or have a significant effect on an ASSI. The following link can be used to apply for assent:

[Request for assent to carry out a notifiable operation on an ASSI | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://daera-ni.gov.uk/request-for-assent-to-carry-out-a-notifiable-operation-on-an-assi)

Marine sites to be considered in ASSI assessment

There are a total of 40 ASSIs which need to be considered in marine and coastal decision making by public authorities. Of these, 20 are coastal ASSIs with marine features and 20 are coastal ASSIs without marine features. The hyperlinks in the tables below provide further information on each of the ASSIs.

Table 2 Coastal ASSIs with designated marine features

COASTAL ASSIs WITH MARINE FEATURES		
ASSI ref	Name	Site details
ASSI 033	Rathlin Island - Coast	Rathlin Island Coast ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 051	Lough Foyle	Lough Foyle ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 106	Larne Lough	Larne Lough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 003	Ballymacormick Point	Ballymacormick Point ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 006	Strangford Lough Part 1	Strangford Lough Part 1 ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 032	Strangford Lough Part 2	Strangford Lough Part 2 ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 034	Strangford Lough Part 3	Strangford Lough Part 3 ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 089	Murlough	Murlough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 225	Killough Bay and Strand Lough	Killough Bay and Strand Lough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 105	Outer Ards	Outer Ards ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 103	Carlingford Lough	Carlingford Lough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 283	The Gobbins	The Gobbins ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 286	Castle Point	Castle Point ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 320	The Maidens	The Maidens ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 330	Fair Head and Murlough Bay	Fair Head and Murlough Bay ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 333	Galboly	Galboly ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 358	Tyrella and Minerstown	Tyrella and Minerstown ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 389	Samuel's Port	Samuel's Port ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 386	St John's Point	St Johns Point ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 379	Mournes Coast	Mourne Coast ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)

Table 3 Coastal ASSIs without designated marine features

COASTAL ASSIs WITHOUT MARINE FEATURES		
ASSI ref	Name	Site details
ASSI 68	Magilligan	Magilligan ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 208	Bann Estuary	Bann Estuary ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 176	Portrush and West Strand	Portrush West Strand ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 113	Ramore Head and the Skerries	Ramore Head & The Skerries ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 174	White Rocks	White Rocks ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 202	Giants Causeway and Dunseverick	Giant's Causeway and Dunseverick ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 107	White Park Bay	White Park Bay ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 050	Sheep Island	Sheep Island ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 116	Carrickarade	Carrickarade ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 147	Ballycastle Coalfield	Ballycastle Coalfield ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 338	Cloghastucan	Cloghastucan ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 399	Ballygalley Head	Ballygalley Head ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 084	Waterloo	Waterloo ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 177	Portmuck	Portmuck ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 104	Outer Belfast Lough	Outer Belfast Lough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 029	Inner Belfast Lough	Inner Belfast Lough ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 232	Copeland Islands	Copeland Islands ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 086	Killard	Killard ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 273	Sheepland Coast	Sheepland Coast ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)
ASSI 346	Kilkeel Steps	Kilkeel Steps ASSI Department of Agriculture, Environment and Rural Affairs (daera-ni.gov.uk)

Guidance for Public Authorities undertaking a Marine Conservation Zone (MCZ) Assessment

Duties in relation to Marine Conservation Zones and Licensing

Section 23 of the Marine Act (Northern Ireland) 2013 (hereafter referred to as 'the Marine Act') places specific duties on public authorities relating to Marine Conservation Zones (MCZs) and decision making.

Section 23 of the Marine Act applies where;

- a) a public authority has the function of determining an application (whenever made) for authorisation of the doing of an act, and
- b) the act is capable of affecting (other than insignificantly) —
 - (i) the protected features of an MCZ;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

Authorisation means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general.

This guidance sets out a process for public authorities to follow, that will enable them to fulfil their duties under section 23 of the Marine Act. The assessment process also addresses the general duties placed on public authorities in section 22 of the Marine Act, with respect to furthering the conservation objectives of MCZs.

Public authorities who are required to complete the MCZ assessment are defined as:

- a Northern Ireland department;
- a Minister of the Crown or a department of the Government of the United Kingdom;
- a statutory undertaker within the meaning given by section 250(1) of the Planning Act (Northern Ireland) 2011;
- a district council;
- the holder of any office under the Crown or any office established under a statutory provision, or

- any other body established or constituted under a statutory provision.

MCZ assessment process

The process has three sequential stages (see figure 1):

- 1) Screening;
- 2) Stage 1 assessment, and
- 3) Stage 2 assessment.

Although the Marine Act does not stipulate that a staged process is required, the approach is designed to ensure that the public authority will have available to it the necessary information by which it can fulfil its duties in relation to licensing in accordance with section 23 of the Marine Act. This approach will maintain proportionality for applicants by helping guide them to supply the correct information to accompany their licence application.

In making determinations with respect to MCZs at each stage in the process, the public authority will always consider the feature(s) for which the MCZ(s) has been designated, the current status of those features and the conservation objectives against each feature. Information relating to each MCZ can be found on the Department's website:

[Marine Conservation Zones | Department of Agriculture, Environment and Rural Affairs \(daera-ni.gov.uk\)](https://www.daera-ni.gov.uk)

The MCZ assessment must be carried out during the application determination window for the specific authorisation being applied for. Similar to the HRA process, the MCZ assessment is part of the decision making process for the public authority to ascertain whether or not the activity may negatively impact a designated site. Information to inform the MCZ assessment will be provided by the public authority, the conservation advisers from the Department and any other professional who may have expertise knowledge in the field. It is anticipated that much of the work to support this assessment for complex projects would be done in pre-application by the public authority. This allows for the iterative process of developing an application to be applied.

The Process

The MCZ assessment process is summarised in Figure 1. More detail is provided in the sections below. The template that should be used for the MCZ assessment can be found at the following link <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/MCZ%20Assessment%20Template%20-%20January%202022.PDF>.

Screening

All applications will be screened by the public authority to determine whether section 23 should apply to the application. It will apply if it is determined through the course of screening that:

- the licensable activity is taking place within or near an area being put forward or already designated as an MCZ, and
- the activity is capable of affecting (other than insignificantly) either:
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

The public authority may use a risk based approach when determining the “nearness” of an activity with respect to MCZs. This will include applying an appropriate buffer zone to the MCZ features under consideration as well as a consideration of risks which lie in activities further removed from features. This screening should take into account hydrological links to the MCZ and the sensitivity of features to particular activities.

In determining “insignificance” the public authority will consider the likelihood of an activity causing an effect, the magnitude and timescale of the effect should it occur, and the potential risk any such effect may cause on either the protected features of an MCZ or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

The public authority is not required to consult the conservation advisers from the Department at this stage in the process. However, if the public authority requests advice at the screening stage the Department will provide it.

Where it has been determined through screening that section 23 does not apply, the public authority can proceed with the authorisation process. Where the screening identifies that an MCZ assessment is required, the public authority should undertake Stage 1 of the assessment process.

Stage 1 assessment

The Stage 1 assessment will consider whether the condition in section 23(6) can be met. In doing so the public authority will use information supplied by the applicant with the licence application, advice from the Department's conservation advisers and any other relevant information to determine whether:

- there is no significant risk of the activity hindering the achievement of the conservation objectives stated for the MCZ; and
- the public authority can exercise its functions to further the conservation objectives (or least hinder) stated for the MCZ (in accordance with section 22 (2)(a)).

This assesses whether the activity could potentially impact the site so the features are no longer in favourable status, or prevent the features from recovering to a favourable status. If the condition in section 23(6) cannot be met the Stage 1 assessment will also consider whether the condition in section 24 can be met. In doing so the public authority will determine whether:

- there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of the conservation objectives stated for the MCZ. This should include proceeding with it:
 - a) in another manner, or
 - b) at another location.

In undertaking a Stage 1 assessment the public authority will formally consult with the conservation advisers from the Department (i.e. the Marine Conservation and Reporting Team, DAERA) for a period of 28 days unless the conservation advisers notify the public authority that it need not wait or the public authority determine that there is an urgent need to grant authorisation (in accordance with section 23 (2)).

Within this stage of assessment “hinder” will be considered as any act that could, either alone or in combination:

- in the case of a conservation objective of “maintain”, increase the likelihood that the current status of a feature would go downwards (e.g. from favourable to degraded) either immediately or in the future (i.e. they would be placed on a downward trend); or
- in the case of a conservation objective of “recover”, decrease the likelihood that the current status of a feature could move upwards (e.g. from degraded to favourable) either immediately or in the future (i.e. they would be placed on a flat or downward trend).

Similarly “further” will be considered as any act that could:

- in the case of a conservation objective of “maintain”, increase the likelihood that the current status of a feature would be maintained either immediately or in the future; or
- in the case of a conservation objective of “recover”, increase the likelihood that the current status of a feature could move upwards (e.g. from degraded to favourable) either immediately or in the future.

When considering whether an activity can further or hinder the conservation objectives of a site, the public authority will consider the direct impact of an activity upon a feature as well as any applicable indirect impacts. An indirect impact could include the changing the effectiveness of a management measure put in place to further the conservation objectives.

The applicant should be able to demonstrate that “other means” reduces the risk such that the act no longer has a significant risk of hindering the conservation objectives of the site.

Stage 2 assessment

The Stage 2 assessment will consider whether the conditions in section 23(7)(b) and (c) can be met. In doing so the public authority will use information supplied by the applicant with the licence application, advice from the conservation advisers from the Department and any other relevant information to determine whether:

- the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it; and, if so, then whether,
- the applicant can satisfy the public authority that they will undertake or make arrangements for the undertaking of measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

The above determinations will be addressed in sequence, that is, if the public benefit test is not “passed” then a consideration of measures of equivalent benefit would **not** be made as the application would be rejected.

As well as consulting with the conservation advisers from the Department a wider consultation with other advisers may also be undertaken at this stage, in particular to provide additional and specific advice on socio-economic matters. For example, consultees could include local authorities, local enterprise partnerships and central government departments that may have relevant expertise to offer. All advice received by the public authority will be considered in the decision making process in the normal manner.

In determining “public benefit” the public authority will consider benefits at a national, regional or local level. Applications for activities that are of solely private benefit would not be considered to deliver a benefit to the public.

Measures of equivalent environmental benefit

When considering measures of equivalent environmental benefit the first step will be to clearly define the nature, scale and scope of impact and features which may be affected. Both the rarity and irreplaceability of features that will be lost are important considerations.

The primary aim should be to ensure no net loss of the biodiversity and maintenance of the ecological coherence of the network. The overall aim should be to improve biodiversity in the MPA network. The impact of a development on the integrity of the network as well as on an individual site should be considered.

Measures of equal environmental benefit should:

- Include an element of enhancement of biodiversity – not just a maintain strategy and should aim to be more than 1:1 ratio.
- Be deliverable i.e. have a realistic chance of successful implementation,
- Be securable e.g. through legal requirements.
- Preferably be delivered before the adverse effects occur.

When exploring equivalent environmental benefit the public authority should consider measures that are of relevance to any of the commitments the UK has made on MPAs at a national and international level. For example, the types of compensatory measures that might be considered under the NI 1995 Conservation Regulations (as amended) would be appropriate to put forward here, although consideration will not be confined to those. The reasons why an affected MCZ was designated (in addition to the features it was designated for) is relevant in this context as this may offer a broader ecosystems context for the consideration of measures.

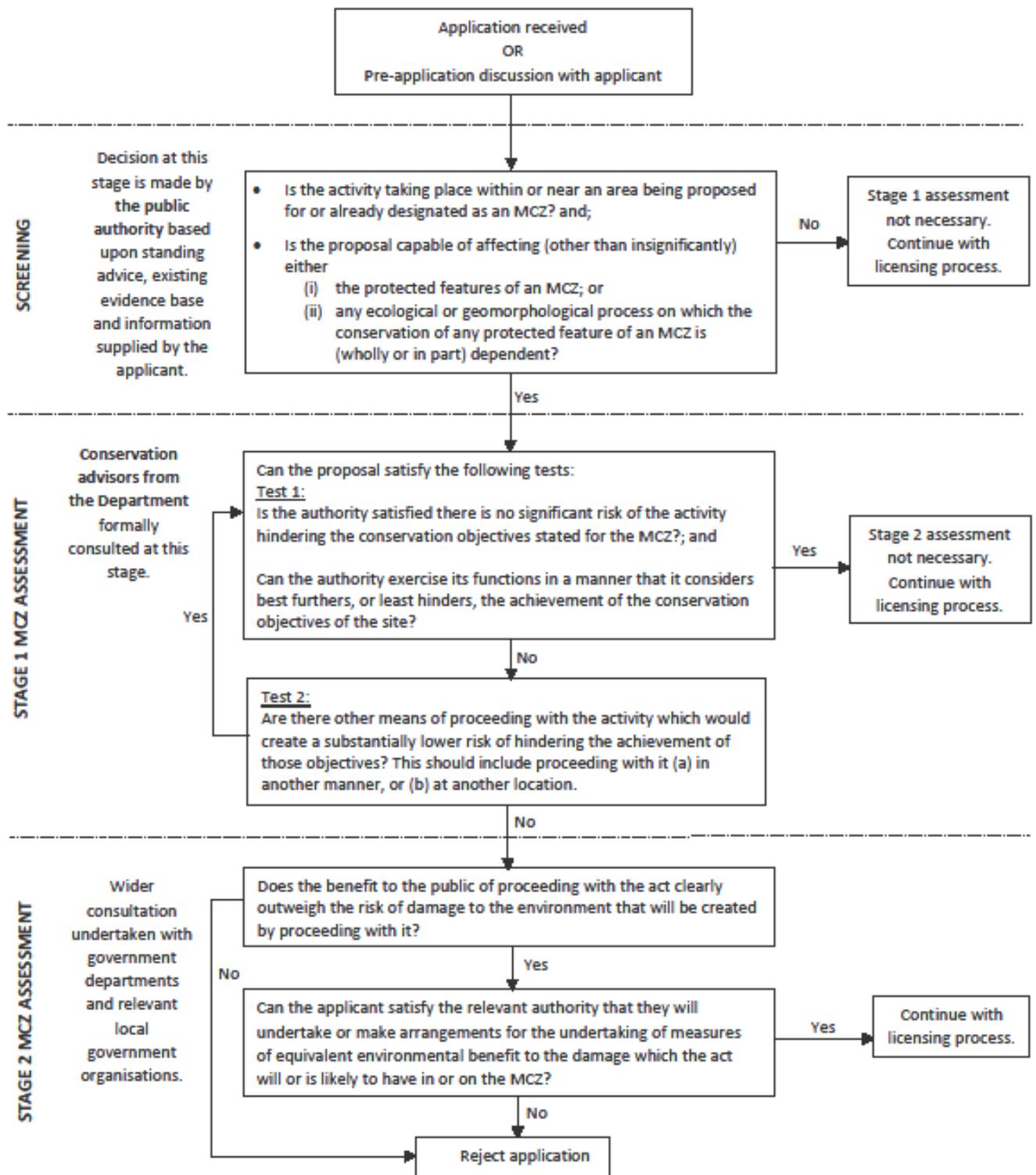
In the marine environment there is great uncertainty over the options we can consider and the effectiveness of those options. It must therefore be recognised that a flexible approach will be taken and all possibilities, including novel approaches, will be explored.

The public authority will work closely with applicants and the conservation advisers from the Department in determining suitable measures, with measures being decided on a case by case basis. They may also seek additional policy advice from the Department during this stage in the process. The public authority will require commitment from an applicant measures of equivalent environmental benefit can be secured and functioning before they can be “satisfied” (in accordance with section 23(9)).

Duties placed on applicants

The onus will be placed on the applicant to supply the relevant information to the public authority and conservation advisers from the Department, in order to progress an application through the assessment process.

Figure 1 Summary of the MCZ assessment process to be used by the public authority in decision making



Potential overlap with other processes

Where another marine protected area or other spatial management measure overlaps an MCZ, the MCZ assessment process will not be a replacement for other necessary tests (e.g. HRA) - it will sit alongside those. Where there are overlaps with other processes, a case by case approach will be taken.

Cumulative Impact Assessment

Section 23 does not provide any legislative requirement for explicit consideration of in combination or cumulative impact assessment to be undertaken when assessing the impacts of activities upon an MCZ. However, this is necessary to implement the ecosystem based approach to the management of human activities, ensuring that the collective pressure of those activities is kept within levels compatible with the achievement of good environmental status.

The UK Marine Policy Statement sets out high level principles for decision making (Section 2.3.2) and this includes taking into account any multiple and cumulative impacts of proposals, in light of other projects and activities, when considering potential benefits and adverse effects. Consideration of cumulative impact is also a core policy in the draft Marine Plan for Northern Ireland (April 2018).

A cumulative impact assessment is necessary for the public authority to fully discharge its duties under section 58 of the Marine and Coastal Access Act (2009) which requires public authorities to take authorisation decisions in accordance with the appropriate marine policy documents.

Review of consents

The Marine Act does not provide any legislative requirement for a review of consents when MCZs are designated.

Conservation advisers from the Department

The conservation advice to public authorities will be provided by the Marine Conservation and Reporting team within the Department's Marine and Fisheries Division.

The public authority must notify the Marine Conservation and Reporting team, wait 28 days until considering the application and have regard to any advice given. There is no need to wait 28 days if:

- (i) the conservation advisers from the Department so notifies, or
- (ii) the situation is urgent.

The public authority must have regard to any advice or guidance given by the Department. If, in the opinion of the Department, the public authority fails to act in accordance with advice or guidance given by the Department, or to comply with its duties regarding MCZs (Section 22&23), the Department will request from the public authority an explanation for failure. The public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request.

The Department has produced a suite of documents for each MCZ and these are available on the DAERA website:

- [Rathlin MCZ](#)
- [Waterfoot MCZ](#)
- [Outer Belfast Lough MCZ](#)
- [Carlingford Lough MCZ](#)

The *Conservation objectives and potential management options* paper for each MCZ discusses the potential impacts of activities on the designated feature. These documents outline how activities should be managed through both existing regulatory processes and the introduction of new management measures, and public authorities should use these documents to inform the MCZ assessment process.

The following link [“Guidance on the development of conservation objectives and potential management options”](#) which is associated with the documents above, provides further information and background.

These documents are not yet available for Strangford Lough MCZ but the Department will provide advice to public authorities on a case by case basis.

If the MCZ assessment progresses to Stage 2 and measures of equivalent environmental benefit are being considered, then in accordance with section 24 of the Marine Act, the Department has a statutory duty to advise a public body as to the suitability of the proposed measures of equivalent environmental benefit.

Contact details for Marine Conservation Advice

Marine Conservation and Reporting Team
DAERA Marine and Fisheries Division
Marine Conservation and Reporting Team
1st floor, Klondyke Building
Cromac Avenue
Belfast
BT2 7JA
Email: MarineConservation@daera-ni.gov.uk

Further information can be found on the [Northern Ireland Marine Mapviewer](#).
This viewer will provide spatial information on protected sites, fishing, seascape, energy, dredging and heritage assets etc.