

Planning in the Coastal Area

A developer's guide to planning considerations and environmental responsibilities

Version 2.1/June 2017

'This good practice guide aims to assist applicants and planning authorities achieve a consistent approach when considering development management impacts on the marine area. Its correct application should help applicants and planning authorities identify and satisfy legislative requirements with regard to development projects.'

This guide does not attempt to provide a detailed account of the legislation and policy that underpin coastal development in Northern Ireland and is not intended to be a source of legal advice. This guide is not intended to replace the need for judgement by planning officers and those making planning applications. Reference should always be made to the relevant legislation and if any discrepancy or conflict exists between the contents of this guide and the relevant legislation, the provisions of the legislation will prevail.

Further information can be obtained from the DAERA website <https://www.daera-ni.gov.uk/>

Links to external sources of information have also been provided in the text, where appropriate.'

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1. Introduction

1.1 What is the purpose of this document?

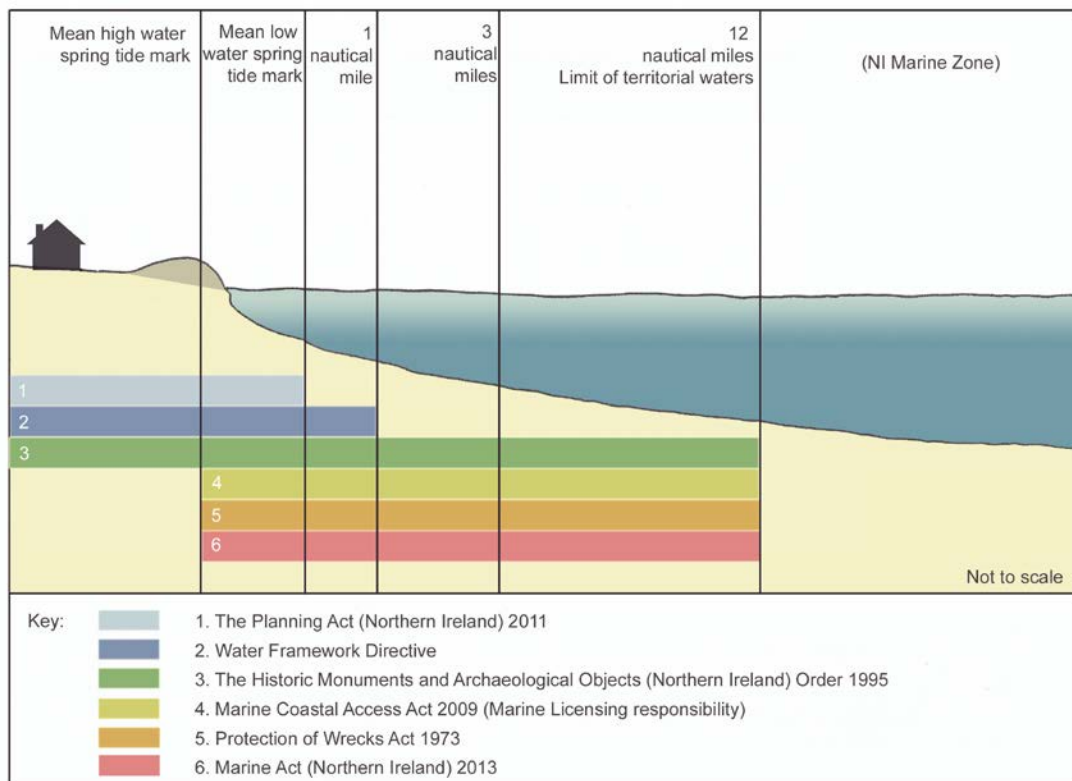
This guidance document aims to explain how some onshore development may impact on the marine environment. It also describes the legislative and regulatory framework within which we manage our marine area. This document aims to outline how development along our coast can be managed in an integrated manner and how potential impacts of onshore development on the marine environment can be avoided or mitigated through early engagement and collaborative working.

1.2 Who is it for and when should it be used?

This document has been produced to assist planning authorities, applicants and agents in their understanding of land and sea interactions. In addition, as planning legislation extends to the mean low water spring tide mark, there is an area of overlapping responsibilities in the intertidal area. For the purposes of this document, the intertidal area is the area between the mean high water and the mean low water spring tides. (Refer to Figure 1 below which demonstrates the overlap in legislative responsibilities in the intertidal area)

This document, in conjunction with terrestrial planning guidance documents, should be used to ensure an integrated approach to the management of the intertidal area along our coastline.

Figure 1 – Geographical overlap between the marine and terrestrial environment



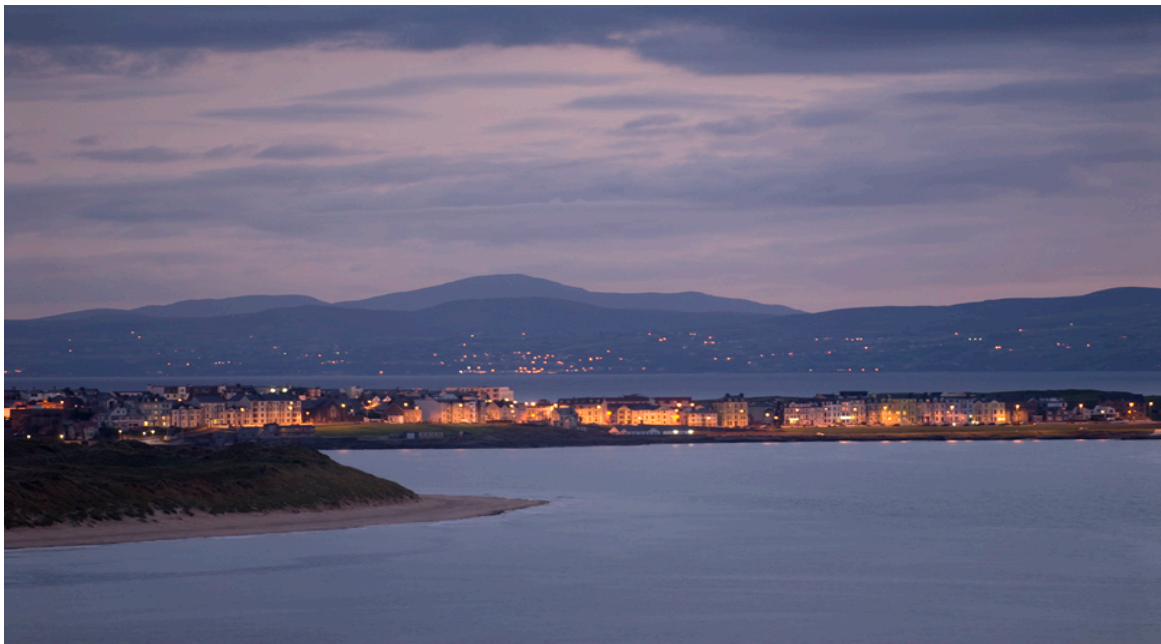
2. Marine and Fisheries Division Overview

2.1 The coast of Northern Ireland is exceptionally diverse. The coast (and the seas around it) includes highly productive and biologically diverse ecosystems, with features which serve as critical natural defences against storms, floods and erosion. Much of our marine wildlife and habitats are recognised as internationally important and the majority of our beautiful coastline is protected for its special interest. The historic use of our coast and seas has also left evidence in place for a vast array of marine cultural heritage assets inclusive of shipwrecks and aircraft wrecks, foreshore fish traps, historic quays and harbours.

This dynamic area supports tourism, recreation, mariculture, inshore fisheries, industry, commercial harbours and quays and power generation. All these activities and more occur in an area, which by nature, is continuously subject to change.

2.2 The Marine and Fisheries Division, within the Department of Agriculture, Environment and Rural Affairs (DAERA) is responsible for protecting the marine area while maximising the sustainable use of its resources, now and for future generations. Our main areas of work include:

- managing ecological and water quality including bathing and shellfish waters under EC Directives;
- managing and protecting marine species and habitats;
- managing and protecting marine cultural heritage assets;
- managing legislative and consenting requirements in the marine area; and
- developing a Marine Plan for Northern Ireland.



Above: Portrush At Night (Photo by Arthur Ward)

3. Management of the Marine Area

3.1 Marine Policy and Legislative Framework

The UK Marine Policy Statement, the UK Marine and Coastal Access Act 2009 and the Marine Act (Northern Ireland) 2013 provide the policy and legislative framework for the management of the marine area in Northern Ireland. EC Directives also govern how we implement management measures in protecting all aspects of the marine area. These include Maritime Spatial Planning, Bathing Water, Water Framework, Marine Strategy Framework, Habitats and Birds Directives.

- **The UK Marine Policy Statement**

The UK vision for the marine environment is the attainment of 'clean, healthy, safe, productive and biologically diverse oceans and seas'. This shared vision is set out in the UK Marine Policy Statement (MPS), which was jointly adopted by all UK administrations in 2011.

- **The UK Marine and Coastal Access Act 2009**

The Marine and Coastal Access Act 2009 is a UK-wide Act which includes a number of provisions for the management of the UK's marine area. For Northern Ireland, key provisions within this Act include a licensing system for management of development within the marine area from the mean high water spring tide out to 12 nautical miles (the inshore region).

- **The Marine Act (Northern Ireland) 2013**

The Marine Act (Northern Ireland) 2013 includes duties to protect and enhance the marine area. The main provisions of this Act include:

- **Marine Planning** - provisions to prepare and adopt a Marine Plan for the Northern Ireland inshore region; and
- **Marine Conservation** – an improved method of managing our rich natural heritage within the marine environment, while also protecting and maintaining areas of specific importance for our marine wildlife and habitats.

3.2 Marine Planning

The Marine and Coastal Access Act 2009 and the Marine Act (NI) 2013 provide for the introduction of a new system of marine planning for the Northern Ireland marine area. A Marine Plan for Northern Ireland, which is currently being drafted by Marine and Fisheries Division, will provide a regional reflection of the national policy objectives within the UK Marine Policy Statement. It will take account of the economic, social and environmental needs to provide policies and guidance for all decisions which affect or have the potential to affect Northern Ireland's marine area.

3.2.1 How will the UK Marine Policy Statement (MPS), the UK Marine Coastal and Access Act 2009 and the Marine Act (Northern Ireland) 2013 affect planning authorities?

The MPS and, once adopted, the Marine Plan for NI, are the key documents for planning authorities to consider when undertaking their responsibilities in respect of :

- Development Planning;
- Development Management; and
- Enforcement.

Development Planning

Planning authorities must have regard to the MPS and the Marine Plan for NI (when adopted) in the preparation of community and local development plans.

Early engagement with Marine and Fisheries Division and other marine stakeholders is strongly encouraged to ensure that proposals in the marine area are supported by the appropriate infrastructure on land and reflected in local development plans. This may include, for example, protecting existing terrestrial sites which support marine industries, such as fisheries harbours. The economic and social potential of the marine area should also be reflected in local development plans; for instance where offshore energy is identified as a realistic opportunity, provision should be made in appropriate locations for supportive terrestrial infrastructure.

Development Management and Enforcement

The MPS and, once adopted, the Marine Plan for NI, are **material considerations**. All terrestrial planning authorisation and enforcement¹ decisions that affect or might affect the marine area, **must** be in accordance with these marine policy documents unless relevant considerations indicate otherwise². Therefore planning authorities making planning or enforcement decisions that affect or might affect the marine area, must familiarise themselves with the MPS, available at <https://www.gov.uk/government/publications/uk-marine-policy-statement> and the Marine Plan for NI (when adopted).

It is the responsibility of the planning authority to assess whether an authorisation or enforcement decision is in accordance with the MPS.

¹ An "authorisation or enforcement decision" is defined by Section 8 (4) of the Marine Act (NI) 2013 and Section 58 (4) of the Marine and Coastal Access Act 2009.

² Under Section 8 (1) of the Marine Act and Section 58 (1) of the Marine and Coastal Access Act, if a public authority makes an authorisation or enforcement decision otherwise than in accordance with any Marine Planning document (MPS or Marine Plan), the public authority must state its reasons.

3.3 Marine Licensing

3.3.1 What is a Marine Licence?

The Marine and Coastal Access Act 2009 provides for a marine licensing system across England, Wales, Northern Ireland and Scotland's offshore region. In Northern Ireland, it applies to all our marine waters from the mean high water spring tide mark out to 12 nautical miles (the inshore region). This includes the waters of any sea lough, estuary, or river, so far as the tide flows at mean high water spring tide. It should be noted that some of the tidal rivers in Northern Ireland can extend quite far inland, for example, the Newry River extends into the centre of Newry and The Foyle Estuary extends as far as Strabane.

Marine and Fisheries Division has responsibility for licensing various activities such as construction works, deposits in the sea, removal of objects or aggregates from the seabed, dredging from the seabed, or use of explosives and incineration.

3.3.2 Why do we need it?

This licensing system allows for a consistent approach to decision making around activities, while ensuring sustainable development and conservation of our marine environment. It also ensures that any decision making is balanced with other uses of the marine environment.

The main principles to consider in any licensing decision are:

- the need to protect the environment;
- the need to protect human health;
- the need to protect legitimate uses of the sea; and
- Any other matters the authority considers relevant.

3.3.3 What does this mean for land use planning?

There is a shared responsibility between Marine and Fisheries Division and Planning Authorities for consenting or licensing projects in the intertidal area. This means that certain activities or development along the coast may require a marine licence as well as planning permission.

In addition, some marine licensable activities may form part of a plan or project that requires an Environmental Impact Assessment under The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 or a Habitats Regulations Assessment under The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). However, the same proposal may also require an Environmental Impact Assessment for the onshore development under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and/or a Habitat Regulations Assessment.

In such cases, Marine and Fisheries Division and Planning Authorities should work together to ensure that only one Environmental Impact Assessment and/or Habitat Regulation Assessment is required from the applicant and unnecessary duplication is avoided.

Furthermore, certain activities may be exempt from the requirement of a marine licence. Figure 2 below, explains this further.

Figure 2 - Marine Licensing Exemptions

The Marine and Coastal Access Act 2009 identifies those activities which are outside its licensing provision. These activities are exempt from the requirement of a marine licence. However, other permissions or consents may still apply under other regulatory controls. For example, maintenance dredging of clean sediments within a harbour, is permitted where a Harbour Order or a Local Act is in place that allows management of the harbour by the relevant harbour authority.



As well as the activities listed as exempt in the main Act, the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011, lists further activities that are exempt from the requirement of a marine licence.

These activities may normally be licensable; however, if the activity satisfies certain conditions and/or criteria, then it may be exempt. An example of this would be the maintenance of coastal protection, drainage and flood defence works. These activities are exempt from the requirement of a marine licence, provided the maintenance work is within the original boundaries. The caveat is that this exemption does not apply to works which consist of beach replenishment or works likely to cause danger or obstruction to navigation. Marine and Fisheries Division encourages developers to discuss potential exempted activities.

3.4 Marine Wildlife Licensing

3.4.1. What is Marine Wildlife Licensing?

In the UK, certain marine species, including whales, dolphins, porpoises, seals and basking sharks, are protected throughout their natural range by International, European and National wildlife legislation. This includes protection from intentional or reckless disturbance, taking, harming and killing and in some cases possession or sale.

A marine wildlife licence may be required for activities which are otherwise prohibited under nature conservation legislation, namely:

- The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and
- The Wildlife (Northern Ireland) Order 1985 (as amended).

Marine wildlife licensing is the process by which certain activities, that would otherwise be prohibited, may take place. The Marine and Fisheries Division has responsibility for marine wildlife licensing out to 12 nautical miles.

Please note: NIEA retains responsibility for wildlife licences for the protected species of terrestrial animals, birds (including marine species) and plants.

3.4.2 Why do we need it?

The marine wildlife licensing system safeguards the conservation and welfare of marine species. Before a marine wildlife licence is applied for, developers should consider if the activity can be avoided or mitigated, for example, by using alternative equipment or undertaking the activity at a different time of the year.

Marine wildlife licences can only be issued for specific purposes, for example, scientific or educational purposes or for reasons of overriding public interest. Licences can only be issued where the Department determines that there is no satisfactory alternative and that the activity would not be detrimental to the maintenance of the population of the species concerned.

3.4.3 What does this mean for land use planning?

Marine and Fisheries Division has responsibility for marine wildlife licensing out to 12 nautical miles. For some marine species, such as seals, this will mean a shared responsibility between planning authorities and Marine and Fisheries Division within the intertidal area. However, development above the intertidal area may also indirectly impact on marine species as



Above: Harbour Seals (By Alain Garsmeur)

Planning Permissions and Marine Wildlife Licensing

Some coastal developments may require a marine wildlife licence in order to carry out specific activities, for example, pile driving or rock blasting. The noise generated during these activities adjacent to the coast may lead to the acoustic disturbance of marine protected species.

The application of mitigation techniques to reduce the risk of a wildlife offence to negligible levels would be considered to be the most appropriate course of action in the first instance. For example, depending on the location of development, mitigation may include avoiding the breeding season for seals, visual monitoring by a Marine Mammal Observer prior to construction works commencing, sequencing of explosive devices etc. Mitigation should be proportionate to the scale of the project.

If mitigation techniques were insufficient, a marine wildlife licence issued by Marine and Fisheries Division would permit temporary disturbance to marine protected species from noise emitted during construction.

Consequently, a wildlife licence would be granted only as a last resort and for reasons of overriding public interest.



Above: Bottlenose Dolphins (By Colin Speedie)

4. Working together at the coast

4.1 When will Marine and Fisheries Division and planning authorities need to work together?

a) When further information or advice is required from Marine and Fisheries Division

In some instances, proposals for land use development may impact upon, or have the potential to impact upon, the marine area. In such cases, Marine and Fisheries Division will endeavour to work closely with planning authorities and the applicant (or agent) to ensure:

- Any relevant marine nature, archaeological or built heritage requirements and information are provided to planning authorities during the planning application consultation process, or before the consultation, if we are contacted prior to submission of an application.
- Co-ordination of information required for any further assessments as part of the planning process.

Planning authorities, applicants and agents are strongly encouraged to commence pre-application discussions with Marine and Fisheries Division **BEFORE** a planning application is submitted. This ensures that any information requirements, for example specific environmental monitoring, and also any necessary mitigation measures, can be included in the application and associated documentation.

Further details of when Marine and Fisheries Division will be consulted by planning authorities can be found in the NIEA Consultation Guide document [Statutory Consultations](#) (PDF, 728KB).

b) When a licence and/or consent is required from Marine and Fisheries Division

In the instances when, in addition to planning permission, licences and consents may be required from Marine and Fisheries Division for development proposals or activities along the coast, Marine and Fisheries Division will:

- Inform the Planning Authority, agent or applicants of any licensing or consenting requirements during the consultation process.
- Aim to streamline any licence or consent required with the planning application, so that the processes run in parallel.
- Partake in early engagement with Planning Authorities, agents and applicants, as well as cross-cutting discussions with other Departments or regulatory authorities involved in the process, when required.

- Engage in discussions and co-ordination where the proposal requires a marine licence and forms part of a project or plan that may require an Environmental Impact Assessment under The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 and/or an Environmental Impact Assessment under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and any other assessments required, for example, a Habitats Regulations Assessment.

Further guidance can be found on the Planning website www.planningni.gov.uk

Working together with planning authorities (and agents and applicants) can ensure early engagement and co-ordination between relevant consenting authorities, to avoid duplication of effort and processes, and ensure that all regulatory requirements are met. Figure 3 below, provides case examples of when Marine and Fisheries Division and planning authorities may need to work together.

Figure 3 – Examples of working together at the land and sea interface

When will we be required to work together?	What permissions may be required?	Case Examples
<p>1. When a proposal for land use development or an activity extends to the low water mark</p>	<ul style="list-style-type: none"> ▪ planning permission ▪ a marine licence 	<p>Construction of a boat house on land with a slipway down to the low water mark.</p> <p><i>Planning permission</i> is required for the proposed boat house and associated infrastructure situated above the mean low water mark.</p> <p><i>A marine licence</i> is required for the construction of the slipway below the mean high water spring tide mark</p>

<p>2. When a proposal for marine development or a sea based activity extends to the mean high water mark</p>	<ul style="list-style-type: none"> ▪ a marine licence ▪ planning permission 	<p>Construction of a new marina.</p> <p><i>A marine licence</i> is required for marina infrastructure below the mean high water spring tide mark.</p> <p><i>Planning permission</i> is required for construction above the mean low water mark.</p>
<p>3. When a proposal for land use development or activity will impact upon or has the potential, to impact upon marine protected wildlife, either in the intertidal area or the wider marine environment</p>	<ul style="list-style-type: none"> ▪ a marine wildlife licence ▪ planning permission 	<p>Construction of a new coastal path using piling which has the potential to disturb a pod of harbour porpoises known to use this area of the coast for feeding.</p> <p><i>A marine wildlife licence</i> may be required if mitigation measures are not sufficient.</p> <p><i>Planning permission</i> is required for construction above the mean low water mark.</p>
<p>4. When a proposal for land use development or activity will impact upon, or has the potential to impact upon, the marine historic environment.</p>	<ul style="list-style-type: none"> ▪ scheduled monument consent ▪ listed building consent ▪ a marine licence ▪ planning permission 	<p>Installation of an electricity cable using foreshore trenching, with potential to impact on a range of designated heritage assets, including a scheduled fish trap.</p> <p>An agreed archaeological mitigation strategy will be required. This will be captured as conditions on both the <i>marine license</i> and <i>planning permission</i>.</p>

		<p><i>Scheduled Monument Consent</i> will be required for any works in the vicinity of the designated fish trap.</p> <p>Marine and Fisheries Division have an in-house marine archaeologist who can advise."</p>
<p>5. When a proposal or an activity is part of a project or plan, which is an EIA development, with legislative and consenting requirements for the land and sea interface and the terrestrial and marine environment.</p>	<ul style="list-style-type: none"> ▪ A marine licence ▪ Planning permission ▪ A marine wildlife licence ▪ Environmental Impact Assessment (EIA) ▪ Habitats Regulations Assessment (HRA) 	<p>Laying of a new gas pipeline for gas transport in Northern Ireland.</p> <p>A <i>marine licence</i> is required for laying the pipe in the inshore waters, up to the mean high water mark.</p> <p><i>Planning permission</i> is required for the terrestrial laying of the pipe, from the low water mark.</p> <p>A <i>marine wildlife licence</i> is required for the offshore works and may be required for onshore works with the potential to disturb European Protected Species.</p> <p>An <i>Environmental Impact Assessment</i> and <i>Habitats Regulations Assessment</i> would also be required.</p> <p>A co-ordinated approach can assist to ensure one EIA and one HRA covers the whole project.</p>

4.2 Managing co-ordination between planning authorities and Marine and Fisheries Division

Marine and Fisheries Division recommends that in the case where a planning proposal in the intertidal area requires a marine licence, in addition to planning permission, that:

- where the majority of a plan or project is **above the mean low water spring tide mark, local planning authorities will take the lead** on cross cutting discussions with other Departments, relevant authorities and stakeholders, insofar as possible, in order to ensure the correct regulatory legislation is adhered to and any required information, advice etc. is incorporated into the plan or project; and
- where the majority of the development is **below the mean high water spring tide mark, Marine and Fisheries Division will take the lead** on cross cutting discussions with other Departments, relevant authorities and stakeholders, insofar as possible, in order to ensure the correct regulatory legislation is adhered to and any required information, advice etc. is incorporated into the plan or project.

5. Contact Details and Information

5.1 Marine Licensing

Further information on Marine Licensing, including guidance documents, can be found on the DAERA website:

<https://www.daera-ni.gov.uk/articles/marine-licensing>

Alternatively the Marine Licensing Team can be contacted by:

Letter : Marine and Fisheries Division
Marine Licensing Team
Klondyke Building
Cromac Avenue
Belfast
County Antrim
BT7 2JA

Email: MarineLicensingTeam@daera-ni.gov.uk

5.2 Marine Wildlife Licensing

Further information on Marine Wildlife Licensing, including application forms and a guidance document, can be found on the DAERA website:

<https://www.daera-ni.gov.uk/articles/marine-wildlife-licensing>

Alternatively the Marine Wildlife Licensing Team can be contacted by letter as detailed above or by email:

Marine.Wildlife@daera-ni.gov.uk