An Taisce
The National Trust for Ireland

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Mr Alan Kelly T.D.
Minister for the Environment, Community and Local Government
Department of Environment, Community and Local Government
Custom House
Dublin 1

msfd@environ.ie

11.09.14

Re: Public Consultation on the Marine Strategy Framework Directive – Monitoring Programmes (Article 11)

Dear Minister Kelly,

An Taisce notes the publication on the Marine Strategy Framework Directive – Monitoring Programmes (Article 11) and would like to make the following comments that we request the Department take into consideration.

It is also requested that the Department make known to An Taisce any further consultation periods regarding this issue and issue An Taisce with notification of any proposed amendments.

Yours sincerely,

Ian Lumley
Built Environment & Heritage Officer
builtenvironment@antaisce.org

Public Consultation on the Marine Strategy Framework Directive Monitoring Programmes (Article 11)

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1.0 General Comments

Ireland, as one of Europe's leading maritime countries and with a marine jurisdiction ten times the land area, should be setting an exemplary standard in the implementation of the Marine Strategy Framework Directive.

The report published for this consultation by the Department of the Environment Community and Local Government, in association with the Department of Arts Heritage and Gaeltacht, Department of Agriculture and Food and the Marine, and Department of Transport Tourism and Sport is not fit for purpose. It significantly fails to meet the legal obligation under Article 11 of the Directive for environmental targets and associated indicators

It does not resolve the critical analysis provided by the European Commission on environmental targets and associated indicators published under Article 12 of the Directive in February 2014 titled "*Article 12 Technical Assessment of the MSFD obligations Ireland"*.

Ireland has a legal obligation under EU law to provide an effective and compliant strategy to (i) meet the obligations of the Marine Strategy Framework Directive, (ii) to maintain the Good Environmental Status of the marine ecosystem, (iii) to apply the precautionary and polluter pays principles in achieving this, and (iv) to set out environmental targets and indicators to achieve and maintain the Good Environmental Status of the marine environment by 2020.

This should be a key part of Ireland's wider role in promoting action on the overriding threats to the global marine environment through climate change, ocean warming, ocean acidification, overfishing, marine litter waste and pollution, both through national initiative, through membership of the EU and taking a proactive role in the UN IPCC process, OSPAR, ESPOO and other international structures.

Major leadership is required to reduce carbon emissions in order to reverse ocean acidification as much as climate warming. The most recent UN data published in September 2014 is alarming (see Appendix 1). It addresses the converging impact of anthropogenic greenhouse gas on increasing ocean temperatures, and the inability of the ocean to absorb additional C02, causing acidification and the accelerated damage to the marine ecosystem.

As in the expansion of agriculture in Ireland through "*Food Harvest 2020*", current Irish Government policies for the marine environment are directly contrary to the imperative of

stabilising global climate and ocean acidification and maintaining biodiversity. The target and objectives set out in the 2012 publication of "*Our Ocean Wealth"* in promoting oil and gas exploration and the increased commercial exploitation of marine life, have not been subject to any environmental constraint evaluation. Similarly, the European Commission is advancing the concept of "*Blue Growth*" without reconciliation of compatibility with the Marine Strategy Framework Directive objectives and provisions.

2.0 The Key Objectives of the Marine Strategy Framework Directive

The Directive sets out an ecosystems approach and mandates national governments to designate marine protected areas in addition to Natura 2000 designation under the Birds and Habitats Directives. Such additional protected areas would allow restriction or exclusion of fishing and oil and gas drilling, and allow fish stocks to recover.

Article 1 of the Directive states:

> *"This Directive establishes a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest."*

The background and objectives of the Directive is set out in the preamble on which the following articles should be noted in particular:

> Article 7 of the Preamble with regard to Marine Protected Areas states:
>
> *"Establishing such protected areas under this Directive will be an important step towards fulfilling the commitments undertaken at the World Summit on Sustainable Development and in the Convention on Biological Diversity, approved by Council Decision 93/626/EEC, and will contribute to the creation of coherent and representative networks of such areas."*
>
> Article 9 of the Preamble states:

"…a transparent and coherent legislative framework is required. This framework should contribute to coherence between different policies and foster the integration of environmental concerns into other policies, such as the Common Fisheries Policy, the Common Agricultural Policy and other relevant Community policies. The legislative framework should provide an overall framework for action and enable the action taken to be coordinated, consistent and properly integrated with action under other Community legislation and international agreements"

Article 27 of the Preamble states:

"Member States should then establish and implement programmes of measures which are designed to achieve or maintain good environmental status in the waters concerned, while accommodating existing Community and international requirements and the needs of the marine region or subregion concerned. Those measures should be devised on the basis of the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay."

The provisions of the Marine Strategy Framework Directive require a comprehensive Initial Assessment Report under Article 8, Determination of Good Environmental Status (GES under Article 9 and Establishment of Environmental Targets and Associated Indicators under Article 10, and putting in place of monitoring structures under Article 11.

Article 12 provides for EU Commission technical assessment of national monitoring and targets. The first stage of the application of Article 12 has been carried out by the European Commission publication in February 2014 of Article 12 Technical Assessment of the MSFD obligations on Ireland's Article 10 and Article 11 compliance.

Article 10 requires "Establishment of environmental targets":

1. On the basis of the initial assessment made pursuant to Article 8(1), Member States shall, in respect of each marine region or subregion, establish a comprehensive set of environmental targets and associated indicators for their marine waters so as to guide progress towards achieving good environmental status in the marine environment, taking into account the indicative lists of pressures and impacts set out in

Table 2 of Annex III, and of characteristics set out in Annex IV. When devising those targets and indicators, Member States shall take into account the continuing application of relevant existing environmental targets laid down at national, Community or international level in respect of the same waters, ensuring that these targets are mutually compatible and that relevant transboundary impacts and transboundary features are also taken into account, to the extent possible.

2. *Member States shall notify the Commission of the environmental targets within three months of their establishment.*

3.0 European Commission "Article 12 Technical Assessment of the MSFD obligations Ireland" February 2014

The February 2014 Commission evaluation under Article 12 shows large-scale failure or inadequate action by Ireland.

This is summarised in the introduction in pg. 5 under the following headings:

- Overall Approach
- *"No targets and associated indicators for biodiversity and water noise"*
- Socio Economic Analysis
- *"No clear conclusions available*"
- Data and Knowledge Gaps

In general, it considered the "o*verall the report does not identify concrete actions and plans to resolve the gaps/ knowledge".* The report evaluates the targets for achieving Good Environmental Status under eleven separate descriptives D1 to D11. A four level matrix is provided:

- **Good Practise**
- **Adequate**
- **Partially Adequate**
- **Not reported**

None of the targets for eleven descriptives met Good Practice standard. Only one was deemed Adequate, six were deemed only partly adequate.

With regard to D2 on non-indigenous species, the information was stated to be "*vague".* For D2 on commercially exploited fish and shellfish it was stated, "*it was not clear which stocks were covered.* For D10, on marine litter, the information was stated to "*lack threshold values and baselines*".

Most seriously, for four descriptives, namely D1, D2 and D6 in relation to Biodiversity and D11 on marine noise no targets were provided. The report concludes with positive and "*Negative Elements*" the latter set out as follows:

- *Overall lack of ambition e.g. Ireland do not go beyond existing standards at EU or RSC level*
- *When using OSPAR and EU requirements and standards e.g. for D8, Ireland does not address potential issues of complementarity*
- *GES is defined at the descriptor level and often integrates some elements of the criteria and is generally only qualitative*
- *Impacts from pressure are not systematically reported on*
- *A number of targets and the associated indicators to these targets still need further*
- *development and are expected to be operational only in 2014 or 2018*
- *No new assessment seems to have been made specifically for the implementation of the MSFD with some exceptions in relation to emerging issues e.g. marine litter*
- *While data and knowledge gaps are described in detail, Ireland does not always specify how they will be addressed and sometimes relies on developments at EU or regional level, without always clear deadlines*
- *Lack of targets for Descriptors 1, 4, 6 and 11*
- *A large number of GES definitions and targets are not sufficiently clear or SMART to be measurable.*

4.0 Recommendations

The document published by Ireland under Article 11 of the Directive in July 2014 does not meet the requirements of the Directive.

It follows a wider trend of producing strategies being not fit for purpose, being neither scientifically grounded, nor integrated with other Government policies and without legally effective timetables or targets to achieve key objectives. Deference to sectoral interests pursuing unsustainable resource exploitation prevails in this case the fishing industry. This has also occurred with two other current draft strategies on Peatland or Landscape produced by the Department of Arts Heritage and the Gaeltacht.

Producing strategies without being informed by adequate baseline scientific information, clear measurable targets and where required legally enforcement is a bureaucratic sham. Ireland's attempts to comply with the Marine Strategy Framework Directive to date are merely a paper exercise. There is no horizontal integration with the ongoing policies and action of other Government departments advancing the objectives of "Our Ocean Wealth 2012". Increasing oil and gas drilling and marine life exploitation and aquaculture is being promoted and facilitated. Climate, ocean acidification and biodiversity impacts are being systemically disregarded.

However, in the case of the Marine Strategy Framework Directive there are legal obligations under EU Law as well as scientific imperatives. **The following actions are required to effect compliance with the requirements of the Directive**

4.1. Legal implementation, resource provision and horizontal integration between Government Departments and agencies

- Identification and provision of all new and amended regulatory provisions required to implement the MSFD.
- Adequate provision of resources for providing baseline data, monitoring and meeting of targets.
- Integration for MSFD with legal remit plans and programmes of Government Departments and agencies.

4.2 Assembly and Maintenance of Baseline data

- Achievement of adequate baseline data on the status of the Irish marine eco system within 2020 timeframe including:
- Marine food web, including maintenance of feed sources for birds.
- Seabed habitat including biogenic reefs deepwater coral.
- Evaluation of deep trawling impact on sea bed

- Accurate monitoring data on the population stability of all commercially fished species in Irish waters.
- The cumulative impact of aquaculture on foreshore on the marine environment including fish feed and nutrient impact on sea floor and interaction with other species and escapee impact or threat.
- Mobility and feeding patterns for cetaceans.
- Changing patterns in migration of non-indigenous species
- Sources of marine litter.

4.3 Targets

The objective should be meet Good Practice standard defined by the European Commission for all 11 target descriptives, to resolve the deficiencies set out in the February 2014 European Commission Article 12 evaluation.

4.4 Further Development Issues

Annex V (11) of the Directive states the "*Need to include, as part of the initial assessment provided for in Article 8, an assessment of major changes in the environmental conditions as well as, where necessary, new and emerging issues*".

Current and future major issues a plan need to be addressed:

4.4.1 Aquaculture

A major extension of caged salmon breeding is proposed the first between Galway Bay and the Aran Islands and two others to follow. This has major issue on scale of nutrient source required for caged fish breeding, lice infestation and risk.

4.4.2 Oil and Gas Drilling

The scale and impact of deep sea drilling in areas covered by exploration licenses by Department of Communications, Energy and Natural Resources is not addressed.

4.4.3 Renewable Energy in Marine Environment

The impact of large-scale wind energy and future development of wave and tidal energy needs to be assessed, including sound impact on cetaceans.

4.4.4 Cultivation of Marine Biomass

The potential impact of future marine biomass cultivation of pharmaceutical, food nutrient or bio energy use needs to be addressed.

4.5 Marine Protected Areas

Article 8 of the preamble to the Directive places strong emphasis on the designation of areas under the Habitats Directive and protected areas generally *"as an important contribution"* to the achievement of Good Environmental Status.

Scientific evaluation is required on the most appropriate area to designate, with Ireland taking European leadership in the introduction of large-scale protected areas.

Appendix 1

Addressing Ocean Acidification

A report released in September 2014 by the UN's World Meteorological Organization (WMO) has stated that Current levels of ocean acidification are "unprecedented" and directly linked to rising emissions of carbon dioxide, UN's World Meteorological Organization (WMO).

In a greenhouse gas analysis of 2013, it said concentrations of CO2 in the air had risen more than any other year since 1984. Methane and nitrous oxide levels also rose.

Carbon dioxide levels in the atmosphere are now 142% higher than 1750, before the industrial revolution.

And the WMO said data showed the warming effect on the world's climate due to greenhouse gases, known as radioactive forcing, had risen 34% between 1990 and 2013.

"Carbon dioxide remains in the atmosphere for many hundreds of years and in the ocean for even longer," said WMO secretary general Michel Jarraud.

"Past, present and future CO2 emissions will have a cumulative impact on both global warming and ocean acidification. The laws of physics are non-negotiable."

WMO scientists said the ability of the biosphere to absorb rising carbon levels had diminished, leaving the oceans to compensate.

"The ocean cushions the increase in CO2 that would otherwise occur in the atmosphere, but with far-reaching impacts," it said in a press release.

"The current rate of ocean acidification appears unprecedented at least over the last 300 million years, according to an analysis in the report."

Caused when the oceans suck in CO2, acidification is likely to lead to the decline of corals, algae, molluscs and some plankton, say scientists.

The ocean currently absorbs around a fourth of manmade CO2 emissions. The WMO said if emissions continue to rise, acidification is likely to accelerate until the 2050s.

Earlier this year the IPCC said ocean warming and acidification linked to rising CO2 levels would undermine food production and threaten the world's poorest people.

See more at:

http://www.rtcc.org/2014/09/09/un-warns-on-ocean-acidification-as-ghg-levels-soar/#sthash.wdapgB0g.dpuf