

DÁIL ÉIREANN

AN COMHCHOISTE UM THITHÍOCHT, RIALTAS ÁITIÚIL AGUS OIDHREACTH

JOINT COMMITTEE ON HOUSING, LOCAL GOVERNMENT AND HERITAGE

Déardaoin, 3 Nollaig 2020

Thursday, 3 December 2020

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Thomas Gould,	Victor Boyhan,
Emer Higgins,	John Cummins,
Jennifer Murnane O'Connor,	Mary Fitzpatrick.
Cian O'Callaghan,	
Eoin Ó Broin.	

I láthair / In attendance: Deputy Pauline Tully.

Teachta / Deputy Steven Matthews sa Chathaoir / in the Chair.

General Scheme of the Marine Planning and Development Management Bill: Discussion (Resumed)

Chairman: We are joined in person by Dr. Tasman Crowe, director of UCD Earth Institute. We are joined remotely by Ms Attracta Uí Bhroin of the Irish Environmental Network and by Ms Karin Dubsky, Mr. Maurice Murphy and Dr. Jean-Luc Solandt of Coastwatch.

Opening statements as well as written submissions from the Marine Institute and An Taisce have been circulated to members. I will first ask our witnesses to make their opening statements and members will then be invited to address their questions. I ask members to confine their questions to five minutes in the first round. Those five minutes include the questions and the answers. That system allows us to get around to all of the members.

Witnesses attending in the committee room are protected by absolute privilege in respect of the presentations they make to the committee. This means that they have an absolute defence against any defamation action for anything they say at the meeting. However, they are expected not to abuse this privilege and it is my duty as Chair to ensure this privilege is not abused. Therefore, if witnesses' statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

For witnesses and members attending remotely, there are some limitations to parliamentary privilege and as such they may not benefit from the same level of immunity from legal proceedings as a person who is physically present. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons, or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against persons outside the House or an official either by name or in such a way as to make him or her identifiable.

The opening statements submitted to the committee will be published on the committee website following the meeting.

I now invite Dr. Crowe to make his opening statement.

Dr. Tasman Crowe: I am a professor at University College Dublin and director of its Earth Institute for environmental and sustainability research. As a researcher, I have worked for 30 years on impacts of human activities on marine ecosystems and the services and benefits we derive from them. I chaired the marine protected area, MPA, advisory group, which recently submitted a report on the expansion of Ireland's network of marine protected areas to the Department of Housing, Local Government and Heritage. That group was made up of experts in the life sciences, including those with expertise on socio-economics, culture, legislation and governance. In preparing our report, we consulted with more than 100 key stakeholders in Ireland's marine environment.

I would like to thank the committee for this opportunity to comment on the marine planning and development management Bill. My knowledge of marine planning is somewhat limited but I hope I can contribute some thoughts on MPAs. Given that the report of the MPA advisory group is being reviewed by the Minister, Deputy Darragh O'Brien, and the Minister of State, Deputy Noonan, prior to its publication for public consultation, I cannot provide much detail

on its contents, although I can give some broad indications and I will also express my views.

As members know, Ireland has an extensive marine environment, rich in habitats, species and cultural significance. Ireland's ecosystems provide a wide range of ecosystem services which underpin health and well-being, regulate climate and support a wide range of sectoral activities, all of which are important to this and future generations. Marine spatial planning for sectoral activities and designation and management of marine protected areas for conservation are mandated under separate EU directives and should be recognised as being distinct processes. However, the relationship between them is critical and should be given careful consideration to enable sustainable development while also achieving good environmental status, as required under the EU's integrated maritime policy.

MPAs constitute an important approach to marine conservation and management. They are mandated under a number of international instruments, including the marine strategy framework directive. They can take many forms and may require a range of levels of protection, which should be tailored to their individual and overarching network objectives. At present, 2.14% of Ireland's maritime area is designated for protection, primarily as Natura 2000 sites under EU directives. Under the current programme for Government, Ireland is committed to increasing coverage by MPAs to 10% as soon as is practicable and to 30% by 2030. New national legislation is required to underpin an effective process of selection and management of MPAs and to enable greater flexibility to protect important species, habitats and other features, particularly those that are not explicitly protected under the EU directives.

A concern raised by a number of stakeholders that we consulted was that the marine planning and development management Bill and the national marine planning framework are likely to come into force before selection and designation of MPAs can take place, such that areas may be zoned for sectoral activities, which may potentially damage important natural features before they can be protected by MPAs. To prevent this, the MPA advisory group recommends that an initial sensitivity analysis should be undertaken in the short term to allow identification of likely candidate MPAs so that they can be afforded some form of temporary protection. The application of existing environmental legislation, such as the environmental impact assessment, will also be important for assessing potential impacts of proposed developments and preventing or adapting them if necessary. It is my understanding from reading the Bill that this should take place routinely as part of the planning process, which falls outside the remit of the Bill itself.

As a researcher, I have worked and published extensively on how multiple local and global pressures can combine in complex ways to affect marine ecosystems and the services and benefits they provide to society, with some combinations of pressures being particularly damaging, while others may actually reduce each other's effects to some degree. A holistic approach to marine planning, governance and conservation is therefore required, encompassing all sectors, perspectives and potential impacts, both positive and negative. Although this may not be directly provided for in the marine planning and development management Bill, its implementation as part of the national marine planning framework will require co-ordination among relevant Departments and wide and sustained consultation. The national marine planning framework is not yet available in its final form, but I hope that this kind of co-ordination and consultation will be well provided for.

Ms Karin Dubsky: I thank the committee and am grateful to be able to address this meeting on behalf of Coastwatch. I will introduce myself and the two other people on my team. I am a director of Coastwatch and have worked on citizen science since 1987 as part of the Coastwatch project. I am joined by Maurice Murphy, whose real job is with tourism and enterprise,

In Coastwatch we all work as volunteers, and his particular role in Coastwatch is on aquaculture. I am also joined by Dr. Jean-Luc Solandt, who is a member of the International Union for Conservation of Nature, IUCN, and has done extensive work on marine protected areas, MPAs.

Ireland was one of the first countries in the world to announce a climate and biodiversity emergency. We hope that this Bill will address some of the issues in a way that will reduce this crisis. First, we need to transpose fully the maritime spatial planning directive into our national law. Maritime spatial planning is defined in the EU directive as “a process by which the relevant Member State’s authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives”. As an environmental group, we would like to look at the ecological aspect, in particular.

The second thing this spatial planning law needs to do is to define MPAs to enable the establishment of a coherent effective network of managed marine protected areas as required under the marine strategy framework directive; the UN biodiversity convention; the sustainable development goal, “life under water”; and the Convention for the Protection of the Marine Environment of the North-East Atlantic, which is known as the OSPAR Convention. We were to have 10% of our waters in place as MPAs by 2020. It is now 2020 and this Bill could easily do the basics of including the stumbling blocks to creating more MPAs.

I would like to emphasise some other things in the heads of the Bill which I am sure will be expanded on later. One of these is the need for regional plans to manage and restore estuaries, in particular, because they are transboundary. In Ireland, there should be transboundary lough management between the North and the South. All sectors in the marine environment, including aquaculture, need to be included. There is also a need for timely public access to information to better protect and manage our seas.

I do not know if the committee can see the PowerPoint presentation. Mr. Murphy is just putting up the next slide up now. We wish to emphasise two things that the Bill needs to do at this stage: to transpose fully the maritime spatial planning directive; and to include the legal text so that MPAs can be made, notwithstanding what Professor Tasman Crowe has said and the huge amount of work done by his team to look at MPAs. We are now in 2020 and we need to have the ability to create more MPAs.

I will set out how we believe this should be done. The Bill should include an extra section which defines MPAs. Ireland is the only country in Europe I am aware of which cannot define an MPA. The Bill should also give legal power to the Government to designate and manage MPAs; give the Government the responsibility to create a statutory instrument which covers the essential MPA elements which Professor Crowe was talking about; state that it is the responsibility of every relevant Department and body to contribute actively to a well-managed and coherent MPA network; and ensure full compliance with the international water nature law. As Professor Crowe has already addressed to some degree, in 2020 approximately 2.3% of our waters, rather than the minimum of 10%, are designated as MPAs. That 2.3% is not even managed, which is why the EU has started infringement proceedings against us.

One simple and quick way to protect features which are under threat because there is so much happening in the marine area now would be to give full protection from the day the Bill is passed to all the features and habitat species listed in the OSPAR Convention, the Bern Convention and the migratory fish convention, which as a nation we have signed. This would enable us to work seamlessly with Northern Ireland as well. For example, the native oyster and the seaweed *ascophyllum nodosum* are protected as priority species in Northern Ireland, but when

they hit the Border that protection dwindles or disappears. As I am about to run over time, I would like to say-----

Chairman: I thank Ms Dubsky for her opening statement. We will get an opportunity later to return to much of the subject matter that she has raised. I invite Mr. Fogarty to make an opening statement on behalf of the Irish Wildlife Trust.

Mr. Pádraic Fogarty: I thank the Chairman and the members of the committee. I apologise for being a few minutes late. The Irish Wildlife Trust is a national non-governmental organisation, a wildlife charity and a member of the Irish Environmental Network. I am joined by my colleague, Ms Attracta Uí Bhroin, who is the environmental law officer of the Irish Environmental Network. The Bill we are considering is immensely important. We know the committee is aware of this. We know from the previous witnesses' statements that getting this Bill right is essential for the future of Ireland, for how we deal with climate change and for planning in the marine environment for the next decade, at least. It is vital we get this right.

We are deeply conscious of our legally binding targets on greenhouse gas emissions reductions and, just as importantly, the reality of climate change and the intertwined biodiversity crisis. We are sensitive to the need for a just transition, the exciting new appetite to “build back better” and the great opportunities for Ireland in moving to a truly green economy. I cannot emphasise that point enough. As an organisation, we are fully behind our climate change targets.

We have an opportunity now to get this legislation right and to do planning right in the marine environment. However, we have specific concerns. We must not lose sight of the fact that the purpose of this Bill is to provide a framework for sustainable planning in the marine environment and therefore should not be fashioned to facilitate the development of one sector only. In our view, the general scheme does not adequately address the requirements of the maritime spatial planning directive. The marine spatial plan required by the directive must be established by the end of March. The draft spatial plan published for consultation earlier in 2020 is not adequate in respect of the directive. These are potential issues for the Bill and the strategy.

The maritime spatial planning directive is central to outlining what this Bill needs to do and how the planning context is to be created. In turn, this will inform how Ireland, as an EU member state, is legally obliged to address its stewardship of the marine environment and its approach to the management of development within it. Without this framework, future development in the marine environment will be beset by issues of legal uncertainty, something that is not good for business, the environment or our citizens.

We welcome the opportunity to share and discuss further this morning our legal concerns and recommendations, particularly in respect of the requirements of the marine spatial planning directive and Ireland's inadequate response to it; to flag other matters arising from the heads of the Bill, such as policy and public participation; and to touch on the importance of cetaceans, such as whales and dolphins, in this context. We should earn the hard lessons from other expedited legislation such as that for strategic housing developments, which has not delivered what is needed or promised.

As we turn to expand focus on infrastructure development in the marine environment, we need to recognise the significant damage which has already been inflicted on our ocean ecosystems. The impacts of over-fishing, destruction of marine habitats, pollution, including from raw sewage discharges and plastic waste, have led to a loss of economic and amenity value as well as a catastrophic collapse in marine life. These effects are both exacerbated by, and contribute

to, global heating, leading to sea level rise, extreme weather events and ocean acidification, which will devastate coastal and low-lying areas of Ireland.

A vital response to this is the creation of marine protected areas, MPAs. Members heard from my colleague, Ms Dubsky, that we have not fulfilled our targets on marine protected areas to date. Only about 2% of our seas enjoy nominal protection and we know that is not sufficient because those areas are not managed and biodiversity continues to be lost. Our approach to planning and development cannot be considered sustainable in the absence of a far more proactive approach to restoration, protection and conservation.

We hope to raise our concerns in regard to the approach to aquaculture and fisheries and their relevance here. Aquaculture and marine fishing can be low impact activities that actively benefit local communities and coastal economies. However, poor regulation and management have resulted in negative impacts to important areas for biodiversity, the loss of economic opportunity, the introduction of alien invasive species and the destruction of habitats even within existing marine protected areas.

We now have a valuable opportunity to develop a new approach to economic activity in the marine environment, one that benefits long-term sustainability of diverse local economies and coastal communities and the wider public interest. However, this is placed at risk if we pursue a short-sighted and excessively limited view of those opportunities precipitated by an intense drive by private interests. That is a point we wish to highlight to the members, as legislators and public representatives. We recommend that a focus on marine protected areas be prioritised. As a matter of law and public interest, they cannot be left as an afterthought.

We welcome this meeting as a constructive opportunity to make sure we engage together to get this right. I thank the members for their attention. We look forward to responding to their questions as best we can and to follow up, where necessary, given the scale and complexity of the general scheme and the extent to which exactly what is proposed and how issues will be resolved is, regrettably, still unclear.

Chairman: I thank Mr. Fogarty for highlighting that only 2% or 2.5% of the 10% target has been met. We see similar on-land use in natural heritage areas and our Natura sites also. It is vital that we achieve the target of designating 30% of our seas as marine protected areas and that this is done in a proper manner. I am glad to see that commitment in the programme for Government.

Senator Mary Fitzpatrick: I thank the witnesses for their presentations and for coming in to meet us today. This is important legislation. I believe this is our third meeting so far and we are still in the pre-legislative scrutiny stage so we are taking this legislation very seriously. We recognise the big challenge in getting the balance right between protecting the environmental gem that is our marine territories with their rich biodiversity and realising their potential in terms of their contribution to climate action and economic sustainability. I should make clear that we are taking this very seriously and we very much appreciate the witnesses giving their time to support us in our work.

We have not yet reached the point we need to reach, so my questions will be of an exploratory nature. The presentations focused on the marine protected areas. Professor Crowe mentioned the need to identify, in the interim, some marine potential areas to be designated at a high level. Can he talk us through how that would be done? As a layperson, my ambition for the marine planning and development management Bill would be to have all of territory become a

designated area and that permissions would then be sought to undertake activities within designated areas. However, I am learning now that we have to have a designated MPA to stop any sort of activity. Is my understanding correct? What is required to designate areas as MPAs?

The witnesses mentioned that the marine spatial planning in Ireland is inadequate. That was certainly a theme in the presentations. Why is it so inadequate? This is an enormously rich resource that we will never be able to replace, so why are we failing so badly as a country?

Dr. Tasman Crowe: To respond to the first question in the sense of how a process of identifying MPAs might work as a sort of initial sensitivity analysis, there is some degree of protection in general. I agree that the whole of the marine environment should be recognised as needing to be protected and conserved and that protection and conservation should not just be something that takes place within designated protection areas. That is an important point. There is legislation that seeks to do that and requires that we give some consideration to the marine environment generally but protected areas provide an explicit, spatially defined level of protection that can be tailored to specifically protect particular features, species, habitats or ecosystem processes.

Senator Mary Fitzpatrick: How big are these areas?

Dr. Tasman Crowe: They would vary considerably. I would not be able to put a figure on that. Mr. Fogarty or Ms Dubsy might be able to do that. Closer inshore, marine protected areas tend to be smaller in mass, covering several square kilometres or tens of square kilometres to protect particular features. In the offshore, they can be very large covering a realm of thousands of square kilometres. As we have heard, a very small proportion of our maritime area is currently protected and we need to go to a much larger proportion.

Marine protected areas do not necessarily exclude all activity in the relevant area. They each have specific site objectives and a management plan can be developed that recognises the activities that are or are not in conflict with those activities. It is not a black and white, protected or unprotected kind of scenario.

There should be a long process of recognising which species and habitats should be prioritised for protection. There is already plenty of information around that in terms of species that are on the OSPAR lists but not in the EU directives. There are species that are on the red lists. There are recognised habitats that are important for a range of ecosystem services that we all rely on, for example, carbon sequestration and so on. We already have a head start on that but some deliberation and consultation is needed to be clear.

We also have a lot of information that would enable us to take an initial pass around Ireland's maritime areas to identify those that clearly need some immediate level of protection from development. Establishing some sort of small group to develop that kind of analysis, take stock of the existing knowledge, identify those areas and give them some interim protection would be a very important step.

Senator Mary Fitzpatrick: Is that information publicly available already?

Dr. Tasman Crowe: It would be available in document but not necessarily in collated form.

Senator Mary Fitzpatrick: How long would it take to do that?

Dr. Tasman Crowe: I am not sure but I would say a matter of a small number of months.

Senator Mary Fitzpatrick: We are talking months, not years.

Dr. Tasman Crowe: Absolutely, it would take months to do something in the interim. A proper process of identifying, designating and coming up with management measures and plans for protected areas would take a number of years to do well with careful consideration and a lot of consultation. However, something useful can be done in the short----

Senator Mary Fitzpatrick: To do an initial desk-top exercise we are talking about months.

Dr. Tasman Crowe: Yes. That would be the way I would see it.

Senator Mary Fitzpatrick: I thank Dr. Crowe.

Chairman: The Senator asked a second question on the reason we are failing in marine spatial planning.

Senator Mary Fitzpatrick: We have not designated more than 98% of our marine territory. What is the reason for that? Let me in on the secret.

Mr. Pádraic Fogarty: In blunt terms, conservation of the marine environment has not been a priority. I will bring in my colleague, Ms Uí Bhroin, who is more expert in marine spatial planning and might describe some of the failings in our marine spatial plan.

Ms Attracta Uí Bhroin: Specifically to answer the question, Ireland, regrettably, has not been to the fore in relation to compliance with a number of EU directives. It may be useful to take a step back and consider the wider legislative context in which the obligation sits and exactly how important it is. While Ireland is an island, it sits in the midst of a deep blue sea of EU regulation and legislation. The EU has brought forward an integrated maritime policy. In that framework, the marine strategy framework directive is effectively the environmental pillar. While it recognises there are many demands, pressures and exciting opportunities for us to develop and expand into the marine environment, we have to do that while providing for the objective of good environmental status in the marine environment. That is key because that is the objective of the marine strategy framework directive, which is the fundamental environmental pillar of the EU's integrated maritime policy. Within that directive is the requirement to bring forward MPAs. The directive says in Article 1 that for the purpose of achieving good environmental status we have to preserve, protect and restore. Given the extent of pressures we have seen through the exercises done under the marine strategy framework directive through aquaculture, fisheries, pollution and many of the matters that Mr. Fogarty referred to in his opening remarks, we have created significant issues in the marine environment and significantly degraded it.

It is incredibly important in the context of this element of the integrated maritime policy, which is the spatial planning dimension, that we recognise the importance of the spatial dimension that is the protection of the marine environment. It is hard to see how we can have a compliant approach to the spatial planning directive in the absence of that because sustainability is at the core of the objective of the spatial planning directive. I had hoped to set this out in more detail in an opening remark but if the committee will permit it, I will attach or send on a note further to this session which clearly lays out the relationships here, the fundamental objectives and the relevant recitals in the directive.

In looking to interpret and make sure we are complying properly with these matters, we have to take a purposive approach and look at the express purpose behind all of these things.

MPAs, in that context, have a critical role. Ireland is late to the table in relation to compliance with the marine strategy framework directive. It has a key opportunity and a key need in terms of the transposition of the requirements of the spatial planning directive and the delivery by 31 March 2021 of a plan which is compliant and which includes the spatial dimension.

Deputy Eoin Ó Broin: I thank everybody for their presentations. I will go straight into questions to maximise the time. In our two previous hearings, one of the big issues of discussion was whether the lag in moving forward with the planning regime, particularly to facilitate renewable energy and wind farms, versus the work around the marine protected area would cause a problem and whether, if we do not accelerate the work around the MPAs, we could end up sacrificing addressing the biodiversity crisis in order to tackle the renewable energy crisis. My first question is to both Mr. Fogarty and Professor Crowe. To what extent do they fear that might happen? I ask for more detail, particularly from Professor Crowe, on what exactly we want to see from the Government in terms of that sensitivity analysis and that level of co-ordination in order that by the 31 March date that Ms Uí Bhroin has mentioned, everything is in place and that lag is reduced.

The second and third questions are for Ms Uí Bhroin. Could she, in as summary a form as possible, highlight what she feels are the conflicts or incompatibilities between the general scheme of the Bill in front of us and both the marine strategy framework directive and the marine spatial planning directive? We are looking to see what we might recommend needs to be changed in this Bill. I also note there is a concern around policy formulation, the role of the Minister and whether that is fully compatible with Article 15 of the Constitution. I ask her to reflect on that, with her legal expertise.

Finally, I address Ms Dubsky. One of the other concerns we have had, particularly when we had the Department in, is about areas of the planning and consent process which do not have public participation, particularly in the granting of consent. With respect to that or any other part of the framework in front of us, is there a concern about lack of consent and therefore lack of compliance with the environmental impact assessment directive or the Aarhus Convention?

Dr. Tasman Crowe: I agree. The first question was to what extent it is a real concern. It is a real concern. It is offset to some degree as long as the existing legislation for environmental impact assessment and the requirement for appropriate assessment is followed through fully. That is slightly outside this Bill, which directs that to the planning process, but it is critical that is properly adhered to in any decision-making.

On the process for that sensitivity analysis, it would be important that a process is gone through that gives an initial assessment of where additional protection is needed. I ask for the opportunity to make an additional submission in more detail about what would be entailed. I will take the chance to speak to some colleagues and flesh that out a bit more. I gave a rough outline of what I think would be required but I would be grateful for the opportunity to put that on paper and in front of the committee.

Mr. Pádraic Fogarty: In answer to the Deputy's first question about whether it is a concern, it is a major concern. We were promised legislation on MPAs years ago. I think it was first promised in 2015. We were told again in 2017 it would happen and so on. To see that MPAs have been taken out of this Bill and to be told this will happen next year is a major concern. It would not benefit the industry if we do this the wrong way around. We have to be able to do two things at the same time, namely, address the climate emergency and the biodiversity emergency. That makes things hard but not impossible.

I will address one of Senator Fitzpatrick's earlier questions about why we are getting it so wrong. The National Parks and Wildlife Service, which is charged with conservation in Ireland, has three people, at the last count, working on the marine environment. We do not have any management plans or engagement with local communities. We have not got the basics right on this. Can we turn that around? Absolutely. It will require investment and political leadership to do it but they are not incompatible.

Ms Attracta Uí Bhroin: I thank the Deputy for his questions. The first part dealt with specific areas of concern in relation to compliance. To encapsulate the spatial planning directive in a nutshell, it requires us to implement spatial planning, to develop a plan and to give effect to the plan. Article 8.1 of the directive requires us to deliver a plan that has both spatial and temporal dimensions of existing and future uses. It requires that to be developed along a certain methodology. Conformance with that methodology, in particular in areas such as the standard of data requirements and data elements, is of fundamental concern and very much how right Ireland is in relation to the specification of the future uses and activities. In some areas, they are indicated. What Ireland seems to be seeking to do is incrementally grow and develop the spatial plan. That is potentially acceptable. The way we grow and develop the plan must be consistent with the directive. That becomes a fundamental issue when we consider issues such as the strategic marine activity zones and the approach. My sense, if I can speak rather informally, is that we developed the national marine planning framework, NMPF, which is Ireland's version of the spatial plan but the framework has been shelved because when the Minister designates strategic marine activity zones or SMAZs there is no requirement for him even to consider their compatibility with the NMPF. It is not even mentioned in head 21. The planning scheme that is developed to facilitate a SMAZ only has to consider the NMPF. It is not bound by the NMPF so it could potentially depart from it. The SMAZ then becomes part of the NMPF but without adhering to the methodology - the prescription or recipe book - that is set out in the directive.

If we consider the strategic infrastructural development consents made by the board, as provided for in the heads of the Bill, in head 51(3), for example, the board only has to "have regard to". Whereas the directive requires us to develop and give effect to a formal plan, Ireland, in this Bill, is not seeking to comply with and conform to its own plan. I have given but some examples of fundamental structural concerns about the approach that we are taking to the plan and the planification approach within the Bill.

On the second question on policy, Article 15.2.1° of the Constitution has been the subject of extensive scrutiny by the courts, particularly in cases like *McGowan v. the Labour Court* and the *Bederev* case, and previous to that, *Cityview Press v. AnCO*. The court has clarified that the rule of the Oireachtas in both law and policy-making rests with the Oireachtas. However, in a number of heads in the Bill, for example, heads 3, 4 and 14, and in the making of the plan much of the obligation is placed on the Minister to develop policy, bring forward plans and develop guidelines that include policy elements. In some instances, there are requirements for these to be laid before the Oireachtas but there is no provision for a debate or a vote. That raises the question as to whether this will conform to the requirements and be compatible with the Constitution. It would be very worthwhile for the committee to raise this as a recommendation for further scrutiny and questioning and to seek legal advice on that. It will be particularly important in matters such as the designation of the nearshore area that we can be satisfied that there are no infirmities in any orders arising under that. It is of particular concern that head 4 provides for the making of guidelines, which somewhat mirrors what we do in section 28 of the Planning and Development Act. While they are called guidelines, they are described as having binding legal effect such that a decision-maker cannot step away from them, and there is a

policy dimension to it. This may create very serious issues for how we approach policy within the Bill.

I hope my comments have been helpful.

Senator Victor Boyhan: I welcome the witnesses and thank them for their extremely informative and professional contributions. We are very lucky and privileged to have their expertise. I acknowledge the enormous work of the environmental network and other allied organisations because we have become increasingly reliant on them. As a Senator who speaks from the Opposition benches, I am indebted to the organisations that the witnesses represent and their ongoing engagement on a whole range of diverse issues ranging from planning to environmental matters.

I am always very conscious of the obligations under the Aarhus Convention and other international agreements on how we protect our built and natural environment. This Bill is amazing legislation and has the potential to be transformative. As someone who lives on the coast and been involved in a number of county development plans, I have always been conscious of how little regard our spatial planning had for our coastline. I say that because I live in Dún Laoghaire and I am a former director of the Dún Laoghaire Harbour Company. Environmental issues were not always to the fore when decisions were taken and we have seen the effects of that all along the coast and at the edges of planning.

Is public participation adequately addressed in the Bill with regard to prescribed bodies, environmental organisations and environmental non-governmental organisations, ENGOs, etc? Are there specific elements of the Bill such as strategic management zones or marine activity consents, both of which are key elements of the Bill? What part of the maritime spatial planning directive is of particular concern to the witnesses? Ms Uí Bhroin covered some of these technical issues. I have picked up from her comments and those of the other witnesses a major concern that marine protected areas are not addressed in the Bill. Why was there a reluctance to mention them? We have a unique opportunity because we have a coalition Government that has strong environmental credentials. We need to bang the drum hard from the Houses of the Oireachtas to galvanise and mobilise people externally, the members of the organisations represented, and allow their voices to be heard. I want to be part of the engagement that occurs outside the gates of Leinster House and in communities. It is critical that we mobilise citizens on this issue.

I thank the witnesses and I ask them to address my questions and areas of concern. I ask Ms Uí Bhroin to respond first to my question about public participation.

Ms Attracta Uí Bhroin: I very much welcome the Senator's questions. He has always been a wonderful champion of the Aarhus Convention, which is key as a human rights convention in environmental decision-making and from which many of our procedural rights flow.

Public participation is not something that is just nice to have. Fundamentally, if we do not comply with our public participation obligations under international and European law, we will potentially fundamentally compromise the legality of the consents, plans and everything else that we develop under this Bill. It is, therefore, incredibly important. I have a list of the dirty dozen, as I like to think of them, of public participation. In head 15, for example, extraordinary discretion has been left to the Minister to make arrangements to comply with Article 9 of the directive without parameters or guidelines on how he provides for public participation. In many instances, such as head 23 for the marine planning scheme, which is developed to give effect to

the strategic marine activity zones, we see what I suggest is an entirely inappropriate 21st century approach to public participation. It involves posting single notices in national newspapers and physical copies of documents in one place. In head 23 there is reference to notifying the wider public. There is a material difference in head 42 where we are seeking applications and notifying the industry. We then move to electronic notifications and websites. With material variations, we dropped down again to notices in local newspapers. It is a material variation of the planning scheme which is effectively binding.

There are major issues in respect of the quality of the notification and accessibility at a time when we should make sure that everybody has a chance to be made aware of this using diverse mechanisms, in particular electronic mechanisms. We should have more and more means of communication.

For example, there is no consultation on the SMAZ designation, which is a fundamental element of the Bill. The Minister and Government worked together on that. While there is consideration in the planning scheme, it begs the question of whether there should be consultation at a previous stage. The same applies to the ministerial activities consensus on considerations around fit and proper persons.

The survey requirements and the extent to which Ireland does or does not comply with the participation requirements when doing an appropriate assessment is already a concern for us. I refer to cases where we do things like seismic surveys, our compliance with the Aarhus Convention under Article 61b and issues around activities which have a likely significant effect on judgments of the Court of Justice in C-243/15. Prior application consultation is an issue which has arisen in the context of SID applications and strategic housing applications. It was provided for in the Bill. It raises some very serious questions in respect of compliance with Article 6(4) of the Aarhus Convention on public participation at the earliest opportunity when all options are open.

There are other considerations in regard to the extension of durations. Many members will be aware of concerns around section 42 of the Planning and Development Act which has been found to be incompatible with the Aarhus Convention in respect of its public participation obligations in a case known as ACCC/C/2013/107. That also figured in the context of equivalent provisions in the Shannon LNG case.

Particularly in the context of the broad public interest and the extent of the remove most of us have from the marine environment, we need to mobilise, require and facilitate effective public participation. We should ensure there are no fees in order that there are no practical barriers and that there is every encouragement to facilitate engagement.

We could do a lot. There is an overlap between public participation and access to justice. I am conscious of time so I will finish. Perhaps I will have a chance to elaborate on that later.

Deputy Cian O’Callaghan: I thank the witnesses for coming before the committee. As a representative of a coastal constituency, these issues are very close to my heart. I want to thank the witnesses for the work they are doing on an ongoing basis on environmental and marine issues. I have been aware of the work Ms Dubsy from Coastwatch has been doing for the past 20 years. I know she has been working longer than that; that is as far back as my awareness goes.

I want to ask Mr. Fogarty from the Irish Wildlife Trust why it is so important that we priori-

tise the designation of marine protected areas and the potential consequences if we do not do this fast enough. In his opening statement he talked about how we can have aquaculture and fishing that can be low-impact, good for biodiversity and prevent the spread of invasive species. He also spoke about the loss of economic opportunity by failing to manage and regulate properly. All of those points are equally important, but I am conscious that in our persuading others in this regard economic opportunity and potential loss will be key arguments. It would be very useful if he could expand on that point.

I want to ask Ms Uí Bhroin from the Irish Environmental Network how the Bill measures up in terms of compliance with our obligations under EU law. What would be the impact of the Bill as it currently stands on marine life, including dolphins and whales?

Mr. Pádraic Fogarty: I thank Deputy Cian O’Callaghan. On why the Bill is important, when environmentalists like me talk about why the protection of whales and sharks is so important we are often accused of thinking that they are more important than people. We do not think that at all because humans are part of nature.

It is fundamental that we protect the environment first. Our economy and society sit within the environment. If we destroy the environment we will destroy the foundations for our society and economy. That is what we have done in the marine environment. We have destroyed habitats and overfished. Climate change is now leading to ecological collapse in the marine environment. I cannot emphasise that enough. On why it is important to create marine protected areas, it is because it recognises that damage has been done and protecting the environment is absolutely fundamental.

It is fundamental for people because of the human impacts climate change will have. We have to remember that offshore wind energy is essential for decarbonising our electricity networks. Protecting the oceans is also a form of climate action. The ocean absorbs enormous amounts of carbon through coral reefs, marine life, kelp, seagrass beds, sediments and so on. Protecting biodiversity is also climate action. That is why it is a fundamental.

Anyone who has lived in a coastal community will see piers around our coasts that do not have any boats on them because the marine life is not there anymore. We have to prioritise restoration in order to bring back coastal jobs and economic activity.

Deputy Cian O’Callaghan touched on the economic opportunity. The idea that protecting the environment is somehow at odds with our social and economic gains is at the heart of why we have a biodiversity and climate crisis. We have to get over that. In order to do so, we have to go back to what Ms Uí Bhroin was talking about, that is, public participation and getting people involved in the decision-making process and managing these areas.

The marine protected areas in the world that work are those that have been designed and managed by fishing communities because they have a say in what happens. They are on the sea, have the best knowledge and can work with scientists, but that has to be enforced. In Ireland fishing communities have found the necessary legal mechanism has not been in place to enforce the ideas they would like and, therefore, the management of schemes breaks down. Prioritising marine protected areas is as much about saving ourselves as it is about saving whales and dolphins.

Chairman: Does anybody else want to comment in response to Deputy Cian O’Callaghan’s question?

Ms Attracta Uí Bhroin: I thank Deputy Cian O’Callaghan for his question. To deal with EU law and compliance in the Bill in a couple of minutes is quite a challenge. In the opening remarks, Coastwatch very much emphasised our concerns around the management of aquaculture and the extent to which the encroach on aquaculture conforms to the directive. There is significant flexibility for member states and they can use and rely on existing policies and regulations, but only if they are in compliance with the directive. It is expressly set out in the directive that it is only if they are in compliance with the requirements of the directive that that is sufficient.

On the architecture we have established, I highlighted the NMPF and the way in which we are moving to expand that with strategic marine activity zones. It is flagged in the NMPF that we will look to expand regional elements of the plan. It seems to me, however, that we have missed a whole layer of architecture in terms of regional spatial plans between that NMPF and then jumping down to the SMAZs. That will be critical in how we apply and conform to requirements around strategic environmental assessment, SEA, which is effectively the land use assessment for programmes and plans that are required by the directive where the environmental impact assessment, EIA, falls to the consideration or assessment of projects which sit within those programmes. This will be key when one looks at the way the Bill sets out that there may be an SEA on a SMAZ but then the board has to grant a permission which is consistent with the planning framework within the strategic marine activity zone. It begs the question whether we have the right level of granularity between land use plans and where an environmental impact assessment may fit. It strikes me that a whole layer of architecture is potentially missing there in terms of the spatial plan above that SMAZ logo, which would be subject to a SEA.

If the SMAZ is the plan that gives rise to the consent because the board cannot depart from that then arguably there should be an EIA done on that. Head 23 does not even allow for a consent procedure and it does not go into anything equivalent to section 34 or 37A in terms of the safer strategic development zones in the planning Acts. That is confusing and one of the problems we have in looking at this general scheme is how unclear it is in respect of certain elements and how it is changing. Even at this late hour, when we are looking to advance development and to comply with transposition deadlines and the delivery of a plan, we have this level of lack of clarity, and that is problematic.

On citations, ironically the second pillar of the habitats directive often gets less attention than the first because it is concerned with the Natura 2000 sites, special protection areas, SPAs, special areas of conservation, SACs, and appropriate assessments, AAs, but the second pillar is the stricter protection under the habitats directive. It gives the number of species in annex 4 of the directive of which citations of whales, dolphins and porpoises etc. are among the species. They are subject to what I call Martini protection, which shows my age. That means they are protected any time, any place, anywhere. This is a strict code of protection for citations. These species are hugely vulnerable to our activity in the marine environment because of noise in particular. Noise is fundamental to the way they live. They use it to navigate, to find food, to communicate and to breed. It is fundamental to their way of life. The noise we make through our deployments and our various activities in the marine environment can be detrimental and in some instances fatal to these species. There are strict requirements, not just in respect of the individual occurrence of each species but also of their breeding and resting places.

As we are looking to expand so significantly in the marine environment, particularly in offshore renewable energy, we need to be conscious of that strict protection of species and we need to look to how adequately we do that or do not do that. I have serious concerns on our compliance with Articles 12 to 16, inclusive, of the European Communities (Birds and Natural

Habitats) Regulations 2011 and the guidelines we have for anthropogenic sound in the marine environment. Whales are not just nice things to see in a tourist boat and good for economic development, they are also incredibly important in the ecosystem services they provide. Whale faeces or poo is incredibly important to our well-being because it stimulates phytoplankton blooms and those blooms are incredibly important to the regulation of our atmosphere in both absorbing CO₂ and in producing the oxygen we need to breathe in order to live. Whales are as important to us as we can be damaging to them and we need to be extremely conscious of this. While we see emphasis over and over in the Bill on SEAs, EIAs and AAs, the emphasis on this critically important dimension of Articles 12 to 16, inclusive, of the European Communities (Birds and Natural Habitats) Regulations 2011 is less in focus than I would like to see.

Dr. Tasman Crowe: I want to come in on this and to pick up on the question that was raised by Senator Boyhan about why MPAs are not in this Bill. I echo everything that Mr. Fogarty said clearly and eloquently about why we need MPAs and about the benefits they can bring for the economy and society. That is an important point. It is fundamentally important that they are part of the marine spatial plan. The argument would be that they do not necessarily need to be part of this Bill but that they should have their own Bill. The rationale for that is that conservation is not really a sectoral activity in the same way that energy, fishing or tourism are and the process for making decisions around it should not be quite the same. Also, they are covered by separate pillars of the integrated maritime policy of the EU as well so they are recognised as being quite distinct. It is critical that they are part of the spatial plan and Ms Uí Bhroin has done a clear job of explaining the weakness in the overall framework, which is the interrelationship between this Bill and the national marine planning framework. The critical element is that there has to be a level of dialogue which enables the considerations about marine protected areas to be taken on board in parallel with other considerations. That is the critical element that needs to be in there but I reiterate the need for interim measures to protect areas of the marine environment, given the mismatch in the time of development of the marine spatial planning process and the MPA process.

Chairman: That leads well into the questions I was going to put. Mr. Fogarty covered this issue well and I raised the issue in the Dáil last week that we have neglected our water network and our natural water resources. The same can be said of our marine resources. Ms Uí Bhroin referred to the architecture of this. We have two directives, namely the maritime spatial planning directive and the maritime strategy framework directive. My understanding of it is that this Bill sits under the maritime spatial planning directive and that the national marine planning framework fits under the maritime strategy framework directive. Mr. Fogarty said that the MPAs had been removed from this Bill. Were they part of this Bill at some stage? Do I understand that correctly?

Mr. Pádraic Fogarty: We were told in 2017 that this Bill would include provisions for designating MPAs.

Chairman: Was that during the drafting or the public consultation on this Bill?

Mr. Pádraic Fogarty: This Bill has a long history. It goes back a number of years to its conception.

Chairman: My understanding is that the marine protected areas would be designated under the national marine planning framework, which comprises marine spatial plans. I always try to compare our land use planning with the marine planning we will be looking at. The marine spatial plans, which will come under the national marine planning framework, will contain the

marine protected areas. Am I misreading that? I know there is an advisory group on that so that is probably not 100% clear but that is my understanding of the direction in which it will go. Would that be correct?

Dr. Tasman Crowe: My perception would be slightly different. The NMPF almost sits above both. It is concerned with the marine spatial planning directive and the marine spatial plan, and the MPAs would be a separate component within that. It is essential that they work in close communication with that match. Would that match that perception as well?

Senator Mary Fitzpatrick: I was going to ask if we could get a statement or a report from the Department because an encyclopaedia of legislation is being referenced here. I would find a guide telling us what is being guided by what, in terms of EU law, Irish law and the various Bills, really helpful.

Chairman: I think we all would find that helpful in order to look at the hierarchy of where it all fits in. I agree with Dr. Crowe that the NMPF is the overarching legislation that will cover this. The marine planning and development management Bill will sit underneath that. I am in agreement on that.

Mr. Pádraic Fogarty: Just to make it more complicated, but the directive should be compliant with the marine strategy framework directive.

Chairman: Could Mr. Fogarty say that again, please?

Mr. Pádraic Fogarty: The overarching directive is the marine strategy framework directive, which provides for good environmental status.

Chairman: Our NMPF will be derived from the marine strategy framework directive.

Mr. Pádraic Fogarty: That is correct.

Chairman: The NMPF is the overarching legislation in Ireland, and the marine planning and development management Bill will sit underneath that. The Bill is the consent process through which we will have development in our marine area. The NMPF will contain the marine spatial plans. Depending on the outcome from the advisory group, I would expect to see MPAs as part of the marine spatial plan. It is similar to regional spatial plans. In our land use planning, if we are designing a county development plan or a regional development plan, that is not where we designate Natura sites. I can see that it is a separate process to designate an MPA so that it can fit in and be included in that marine spatial plan. That is clear in my head, but I am not sure if I have explained it well. I want to return to the environmental considerations.

(Interruptions).

Chairman: I have not asked any questions yet. Does Mr. Fogarty think we have a good understanding of the baseline condition of our marine environment at the moment?

Mr. Pádraic Fogarty: In outline terms, I would say we do. There is a lot we do not know and we would love to have more information, but basically we know it is in bad condition.

Chairman: In Mr. Fogarty's view, what sector or factor has the most significant negative impact on our marine environment at the moment?

Mr. Pádraic Fogarty: Fishing.

Chairman: Does Ms Dubsy want to make a point? There seem to be some difficulty with the connection.

I want to ask Dr. Crowe about MPAs. My understanding is that by designating an area as an MPA, it does not mean that the area is neutralised in the sense that no activity can take place in the area. We can have various levels of a marine protected area or we can have continued activity, provided it is managed very carefully and monitored. Is that the basis for MPAs?

Dr. Tasman Crowe: That is exactly correct. Each protected area will have its own set of objectives that will be worked through, and they may be to protect particular features within the environment. They may be on the seabed, in the water column or they may be birds above the surface. Therefore, activities that do not conflict with those objectives can be allowed and in some cases activities can be modified or adapted. For example, an activity like fishing has many different approaches and types and some may be acceptable and some may not, so it a real participatory process is required. As Mr. Fogarty said, the MPAs that have worked, have been ones that have been worked through in close consultation with all the interested stakeholders, so there is a real participatory process there. It helps if everyone can recognise what needs to be done and why is it important that it is done. During our consultations, all the consultees we spoke to recognised the need for protected areas and the benefits of having a healthy and productive marine environment. All of the different sectors were keen to come to the table and prepared to compromise to meet those kinds of objectives. Therefore, it is not a question of putting a box around an area and saying nobody can do anything within it. There will be some protected areas where a decision may be made to fully protected the areas and to allow very little activity in them but there will be others where there will be a much more open and discursive approach to what can and cannot take place within them.

Chairman: There could be a time element to that also. For example, an MPA could be much more strict, say, for a ten-year period until fish stocks come back or in order to meet the relevant objective.

Dr. Tasman Crowe: Absolutely.

Chairman: Ms Dubsy is experiencing technical difficulties, so I will move on to Senator Cummins.

Senator John Cummins: I thank the witnesses for appearing before the committee. I come from a coastal community like Deputy Cian O’Callaghan. I am from Waterford, which has an extensive coastline. This Bill and any potential development that will be provided for in it is of particular interest to me. I apologise for arriving late. I read the majority of the witnesses’ submissions while the other members were asking their questions.

As a former geography teacher, I have a particular interest in this area. I accept that over the decades there have been significant failures to protect our coastline and marine life, and I am of the opinion that past failures should not be allowed to define our future. I take Dr. Crowe’s point on board that a MPA is not a boxed-off area in which nothing can happen. I agree with that because there must always be a balancing of interests in terms of development, whether it is on land or at sea.

In the submission from the Irish Wildlife Trust, it is stated that the “long term sustainability of diverse local economies and coastal communities ... is placed at risk if we pursue a short

sighted and excessively limited view of the opportunities ... precipitated by an intense drive by private interests.” I would like the witnesses to elaborate on what they see as the wider opportunities, if it is said that we are pursuing a limited view of opportunities. On the comment about private interests, and looking at it in respect of the wind energy sector specifically, it is my understanding, and given what we heard in the presentations made to this committee on Tuesday and previously, that the expertise in offshore wind lies predominantly with the private sector. Therefore, is there an ideological issue at play in the comment about private interests in the submission?

Mr. Pádraic Fogarty: We have no ideological opposition to private interests or private investments at all. Our worry here is that there is a very pressing need to decarbonise our economy. We have an industry that is ready to go and, as we said, we are fully supportive of that. We are absolutely behind the need to decarbonise our economy as that has to happen. There are economic opportunities for Ireland in doing that and we are totally supportive of doing that. Our worry is that this sense of opportunity is going to override the sensible measures we need to put in place in order to protect the marine environment. The real opportunity here is to avert climate and biodiversity catastrophe. That is the opportunity we have for our generation. Renewable energy is a part of that solution. The ocean is too big to fail. We have to get the ocean protection bit right.

Senator John Cummins: What of the wider opportunities?

Mr. Pádraic Fogarty: The wider opportunities of protecting our marine environment are through fishing, which is a very important economic activity in Ireland, and tourism and the general amenity. The Irish people enjoy the coast. They may not derive economic benefit from it but people love the sea and, even this year, we have seen the problems that are caused by sewage discharges in amenity areas. This is the public good. We all have a right to enjoy the sea, even if we are not marine biologists. Those are the wider opportunities that I see.

Senator John Cummins: I am from a coastal county, as I said, and I totally appreciate what Mr. Fogarty said. I consider myself exceptionally lucky to be only 10 km away from Tramore, which is just out the road from Waterford city. It is a fantastic amenity, which we all utilised when we were able to get out there from our 5 km Covid limit. It was certainly refreshing for everyone from the city to be able to travel out to our coastline. I appreciate that.

I want to re-emphasise that a balance has to be struck. I understand that there is a push for marine protected areas in all of the submissions that have come from the various bodies. However, like the Chairman, I was of the belief that these could be provided for in subsequent revisions. We will have to get clarity from the Department in that regard. Again, I thank the witnesses.

Ms Karin Dubsky: It is essential that we adequately cover biodiversity, not just marine protected areas, as Ms Uí Bhroin said in her submission regarding species and habitats. I also want to comment on public information. We are coming out of the Dark Ages in terms of public information and public participation on the marine environment. Even today, I am in north Wexford and I cannot get a map of what is happening in terms of wind energy around Ireland. Such a map in terms of the actual footprint of the current applications and interests only exists in hard copy. This is 2020 and we can see little windmills on a map, but not the detail. Similarly, in many other areas, we can either not see the information or we get it too late. There is a huge job to be done on public information, and public participation is even weaker. There is an enormous onus on us not just to improve things a little, but to make a major step forward, which

is doable. I emphasise those two points on biodiversity as a whole. In the Northern Irish plan, “biodiversity” as a word search comes up 16 times.

Chairman: With regard to having that information, one of the objectives of having a marine planning and development management Bill is that we would have that more streamlined, single consent process, rather than the old Foreshore Act that is currently in place, which probably makes it even more difficult to know what is being looked for out there at the moment. I take the point on the question of how the public will be informed that a planning application relating to the sea is going in, where there would be a site notice and a newspaper notice, as is the case now, and, through our local authority websites, we would know that a planning application was going in for a certain area. I believe this needs to be addressed in regard to how we advertise to the public that an operator is putting in a wind farm or a cable, or whatever it may be, in the marine environment.

To follow up on an earlier question, what is it that has the most significant negative impact on the marine environment at the moment?

Ms Karin Dubsky: It is the cumulative impact of many activities that are not managed. That is why the Bill is so incredibly important. Aquaculture can have a major impact locally, and Mr. Murphy has prepared some slides on this, which are hair-raising. That is the challenge, particularly in areas such as estuaries where there are several local authorities, which, under the proposed Bill, will have a near-shore responsibility. The question is how they are going to act on that. For example, there are three different local authorities in the Waterford Estuary. We have to front-load or make it possible for local authorities to have regional plans and, in those regional plans, one has to look at waste management, biodiversity and various other issues together, because the individual local authority, no matter how good it is, will not be able to manage it.

Deputy Eoin Ó Broin: I thank everybody for their answers. At the nub of our shared concern around the biodiversity issue is sequencing. In some sense, it does not matter if the legislation for the marine protected areas is in this Bill or another Bill; it is that the two things happen at the same time. I share Mr. Fogarty’s concern that despite the promise of a Bill coming in the future, there is a long history of those Bills never materialising or being much delayed. That is not a criticism of anyone and is a reflection of limited staff in Departments and so on. That is at the centre of this issue.

There are two problems. First, once this Bill is passed, there are seven transitional wind energy projects ready to go. Professor Crowe has put forward a proposition on the sensitivity analysis, which seems an eminently urgent and sensible thing to do, but even while that is being conducted, there will be ministerial consents on planning applications potentially in parallel with that. The other big worry, so we are all clear, given the Chairman and Senator Cummins asked earlier around the marine planning framework and the marine protected areas, is that the Department told us those marine protected areas would be rolled into subsequent revisions of the planning framework itself, as the public consultations and designations took place. However, that is going to happen over a ten-year period if we meet the 2013 deadline, and that is a big “if”, given we did not meet the 2020 deadline by almost 90%.

There is a genuine cause for concern. What this committee has an opportunity to do, in our report on foot of this, is to put our views to the Minister in a way that allows us to press ahead with the crucial renewable energy projects, but in a way that does not jeopardise the other stuff, so everything can be done in sequence in a way that is good.

My question to all four presenters is this. If they were the committee members writing that report and they had to prioritise a couple of things that we really needed to say to the Minister that we either need to change in this legislation or that have to happen in parallel with this legislation, what would their priorities be? That might give us a bit of a guide.

Given the limited time, I ask that we get answers to those questions now. I might have more technical questions that I would like to come back in on, but that is at the discretion of the Chair.

Chairman: The question concerned the priorities that should be included in a report back to the Minister in regard to the marine planning and development management Bill, which is what we are discussing.

Deputy Eoin Ó Broin: Specifically, it was in regard to changes to this Bill or other things that need to happen in parallel. We are working towards a 31 March deadline, which is our legal obligation under EU law. Of course, as our maritime environment is degrading, time is of the essence, irrespective of EU law, so what also needs to happen between now and 31 March?

Mr. Pádraic Fogarty: We have made our position clear on the marine protected areas and why we feel they should be in this Bill, which is because of the fear of backsliding, more than anything else. In parallel, things we could be doing today include implementing the habitats and birds directives and resourcing the NPWS so the processes we want to see happening can start. We do not really need to wait for anything else in order for that to happen, other than for these organisations to get up and running.

I will let Ms Uí Bhroin comment on what needs to happen on the spatial plan before March. From a biodiversity point of view, we know all the things that need to happen today, for example, an end to overfishing. We have a lot of data but we have not acted on the information that we have. It goes back to the fact that the Dáil declared a biodiversity and climate emergency a year and a half ago. We really want to see that acted on. We want to see the emergency measures being put in place to protect biodiversity and avert climate catastrophe. That is what we all want. The purpose of this Bill is to help us do that.

Dr. Tasman Crowe: I will reiterate the kind of points that I would have raised. The question of where the MPA legislation sits and the issue that, if it is not provided for in this Bill, it might not happen at all is a real concern. It is slightly outside my area. Certainly, my strong push would be that MPAs have to be provided for somehow somewhere. It is important that that happens. Probably this Bill is not the appropriate place to lay out the detailed considerations around MPAs and the legal framework that is required. There is an argument that they should be kept separate but that has to happen.

Deputy Eoin Ó Broin: Is it fair to say that if that separate legislation is not in place by 31 March, we have a problem?

Dr. Tasman Crowe: Yes. The sensitivity analysis is a critical stopgap. In the short term, there may be a recognition that conflicts could arise quite quickly, especially with the offshore wind farm side of things. There is a degree to which there may not be as much conflict there as one might initially think. It is important to investigate that quickly and get a handle on that.

The other critical point is the articulation between this Bill and the national marine planning framework and a more rigid requirement for an interplay between them. Attracta Uí Bhroin highlighted that that is not as strong as it could be. That joined-up thinking is what is critical and it does not appear to be there, really. All the statements, apart from on the strategy marine

activity zones, are around individual proposals. The provision for forward planning in a joined-up coherent way across the sectors, and including conservation as an underlying consideration across the board, is not apparent to me reading those different Bills and frameworks.

Ms Karin Dubsky: I would agree with what the other speakers said. I would emphasise to the Minister that he has to put enough detail into regional plans and resource them so that regional plans can get going very quickly. Our estuaries are going downhill. More than half of our estuaries are now in moderate or less condition. That is really important. They are like the train stations where biodiversity moves inland and out. We will not get an improvement unless that gets addressed.

I would place some extra emphasis. We are talking about marine protected areas, MPA. There is MPA advice which was given to the Government in October. I do not see any logical reason it cannot be published now because there is a slight difficulty that some of us are talking in the dark about what might be in it. It is in the public interest that that is published now.

The enforcement side has been a really weak point in Ireland. Will the Minister lay out in detail how enforcement of all aspects of this Bill will work?

The Foreshore Act is still sitting there like an appendix of olden days. We would love to see some clarification where the Foreshore Act will be active, where it will not, and if it will still be a feature that it has to be updated so that it is Aarhus compliant.

Ms Attracta Uí Bhroin: Deputy Ó Broin gave us all an opportunity to come in on what is, basically, his Dear Santa list. If I could put it in the context of the discussion earlier around the different hierarchies and the relationships, I hope the members have had a chance to look at some slides that I requested be circulated yesterday. There is, on slide 3 in that pack, a rather crude image. It is a nested Venn diagram showing the EU integrated maritime policy and, within that, the environmental pillar, which is the marine strategy framework directive which has that objective of good environmental status. That is the wrapper in which our spatial planning needs to happen. That is the wrapper in which the spatial planning directive sits. This Bill sits within that because we are in the business of planning in this Bill.

This Bill is concerned with two issues - the planning aspect and bringing forward the national marine planning framework. That is heads 9 to 21, inclusive, effectively restating the 2018 Act. The rest of the Bill should be around the delivery of and giving effect to that plan. It does not do that. There is a material departure in the architecture, as I highlighted earlier, where we do not have a sufficient level of detail on our future planning in the draft national marine planning framework and when we grow that level of further detail, we are not doing it in a way which is consistent with the directive. We need to close that gap. We need to have a further layer, potentially, of regional spatial planning which is consistent with the directive, and not merely jump down to the strategic marine activity zones, SMAZ, level. That is a fundamental ask.

The marine protected areas are a fundamental part of the spatial plan. We cannot deliver on good environmental status in the context where our monitoring reports, which we are legally obliged to produce under the marine strategy framework directive, are telling us - we can look to the reports done by the Sustainable Water Network, SWAN, in terms of criticising the indicators which tell us about our marine environment - how problematic those are and the pressures that we have from all of the different factors, such as aquaculture, fisheries, pollution and noise. We can learn from that but it is critical that we respond. We cannot merely march blithely on

and start granting consents in the absence of doing something constructive about achieving good environmental status, because if we do not have credible initiatives in that regard and we do not have a credible spatial plan which has a conservation dimension to it, the legality of the plan and any consents granted under it will come into question. We need to be conscious that while we may want to do things in parallel, there is an absolute limit. The courts, and the Court of Justice in Luxembourg, will be looking to the credibility of the plan and any consents granted in the context of that plan if we have not addressed fundamental conservation elements, such as MPAs, and if we do not have a compliant approach to aquaculture, which raises the question of how we can say that we are taking an approach which is consistent with Article 1 of the spatial planning directive to provide for sustainable development in the marine environment. That word “sustainable” is emphasised repeatedly in Article 1 of the spatial planning directive and that extract is included in the committee’s pack from yesterday.

Aligning aquaculture and bringing that into conformance with the directive would be one key parallel ask. Others would be addressing the MPAs properly in terms of spatial planning, addressing the architectural requirements, addressing the other EU law requirements on full compliance with all pillars of the habitats directive and the requirements for assessment in both environmental impact assessment, EIA, and strategic environmental assessment, SEA. Then, specifically, we need to look at the national marine planning framework, NMPP, itself and the deficiencies within that in terms of how adequately that plan will facilitate because it is a creature of this Bill and it cannot be looked at in isolation from it. This Bill gives rise to the production of that plan in terms of the legal underpinning and then it gives effect to the plan. Therefore, we need to make sure that the plan is in conformance with the directive itself, and there are very serious issues about its adequacy in terms of both the spatial and temporal dimensions. In terms of its practicalities as a tool to facilitate planning, it is a very flat document in the data that are provided on it. The paper maps are not of the same level of granularity and do not use the type of sophistication of data layers, geographic names information system, GNIS, information and all of those different types of things that we should be able to provide and produce to give effect to a meaningful planning tool. When somebody then is proposing something, be it a developer, an NGO wanting to look at something or a member of the public, they should be able to interrogate that plan in a meaningful way to ask what are the existing uses, what else is proposed in the future, what are the cumulative considerations and what are the potential conflicts. That is what is intended here and is what is specifically provided for in the directive, when we look at the richness of the best types of data that we should be employing. I urge members to look at the draft national maritime planning framework to see how they, many of whom are former county councillors, would look at that as a plan that would help inform their planning decisions. There is an extraordinarily complex matrix of objectives, some of which are conflicting, some of which are unclear and some of which are potentially incompatible with the habitats directive. One has to ask a question as to how anybody can realistically decide that these are going to be compatible with the NMPP and to use it as a planning tool to inform the consents which will be given under the marine planning and development management Bill. The NMPP is a core part of the Bill, is a core output and is the core framework that this Bill needs to give effect to and the consents given in this Bill need to be considered in that context.

Chairman: I thank Ms Uí Bhroin. I wish to follow up with a question on that. As to the date that this Bill is supposed to be enacted in order to be comply with the directives, does that date apply across all European countries?

Ms Attracta Uí Bhroin: Yes.

Chairman: What European countries' compliance with the directive would Ms Uí Bhroin consider as the model?

Ms Attracta Uí Bhroin: The date of 31 March is set out in Article 15(3) of the directive. This applies to all member states. Some of the states are more advanced than others in how they have developed on this. Some are taking a more regional and incremental approach because there is discretion to define the scope of the spatial planning that a country wishes to work on.

As to the best example, this is an excellent question and one that I have asked myself several times, including of the Commission's DG MARE. Due to the fact that this is very much "in-process" it is very hard to answer that. If I can get any further clarity on that point I will be happy to revert to the committee and I am certainly reaching out to colleagues on that question. It is the case that in some places, there are elements that are done well and elements that are not done as well as one might like. It may be somewhat difficult to point to a "best in class". A number of other member states will have been much more robust in the approach in that they take to using sophisticated spatial representations etc., which Ireland should really be looking to, compared to the very flat data that are provided in our NMPF. I am very much looking to the future and to the spatial and temporal dimensions. A plan is something that does not just lay out where we are but where we want to get to and how we are going to do and move to do that. That is effectively what the plan is supposed to do.

Chairman: My thanks to Ms Uí Bhroin. I will let Ms Dubsy in briefly and then I will return to Senator Cummins and then back to Deputy Ó Broin.

Ms Karin Dubsy: I suggest it might be very useful if the committee heard from somebody in the maritime spatial planning unit of the European Commission because it has gone out of its way to create case studies and synergies. As Ms Uí Bhroin said, there are some "best in class" countries on various aspects, for example, on aquaculture in the Mediterranean. Northern Ireland has also done some really nice work. The most up-to-date person in the Commission would be somebody I am sure would be happy to address some of these questions also. I thank the committee.

Chairman: I call Senator Cummins.

Senator John Cummins: I have a question that follows on from the appearance of witnesses from the Irish Wind Energy Association before the committee earlier in respect of floating wind turbines. I appreciate this is a relatively new technology but I understand it has been deployed in Scotland, with further plans for Japan and Europe. Has analysis been done on floating versus fixed wind turbines or have the witnesses any comment to make on whether they see such turbines as being better with regard to our marine life? I would appreciate a general comment on this question.

Mr. Pádraic Fogarty: As the committee knows, the technologies are evolving very rapidly and it is sometimes hard to predict what likely impacts there will be. I understand that some of the designs for floating turbines still involve tethering to the sea floor and there are still fixtures in place. Some of these things can have benefits for marine life if they keep damaging trawlers away. There is still a potential impact on birds, and it does not really matter whether it is floating or fixed because there are impacts from the aerial part of the turbine which can affect seabird life. In the case, particularly, of cetaceans, Ireland is enormously important for whales, dolphins, porpoises and so on, and as my colleague, Ms Uí Bhroin pointed out, these are already protected under law. This is why it is important to get this right. We have to be precautionary.

We know that there are important areas for whales, particularly around the south west, and we should not be marching on to try to put wind turbines in those important areas. That is why Professor Crowe's talk of sensitivity mapping would be very important at this stage. It would not be to the advantage of the industry to plough on with plans that could end up then being scuppered under the habitats or EIA directives.

Senator John Cummins: In principle then, there has not been an analysis done of fixed versus floating as yet. I appreciate there is tethering, but there is not a concrete and steel column going to the seabed, which I would imagine is ultimately a block. I imagine that tethering would be more beneficial.

Mr. Pádraic Fogarty: It would depend. Many of the impacts here are during the construction phase. If one is pile-driving into the sea, that creates much noise and it depends on the type of habitat that is on the seabed, for instance.

Ms Karin Dubsy: The main issue is that the ones that are floating can be further out to sea while the ones that we are now going to authorise are all inshore and generally will be in less than 30 m but possibly up to 60 m. If one is looking at the map, there is a very high-density on the Irish Sea coast, which is much closer than anywhere else in Europe. The difference, first of all, for the public, for the voter, would be the visual impact. Environmentally one has these sandbanks in the Irish Sea that are very important for bird feeding and fish spawning. For example, rays and skates go on to those sandbanks. Environmentally, as a general gist but not totally, one would have a higher concentration of biodiversity inshore. There are large areas, and one can look at that from the fishing maps, where there is not much happening in the wider marine environment. We have nine to ten times more sea than land, therefore, and putting everything into the nearshore is an advantage for industry because it is cheaper now and there is more known about it but that is the main difference. We are piling everything very close to shore at high densities now.

Chairman: I call Deputy Ó Broin to speak now.

Deputy Eoin Ó Broin: Yes certainly. I have perhaps four final questions. On two of the issues raised by Ms Dubsy, some of us have written to the Minister asking that Professor Crowe's report be published and he has given a commitment to do so although he has not given us a timeframe for that yet. We also asked the Department about the issue of enforcement. One of the matters that will be detailed in the Bill when it is published next year is the enforcement mechanisms, but they did not give us much detail on that.

I have four further questions. The first is for Dr. Crowe and Ms Uí Bhroin. Can they talk to us a little more about their perspective regarding the pressures on biodiversity within the marine area? If they do not have enough time to go into the detail, they might be in a position to give us a written note on that, without giving them too much homework. That would be very helpful.

The second point is that aquaculture and fisheries is not included in this proposed legislation. Some of us got the impression from the Department officials that they would certainly like aquaculture to be included in it. There is a provision in the heads for aquaculture to be inserted at a later stage but it is a matter for the Minister for Agriculture, Food and the Marine. They told us the fisheries was a matter for EU level. Does anybody have a view on the non-inclusion of aquaculture and fisheries at this point? From a marine protection point of view, I presume having aquaculture and fisheries in this Bill makes more sense.

Third, much of our discussion has been about how we can roll out the designation of the marine protected areas and then have all the data that is available. What kind of resourcing will that require even in terms of the scientific evidence base, the public consultation and the development of the plans in those areas?

Finally, when they were in before us last week, the representatives of the industry had three main asks in terms of changes. They wanted something called a design envelope in recognition of the fact that the technology relating to wind energy generation is evolving rapidly. In the consents and the planning, there would be scope for taking account of technological changes in, for example, wind turbines that would not require material alterations to the plans. The representatives in question referred to streamlining the process, that is, not including the local authorities but putting everything through the board in various ways. A sensible point they made was about milestones and having clear statutory timelines at various stages. For those of the witnesses who may have been listening in to the previous session, if they have thoughts on any of those matters, I would be interested to hear them.

Dr. Tasman Crowe: On the pressures, I would echo what Mr. Fogarty mentioned about fisheries probably being the single biggest force acting in the marine environment but I would also very much agree with Ms Dubsy that it is the accumulation of a wide range of pressures. What is particularly interesting and important about that in this context is that different combinations of pressures can have unexpected consequences. Sometimes, they are very bad consequences and, in fact, two pressures can nullify each other to some degree so it is very important that that consideration is taken into account in a planning environment.

On the absence of fisheries from the Bill, again, without knowing too much of the political side of things, it is critical that this matter forms part of the conversation. Regardless of whether fisheries are included directly in this Bill, the provision must be there for a dialogue that includes the relevant Departments in reaching decisions. Essentially, the Bill respects the responsibility that already resides within the Department of the Environment, Climate and Communications. That is another very important part of the whole provision for there to be dialogue and co-ordination, which is critical.

Mr. Pádraic Fogarty: On the data, the Deputy asked about the amount of information we need. We need much more information. We need to be monitoring now and all the way through the construction and operation phases. We need to be monitoring consistently and constantly. I understand where the industry is coming from in that the technology is changing and there needs to be some leeway to allow for that but in tandem with that we need the information to make good decisions. We need a lot of monitoring to be going on in these areas in respect of all kinds of issues.

In terms of the resources that are required, I mentioned earlier that the National Parks and Wildlife Service has about three people working on the marine environment. We have to scale that up dramatically. We need to be far more proactive in terms of managing even the existing designations and information we have, for instance, on birds and special protection areas. If, say, we have big seabird colonies near some of these places that are needed we do not have basic information on the numbers or types of birds, whether the numbers are going up or down or where they are feeding. That is basic information if we need to be planning wind development in a marine environment. We have not done it so far so the best time to start would be right now.

Chairman: Ms Dubsy and Ms Uí Bhroin both have their hands raised.

Ms Karin Dubsy: Briefly, the wind sector is collecting a huge amount of information at the moment that we are not accessing. It should be mandatory that information is shared with Government, that is, on the clawing, what is on the sea floor and everything else. That would improve the amount of information we have.

On the question on aquaculture, Mr. Murphy might like to come in on that.

Mr. Maurice Murphy: I presented three or four slides based on a local view, Castlemaine Harbour, in County Kerry. It is an MPA. Due to the lack of monitoring we are losing key information when it comes to developing an appropriate assessment. Many of the conclusions on aquaculture from the Minister could then be based upon or influenced by that conclusion in the appropriate assessment. Currently, we have unlicensed activity. Gigas oysters, which are non-native oysters, are lying on the ground. We have trestles being farmed on the ground. There is a lot of destruction in some areas. Adjacent to that there can be a perfectly managed aquaculture farm but where they may be falling down is on the foreshore. A great deal of activity is happening on the foreshore under special licence. Again, those goes back to poor regulation and management. When I talk about foreshore, I mean they will have heavy machinery sitting overnight. They are even tarring some of the foreshore without regulation or approval. It is very important that it would have to be included in this draft Bill.

Ms Karin Dubsy: The potential of aquaculture, of native species, to restore ecosystems is being rolled out very strongly on the Continent. If we want to improve our native oyster stocks or work on seaweeds for carbon sequestration, we have to use the skills in aquaculture but for the good of biodiversity. I have talked to a number of aquaculture operators who would be very keen to do that. They are people who now, with Covid-19, are holding on by their toe tips. They are likely to close or are closing in the Waterford Estuary area. This would give them a lifeline which would also support marine biodiversity.

Chairman: I thank Ms Dubsy. We have reached the end of our allocated time. We have to vacate the room within two hours due to Covid restrictions. A matter I wanted to try to cover but we will not reach now is the new consenting regime for local authorities for nearshore activities. It is an area we need to examine closely, not just in terms of the impact it can have on the marine environment but also the impact on residents in those areas. It is an area that needs further consideration.

I thank all the witnesses for their time. We had a huge amount of expertise gathered here to assist us in this pre-legislative scrutiny work and it has been very helpful.

The joint committee adjourned at 11 a.m. until 10 a.m. on Tuesday, 8 December 2020.