

Link response to The House of Lords EU Sub-Committee on Agriculture, Fisheries, Environment and Energy inquiry into EU Regional Marine Co-operation

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Wildlife and Countryside Link (Link) brings together 44 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following members of Link:

- Environmental Investigation Agency
- Marine Conservation Society
- Royal Society for the Prevention of Cruelty to Animals
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- WWF – UK

1. What are the principal risks to the EU's marine environment? How significant are factors such as conflicts between users of the marine environment, unclear governance arrangements and potential inconsistencies between pieces of legislation affecting the marine environment?

a) Poor state of knowledge of the marine ecosystem

- 1.1. No objective assessment of principal risks and their cumulative impacts has been carried out for the EU's marine environment. The impacts of some activities such as trawling, coastal development, aggregate extraction and other commercial activities are generally well studied at an individual level. The changes taking place in marine biodiversity and habitats at a wider scale as a result of ocean acidification, invasive and non-native species and warming of oceans are also increasingly becoming better studied. However, our understanding of the complex, multiple interactions between human activity and our marine species, in particular impacts of specific forms of fishing activity on our seabed¹, impacts of construction noise on cetaceans and the cumulative impacts of human activity needs developing. The cumulative impacts of these activities taking place within the same space are believed to be significant but complex to measure due to limitations in data, multiple interactions and overlaps in space and time.
- 1.2. Whilst declines in our marine environment have been well documented at a national, European and indeed a global level, a detailed understanding of our marine environment is still poor. Knowledge of the biological makeup of our seabed, and the life cycles, population numbers, trends and interactions between marine species is still lacking. This makes decision-making in the marine environment complex and

¹ For example electric pulse fishing which has been approved on a temporary basis under the Common Fisheries Policy and which takes place within European marine protected areas in the North Sea. Scientific studies continue to look into the environmental effects of electric pulse fishing in the North Sea.

uncertain. Therefore, development in the marine environment should be balanced with the need to take a precautionary approach to protect our valuable marine features.

- 1.3. Impacts and pressures on the marine environment have been recognised by the European Commission and in particular in two recent reports. The report from the Commission to the Council and the European Parliament into the first phase of implementation of the Marine Strategy Framework Directive² (Feb 2014) concluded that ensuring that EU waters are in Good Environmental Status (GES) by 2020 will require a major effort. A report published by the European Environment Agency in February 2014³ recognised the failure to protect our marine habitats noting that the conservation status was inadequate for 50% of the marine habitats assessed and that the trajectory of declines in marine species and habitats was continuing.
- 1.4. Declines in marine species and habitats would suggest that we have not yet managed to get the balance right and co-operation and co-ordination across Member States is crucial in order to address some of these evidence gaps, in particular when it comes to best practice in reducing impacts. The development of best practice will also help reduce the burden of evidence gathering for each new marine project proposal.

b) User conflicts and the need for regional marine planning

- 1.5. The ever increasing demand for marine space in EU waters, combined with the European Commission's drive for economic Blue Growth has led to user conflict at a number of levels. The licensing of commercial developments takes place on a case-by-case basis with potential impacts being identified at a local level but often without appropriate regard to 'in-combination effects' with other proposals and other on-going activities. It would be more effective to take a strategic approach to licensing new developments and to develop a clearer understanding of spatial needs. In some cases, inappropriate developments, which have not undertaken adequate environmental assessments, take space away from more suitable uses, and can even prevent future development of the same activity nearby on the basis of potential cumulative impacts.
- 1.6. There is a misconception that the needs of fishing and conservation are not as spatially specific as commercial activities such as wind farms and aggregate dredging and the plans so far, developed in the North Sea area have not included fisheries and future conservation designations. The use of marine plans could help to reduce conflicts between users provided that all activities are considered and the plan is future proofed. Regional co-operation could help ensure that local and national plans are coordinated and consider the needs of regional seas as a whole.

c) Legislation affecting the marine environment

- 1.7. The Marine Strategy Framework Directive is designed as an all-encompassing piece of environmental legislation for the protection and restoration of the marine environment. The overarching objective of the Marine Strategy Framework Directive is for all Member States to have achieved 'Good Environmental Status' in the marine environment by the year 2020 at the latest. As a framework directive, it anticipates

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0097&from=EN>

³ <http://www.eea.europa.eu/publications/marine-messages>

that there will be different conditions, problems and needs within the waters of different member states and so allows discretion to Member States in relation to what the 'necessary measures' are to achieve the overarching objective. The importance of regional co-operation is highlighted in Article 6 which requires Member States to 'make every efforts, using relevant international forums, including mechanisms and structures of Regional Seas Conventions, to co-ordinate their actions with third countries having sovereignty or jurisdiction over waters in the same marine region or sub region'.

- 1.8. The achievement of Good Environmental Status ultimately needs to be a combined effort, with all Member States around a Regional Sea basin implementing measures on an equitable basis. Our seas are inescapably transnational, so, for example there is little to be gained from one nation taking far-reaching steps to reduce marine litter, or improve biodiversity protection if these are not matched elsewhere in a Regional Sea. What is lacking is a joined up approach to the different Directives and therefore Europe does not have a single vision for our marine environment.

2. To what extent do you agree with the recent conclusion by the European HOPE Conference that co-operation, co-ordination and improved governance lie at the heart of the solution to tackling the risks to the EU's marine environment?

- 2.1. The ecosystems that support marine living resources, as well as charismatic mobile species, operate at regional seas, oceanic and global scales. This means that activities in one nation's waters can be dramatically affected by those occurring in the waters of quite distant nations. It is therefore crucial that EU Member States are able to effectively work together into order to ensure that decision-making - at EU, national and regional levels - provides the best solutions to tackling the risks to the EU's marine environment.
- 2.2. We agree with the conclusions of the EU's Article 12 assessment of progress under the Marine Strategy Framework Directive, and conclusions of the EU HOPE conference, that regional cooperation between countries sharing the same marine sub-region should be significantly improved in order to reach and maintain Good Environmental Status (GES). Such co-ordination and cooperation across Member States, while recognising issues specific to individual countries, is vital to manage a number of the impacts in our marine environment. If we are to properly tackle and appropriately manage a number of pressures in our marine environment, including pollution, fishing pressures and underwater noise, both on our fish stocks, mobile species such as harbour porpoise and our wider marine environment, this will require cooperation at a regional level. We recognise that this is best undertaken at a Regional Seas level in order to ensure best practice and cooperation between Member States that share bodies of water but this should not be instead of domestic implementation.
- 2.3. Cooperation and a coordinated approach to managing marine features are important when addressing conservation of migratory or highly mobile species. For example, the trans-national shared seas nature of the fisheries resources mean that for the vast majority of species, fishing cannot be satisfactorily regulated by Member States and/or local and regional authorities individually and there is a great need for coordination and cooperation to ensure that these resources are appropriately managed. Migratory birds also often require conservation action in several countries at breeding, passage and wintering stages.

- 2.4. This need for appropriate and effective management of shared resources is particularly apparent in the context of the Common Fisheries Policy (CFP). It is worrying that while decision-makers were reforming the CFP, which included as a high-level and overarching objective the need to fish at sustainable levels on the basis of best scientific evidence, the Council of Ministers actually increased the amount of overfishing they allowed under annual catch opportunities. The Commission's communication on fishing opportunities for 2015⁴ reported that for 2014, Total Allowable Catches (TACs) were set 35% higher than the scientific advice for sustainable catch limits. This was 6% higher than in 2013 and 24% more than the lowest level of disparity (11%) achieved in the last decade.
- 2.5. Restoring and/or maintaining stocks at healthier (i.e. higher) levels will allow them to be more resilient in the face of other pressures, including pollution and climate change. The revised CFP should contribute to helping achieve this, as it includes a legally-binding requirement for decision-makers to set sustainable catch limits and to follow scientific advice. In cases of uncertainty with regard to sustainable fishing levels, the need for a precautionary approach (i.e. lower exploitation) is all the more compelling given the growing evidence of poor recruitment across a wide range of fish stocks in EU waters. Reducing fleet overcapacity is another aspect of tackling overfishing. The revised CFP includes stronger provisions for Member States to ensure that their fishing capacity is in line with their fishing opportunities. Not achieving this balance will have negative financial implications under the European Maritime and Fisheries Fund.
- 2.6. Cooperation and a strategic approach also needs to be considered with regard to marine mammals, which range across member state boundaries. This is particularly relevant in the North Sea, where offshore renewable energy developments are being planned in deeper waters and therefore in closer proximity to other Member States' waters. Underwater noise pollution resulting from pile driving during construction is of particular concern. Not only can it cause physical injury to marine mammals but the impacts on behaviour can spread several 10's of kilometres away from the source of the noise. The long term implication of this impact is unknown and it may not be possible to measure it unless dramatic declines result. Furthermore, the use of certain types of vessel in the construction of these developments can also create a hazard for marine mammals unless the proper mitigation is included.
- 2.7. A strategic approach to cumulative impacts on marine mammals from underwater noise is required. For example strategic planning of construction times is needed so that the Marine Strategy Framework Directive Descriptor 11 target for the introduction of energy that does not adversely affect the marine environment (including underwater noise) can be met. A coordinated approach to such a Descriptor 11 target across Member States is also essential. Whilst there is a degree of similarity to the approach currently being taken, some Member States are more ambitious than others, for example Belgium and Germany are planning to have a quantitative noise threshold limit, whereas the UK and others are only proposing to establish a noise registry.
- 2.8. We have concerns about the UK's management of fishing activity within European Marine Sites (designated under the EU Birds and Habitats Directives) and UK national sites in offshore waters. Under the Birds and Habitats Directive, the UK has an obligation to ensure that no activity takes place within a European Marine Site that would 'adversely affect the integrity of the site' with the overall aim being to ensure

⁴ COM(2014)388 final

that the protected habitats and species within each site are maintained at ‘favourable conservation status’. In addition, the Marine Strategy Framework Directive also requires Member States to put in place an ecologically coherent network of Marine Protected Areas and includes obligations for Member States to adopt measures to regulate human activities likely to have a significant impact on marine protected areas.

- 2.9. The Common Fisheries Policy stipulates a new process for how Member States must implement such conservation measures where they affect the fisheries interests of other Member States. This can result in complex negotiations between Member States, which are often dominated by fishing interests. It is essential that during negotiations, each Member State has a clear understanding of the environmental stringency that is expressly incorporated through the Common Fisheries Policy in respect of a Member State’s compliance with EU environmental law, marine protected areas measures. To assist this process, the European Commission - and in particular the Directorate General for the Environment which has the relevant expertise and responsibility for ensuring that EU nature conservation laws are being complied with - must provide clear leadership and guidance and only allow measures that are compliant with a Member States environmental law obligations. The European Commission can adopt urgent conservation measures on a temporary basis itself (for example if Member States cannot agree solutions amongst themselves) and this power should be utilised by the Commission where necessary. Again, this must be carried out by DG Environment.
- 2.10. We have concerns that complex, ongoing negotiations over management of these sites will greatly delay the implementation of appropriate management, thereby reducing the likelihood that the UK (and other Member States) achieves compliance of its EU environmental laws in the marine environment, including reaching good environmental status by 2020. For example, transboundary negotiations regarding bottom fishing within the 3 designated SACs on the Dogger Bank (UK, Netherlands and Germany) have been taking place since 2011 without an outcome, meaning fishing activity in this region is still taking place unchecked. This is coupled with the added complexity that each of the 3 Member States has designated its SAC for different features, and with different conservation objectives. The recovery of the Dogger Bank habitat has the potential to make a major contribution to marine conservation in the North Sea, but the lack of governance, support and political will means that this has been severely delayed.
- 2.11. However, whilst cooperation across Member States is important, it is also vital that countries are able to adopt management measures that are appropriate for them given their individual ecological and sectoral characteristics. For example, the European Commission has recently proposed a ban on small-scale drift net fishing in EU waters. This is in response to the devastating effects that drift net fishing has had in the Mediterranean where vulnerable and protected species including turtles, cetaceans and sharks can end up entangled in nets. Whilst a ban on this type of fishing in the Mediterranean would likely have a positive impact on the conservation of vulnerable species if it were effectively enforced, we have concerns that a blanket EU-wide ban would not have the same benefits in UK waters. A ban on small-scale driftnets in UK waters may result in fishermen that currently operate with low-impact, low-bycatch gears (some of which are certified by the Marine Stewardship Council), turning to more damaging types of fishing, such as trawling, or gears with higher bycatch rates. If, as suspected, the UK can produce evidence showing the low-impact and low-bycatch level of their small-scale driftnetters, we would support their

position that a blanket ban is not appropriate in this case, and indeed may be detrimental to achieving and supporting more sustainable methods of fishing.

A regional approach to marine health and productivity: Case Studies

3. In relation to the case studies set out below in particular, what are your views on existing examples of effective regional collaboration between Member States and between sectors? What further progress towards regional co-operation in these areas, particularly in the North Sea, would you like to see?

- **Identification of spatial protection measures, such as Marine Protected Areas, under the Marine Strategy Framework Directive; Action, through regional co-operation, to implement the fisheries and aquaculture sustainability objectives of both the Marine Strategy Framework Directive and the revised Common Fisheries Policy;**
- **The development of energy co-operation in regional seas including interconnection and the development of marine renewable technologies;**
- **Innovation and knowledge, particularly towards delivery of the Commission's Blue Growth Agenda.**

Marine Spatial Planning

- 3.1. Sub-national marine planning is now underway in English waters, with similar plans being developed in the devolved countries. The first of these, the East Inshore & Offshore Marine Plan was adopted in April 2014 and covers almost 60,000km² of the southern North Sea, extending into the Dogger Bank. Marine plans are intended to bring a more strategic approach to our use of the seas and give direction for all sea users. Although these plans do largely sum up the existing set of policies affecting the marine environment, with some guidance on how these should be applied, we are not convinced that the policies within this plan currently address the complex issues of different sectors competing for the same space. We do, however, recognise that these were the first plans in a new process and if done well, marine plans could be a useful tool in reducing the risks to the marine environment brought about through multiple sector use.
- 3.2. We are encouraged by the development of the marine plans covering the English Channel from Dover to Dartmouth, and continue to engage proactively as Link organisations in each of the marine planning processes around the UK. At the regional level, we would like to see the UK engaging more proactively through OSPAR's ICG_MSP subgroup, which currently does little but could be a useful forum for exchanging best practice. Together with the introduction of the EU Maritime Spatial Planning Directive, which will require reporting to the European Commission, marine planning should become a more cooperative process across EU seas, with each region/member state having to consider neighbouring marine plans to ensure a joined up and strategic approach to use of the sea.

Marine Protected Areas under the Marine Strategy Framework Directive

- 3.3. As referred to above, the Marine Strategy Framework Directive stipulates that measures to achieve Good Environmental Status shall include 'spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems....in the

framework of international or regional agreements to which they are parties.’. However, there is no mechanism through which member states can co-operate in the development of marine protected areas to build a network that is ecologically coherent across different regions and boundaries. Ecological coherence is poorly defined, and while England and France have co-operated on an analysis of ecological coherence within the Channel region, there is no obligation on Member States to co-operate with one another in designating sites.

- 3.4. An international consortium has been commissioned by DG Environment to develop and test methodology and criteria for assessing coherence, adequacy and representatively of European networks of marine protected areas.⁵ It is not currently clear whether DG Environment will provide any specific guidance or targets on meeting ecological coherence criteria.
- 3.5. There is significant variation in the coasts and marine environments of Europe, from the highly indented coasts of Scotland to the low energy, soft sediment environments of Belgium and southern England. European countries have taken different approaches to the implementation of the Birds and Habitats Directives, with variation in how features have been demarcated and managed. Some countries, such as France and the UK are also implementing national networks of marine protected areas. The challenge therefore is to be able to provide meaningful, but flexible criteria that leads Member States towards ecological coherence. Currently, the development of MPAs takes place in an ad-hoc manner, with assessment provided on a bi-annual basis by OSPAR.⁶
- 3.6. Link commissioned a report on the ecological coherence of the UK marine protected area network in June 2014 and concluded that whilst MPA network properties vary across UK regions, with good percentage coverage in some places, overall the network is some distance away from being ecologically coherent.⁷

Energy Co-operation

- 3.7. Offshore electricity cabling is the lowest cost way to enable integration of variable renewable electricity supplies into Europe’s grid, both from onshore and offshore sources. As such it is essential for tackling climate change. However these developments must be compatible with the need to protect and enhance the marine environment and biodiversity – both individually and in terms of the overall grid architecture.
- 3.8. Avoiding unnecessary economic, environmental and social impacts will be important to secure government, stakeholder and public support for rapid development and to maximise short, medium and long-term economic, environmental and social benefits. This requires integrated and sensitive planning involving governments and stakeholders across the region.
- 3.9. Developing the North Sea Grid in a low-impact way requires:

⁵ <https://circabc.europa.eu/sd/a/9f747277-529b-4ee9-8765-6407f577adad/Analysis%20and%20comparison%20of%20criteria%20used%20by%20Member%20States%20for%20establishing%20coherents.pdf>

⁶ http://www.ospar.org/documents/dbase/publications/p00619/p00619_ecological_coherence_report.pdf

⁷ http://www.wcl.org.uk/docs/ECN_MPA_report_for_Joint_Links.pdf

- Closer working relationships and strategic partnerships between stakeholders to develop shared visions and share knowledge;
 - Collection and sharing of methodologies and data to enable authorities and regulators to coordinate effectively;
 - Cross-border cooperation to assure effective marine spatial planning and environmental assessments that takes cumulative impacts into account effectively and to a common, high standard.
- 3.10. We are concerned that current institutional arrangements do not enable this kind of integrated planning and knowledge sharing. Grid planning is coordinated by ENTSO-E, the umbrella group for European grid operators. However its Ten year Network Development Planning process remains very much a 'bottom-up' process, derived from national plans that often take little account of European priorities and coordination needs. National plans and regulatory regimes are very poorly integrated at present, and the European regulator ACER as yet has little power to improve coordination. The North Sea Countries Offshore Grid Initiative is a valuable forum bringing together national governments to advance a more integrated approach and better coordination. However to date this forum has failed to overcome the challenges to more integrated working identified above.
- 3.11. Overall, we believe there is scope to improve regional inter-sectoral co-operation and that there is value in doing so to reduce conflict, plan more efficiently and understand spatial needs of different sectors. An example of effective regional collaboration between Member States and sectors is the EC LIFE+ Celtic Seas Partnership project. The Celtic Seas Partnership (led by WWF-UK) is an innovative model for cooperation between countries and sectors, which facilitates engagement between sea-users, industry, governments and the scientific community across the Celtic Seas to support delivery of the MSFD.
- 4. With particular reference to the case studies above, what are the advantages and disadvantages, including resource implications, of a regional co-operation approach? To what extent can local and national approaches conflict with a regional approach?**
- 4.1. In the case studies above, we have highlighted the need for regional co-operation at a strategic level to ensure coherence and collaboration where necessary. The designation and management of marine protected areas, measures under Marine Strategy Framework Directive and marine plans needs to be undertaken at a national level. We advocate strong, well-resourced regional co-operation with a clear framework for delivery.
- 4.2. A regional approach means that countries in a Regional Sea context are taking a balanced and equal commitment to achieving compliance with environmental laws as well as sharing resources and expertise. Decisions are also being taken at an appropriate scale that can ensure the overall good management of a Regional Sea. Regional co-operation needs to be able to provide a clear framework that will provide clear boundaries within which it can be delivered at a national or local level. This can be an iterative and two-way process through which the development of national implementation can be subsequently assessed and updated at a Regional level.

Potential processes to develop a coherent regional approach

5. A range of processes and institutions have evolved to support regional marine co-operation, including Regional Sea Conventions, EU macro-regional strategies, EU sea basin strategies and the Maritime Spatial Planning Directive. Others have developed more informally, such as the North Sea Countries Offshore Grid Initiative. What, with reference to emerging structures and experience around the world, are the basic requirements to develop a coherent and flexible regional approach to marine regional co-operation? Is an ideal model yet identifiable, particularly for the North Sea, from those that are emerging?

5.1. We are unaware of an ideal model for regional co-operation in other parts of the world. In our view the following are essential components of a well-functioning regional approach:

- A strong, well resourced Regional Seas Convention that can direct Contracting Parties (and where relevant) Member States to take action to meet requirements of Convention or EU Directives respectively.
- Legislation that is coherent and complementary, that is implemented effectively and is well understood.
- A long term role for sector or issue specific organisations – often these are project led, and institutional memory, relationships and capacity are lost when the project ends.



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