

**Implementation of the Marine Strategy
Framework Directive on the island of Ireland:
a critical appraisal of policy, law and
governance.**

Declan Lawlor

Loughs Agency

(Foyle, Carlingford & Irish Lights Commission)

Contents

- Marine Governance in Europe
- Governance Arrangements within Shared Seas
- Solutions?

Context

- For decades the main mode of marine governance throughout Europe was through a sectoral approach with a significant bias towards sea fisheries.
- Legislation and policies administered on a sector by sector basis (e.g.. shipping aggregates, fisheries), with little or no policy integration!
- Condition of the marine environment and associated ecosystem services would suffer due to continuing resource degradation and associated pollution.

Context

- Following the 1992 Rio Earth Summit, and a realisation that Europe had to protect its rich marine biodiversity, public concern was growing through the 1990's.
- The 6th Community Environment Action Programme in 2002 included the marine environment as one of several thematic strategies, adopted by the Council and Parliament.
- Aim= to promote the sustainable use of seas and to conserve marine ecosystems in the face of threats and pressures.

Thematic Strategy

- The thematic strategy on the marine environment (Marine Strategy) was published by the EC in October 2005.
- Primary Objective = protecting and restoring Europe's oceans and seas and ensuring human activities are undertaken sustainably, ensuring future generations can enjoy safe, clean, healthy and productive seas.

Thematic Strategy - Implementation

- Encompasses a dual EU and regional approach (including 3rd countries bordering Europe)
- Knowledge-based approach to improve policy making
- Ecosystems-based approach to managing human activities
- Co-operative approach to engage stakeholders (including existing regional seas conventions)

Thematic Strategy - Implementation

- However, thematic strategies are not legally binding and normally require substantial legislative measures in the form of Directives to fully enable them.
- Preparation of the Marine Strategy Framework Directive (MSFD) (2008/56/EC) soon followed, ensuring that the essence of the thematic strategy for the marine be properly and legally binding.

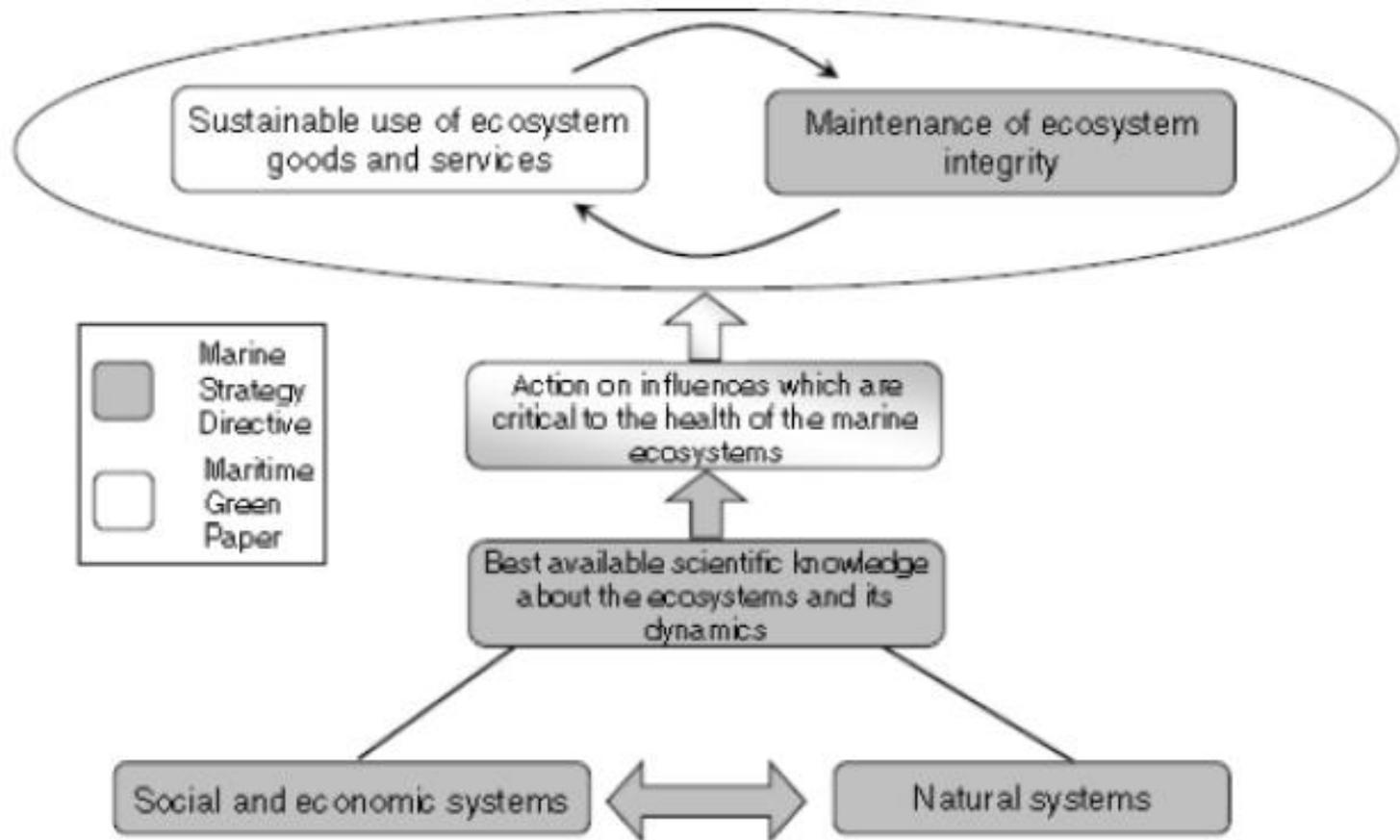
Integrated Maritime Policy

- The EC established a Maritime Task Force in 2005 to develop a future maritime policy for Europe.
- The task force prepared a Green Paper (Towards a future maritime policy for the Union: A vision for the oceans and seas).
- The Green paper advances the idea that all activities significant for the seas should be subjected to a cross-sectoral management, with effective coordination and integration of marine policy areas at all levels.

Integrated Maritime Policy

- Following a consultation period, the Commission published 'An Integrated Maritime Policy for the EU' in October 2007 (Blue Book).
- Marine Green Paper and the MSFD often referred to as the 'two pillar' approach to maritime governance and policy within the EU's IMP.
- MSFD is a legally-binding Directive
- IMP comprises a series of declarations of intentions and administrative actions.

A two pillar approach for the *comprehensive integrated management of human activities*



Integrated Maritime Policy

- The two also differ in terms of policy objectives and focus:
 - MSFD (DG Environment)
 - IMP (DG MARE)
- The EC established 3 committees to oversee progress and to ensure sufficient communication between IMP and MSFD.

Marine Strategy Framework Directive

- MSFD aims to achieve good environmental status of the EU's maritime waters by 2020 and to protect the resource base which marine-related economic and social activities depend.
- MSFD constitutes the vital environmental component of the Union's future maritime policy.
- First legislative instrument directed at protecting and preserving the marine environment.
- Arranged in 28 Articles and establishes marine regions on the basis of geographical and environmental criteria.

Marine Strategy Framework Directive

- Article 5,1(b) provides detail on the development by 2015 of a programme of measures to achieve or maintain good environmental status (GES).
- A series of 11 qualitative descriptors have been put forward by the EC to assist in achieving GES.
- MSFD, Birds Directive and Habitats Directive are all inter-linked in that all are concerned with aspects of biodiversity conservation in the marine environment.
- However, GES and favourable conservation status are not necessarily equivalent, but can be mutually supportive.

MSFD Implementation (UK)

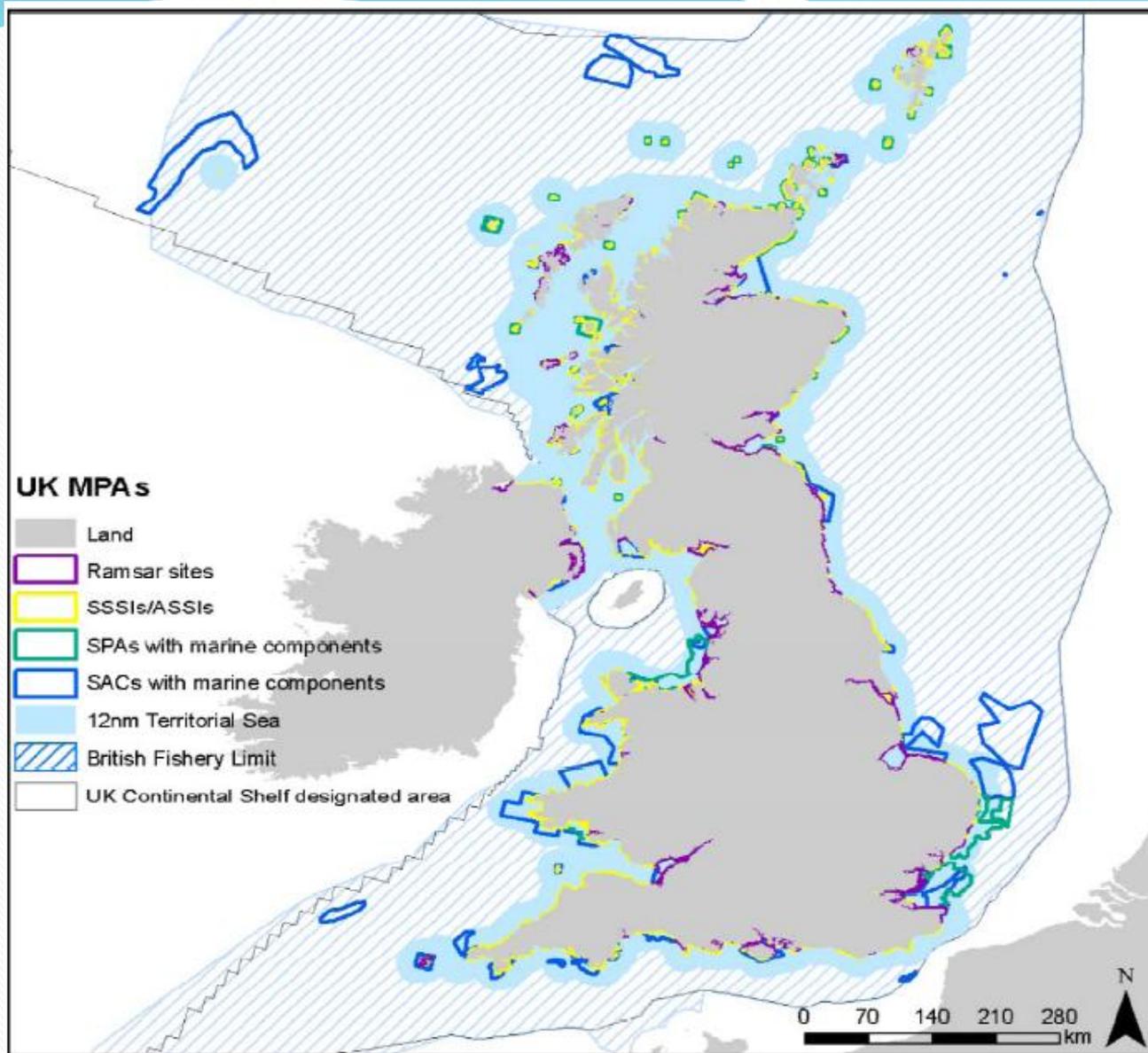
- UK Government has indicated how the UK can achieve GES (national and European legislation).
 - Marine and Coastal Access Act (2009)
 - Marine (Scotland) Act (2010)
 - Northern Ireland Marine Bill (2012)
- UK is committed to delivering an ecologically coherent network of marine protected areas (MPA's) by 2012, comprising existing designated sites (SPA, SAC, ASSI, SSSI, MNR, Ramsar).

MSFD Implementation (UK)

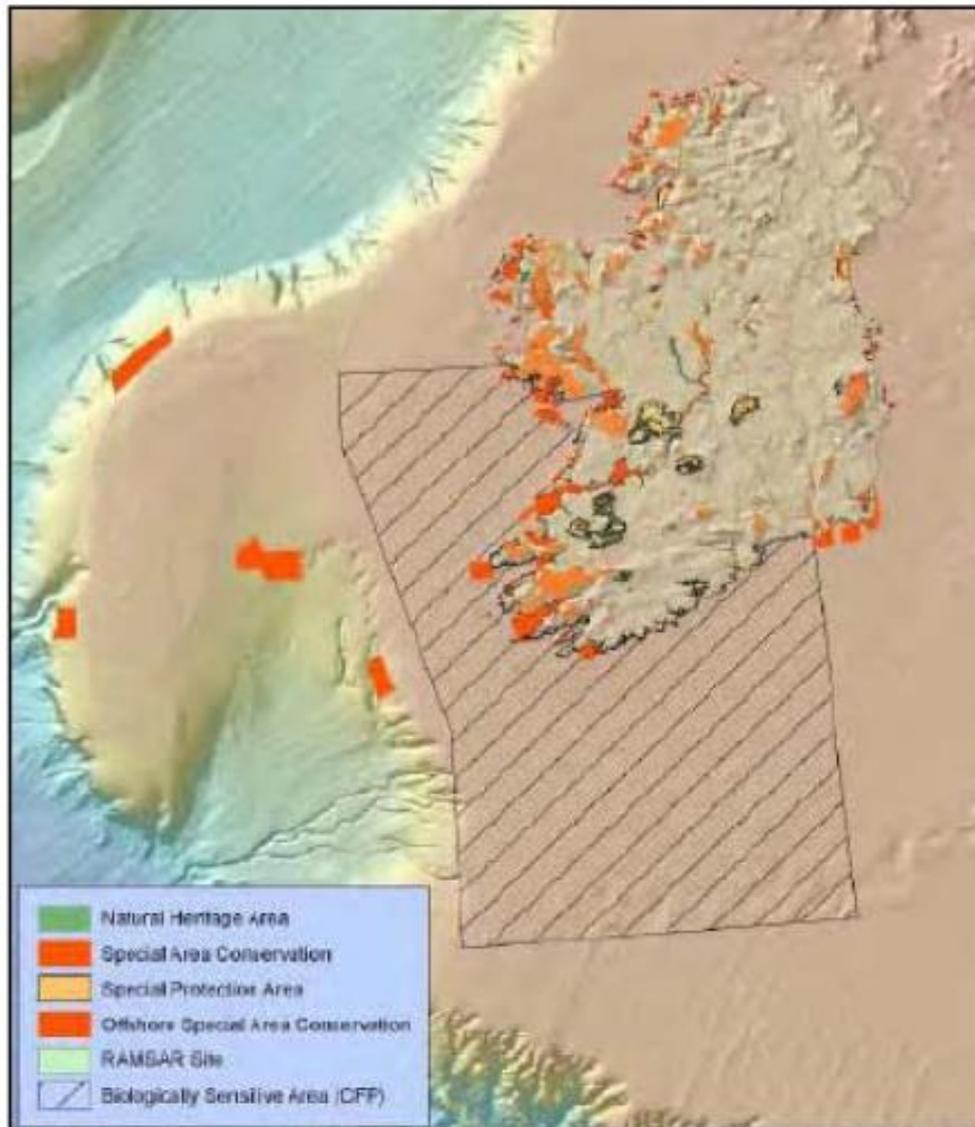
- MPA network designed to be a collection of areas that work together to provide more benefits than an individual area could on its own.
- Meeting UK's commitment under the Convention on Biological Diversity and to achieving GES by 2020 under MSFD.

MSFD Implementation (UK)

- England & Wales new MPA – Marine Conservation Zone (MCZ), (Marine and Coastal Access Act, 2009);
- Scotland – Nature Conservation MPA, (Marine (Scotland) Act 2010);
- Northern Ireland – has provision in its Marine Bill for the designation of marine conservation zones within its territorial waters.



Distribution and locations of UK Marine Protected Areas (MPA's)



Distribution and locations of Irish Marine Protected Areas (MPA's) and terrestrial conservation sites⁵³

Marine Spatial Planning

- Advocated in MSFD as a useful tool for managing human activities in the marine environment (Annex 1), therefore supporting the ecosystem-based approach.
- Also considered an important tool to be developed in terms of assisting achieving GES under the MSFD.
- Focus on planning and regulating all human uses of the sea, whilst protecting marine ecosystems.
- Focus on marine waters under national jurisdiction.

Perceived Problems with MSFD

- Concerns in approach to terrestrial-based agriculture sector and contribution of nutrient loading of seas.
- Agriculture sector unmentioned in the economic sectors covered by the Green Paper.
- Some concerns on lack of vital linkage to other EU Directives (WFD, Nitrates, UWWT).
- Handing responsibility for multi-layered marine environmental problems and issues to Member States, and allowing them to determine their own marine protection strategies.

Perceived Problems with MSFD

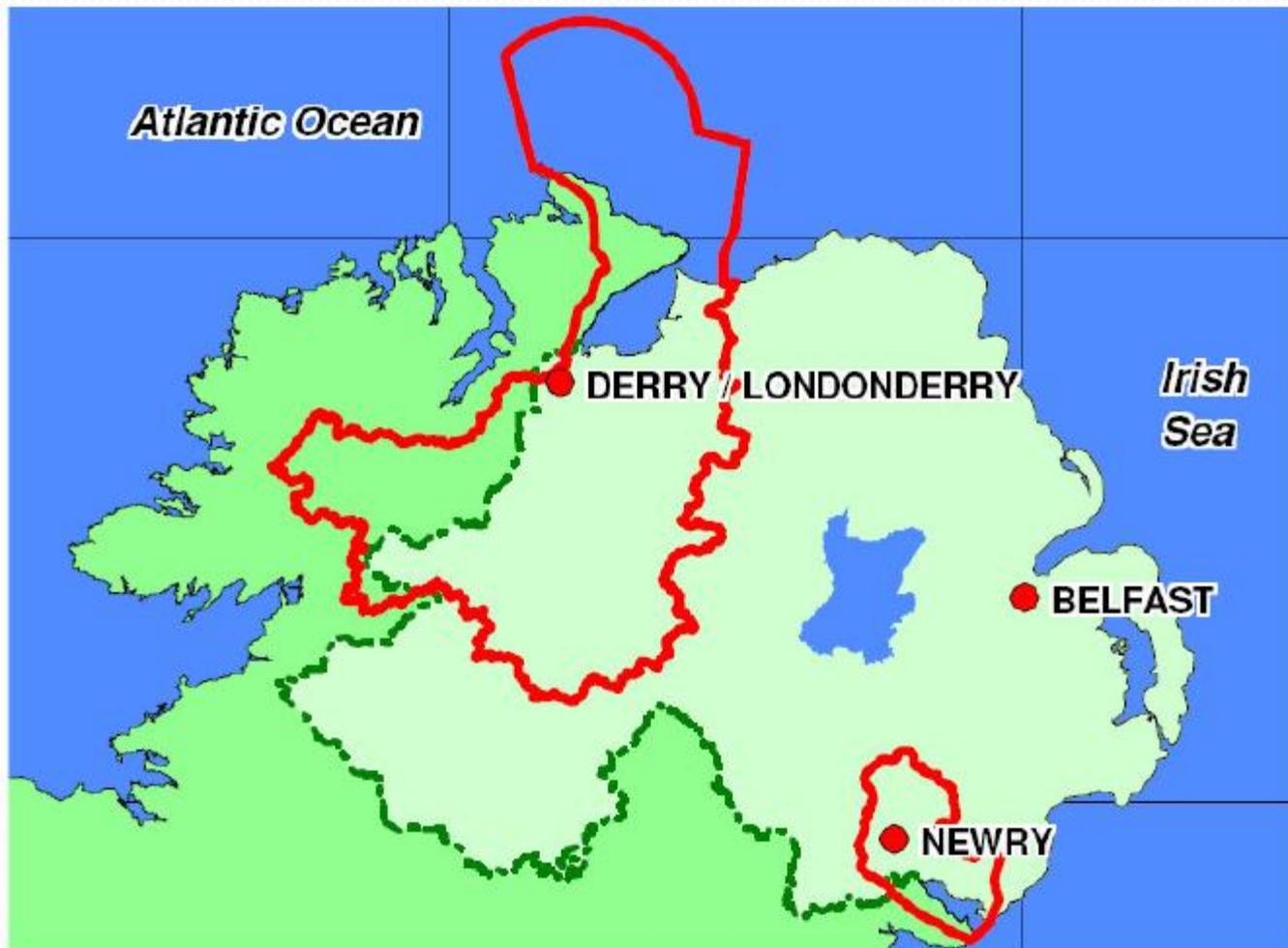
- This approach makes compliance monitoring and enforcement harder to do.
- Concerns regarding the precise definition of GES.
- Definition of quality descriptors is largely left to individual states.
- Ad-hoc, inconsistent or differently ambitious targets for the same marine areas.

Managing Aquaculture within shared waters

- Sustainable fisheries has an important role to play in food security in both EU CFP reform and MSFD.
- Aquaculture is increasingly important in meeting demand for seafood and food security.
- Predicted 78% increase in volume of production by 2020.
- Concerns over impacts on marine habitats – intertidal areas, bird assemblages.

Managing aquaculture within shared waters.

- The Loughs Agency (FCILC) given role as licensing authority through the Foyle & Carlingford Aquaculture Licensing Regulations in both jurisdictions.
- Legislation drafted in 2008, with several re-drafts.
- Provides a remit for the licensing of aquaculture and wild shellfisheries in both Loughs as well as freshwater aquaculture in both catchments.
- The delay in implementing the regulations appears to centre on the management agreement between both administrations in licensing arrangements.



Geographical jurisdiction of the cross-border Loughs Agency.

Managing aquaculture within shared waters.

- A seabed lease is required before any aquaculture operation can commence.
- Provided by Crown Estates in Northern Ireland and the DAFM on behalf of the Irish state.
- The management agreement would require both Crown Estates and DAFM to agree to allow the Loughs Agency to issue seabed leases on behalf of both jurisdictions.
- The lack of delineation within the two sea loughs is presenting ongoing problems.

Managing aquaculture within shared waters.

- Potential income to be generated from licence fees through delivery and implementation of the Loughs Agency's Regulations.
- Crown Estates are keen to proceed.
- DAFM have pushed the matter lower down their agenda.
- Carlingford Lough – Gentleman's Agreement (no legal basis in identifying territorial boundaries!)
- Lough Foyle – Currently no licences in place for aquaculture due to jurisdictional issues.

Managing aquaculture within shared waters

- Key environmental problems from a lack of aquaculture licensing in Lough Foyle:
 - Overfishing impacts
 - Water pollution
 - Loss of native species/habitats
- All of which aim to be addressed within the MSFD
- A lack of effective impact mitigation due to the lack of management can also arise.

Managing aquaculture within shared waters

- Commercial importance of harvesting in both sea loughs:
 - Carlingford Lough = approx. 68'000 tonnes of blue mussel at €1100/tonne, and 900 tonnes of oysters annually at €3000 - €3500 /tonne.
 - Carlingford Lough is the most important commercial harvesting area in Europe outside of the Netherlands.
 - Lough Foyle = 3000 tonnes of blue mussel per year at €600/tonne, 120 tonnes/year of flat wild oyster at €3500/tonne, and 200 tonnes of the pacific oyster/yr.

A working model for transboundary implementation of MSFD

- Could the cross-border model that is the Loughs Agency be built upon to progress the achievement of GES between Northern Ireland and Ireland's shared marine waterbodies?
- Historical marine boundary dispute does not pose any legislative issue.
- Is there the political will and appetite for an increased role for the Loughs Agency?
- Another hurdle is the delay in implementation of the Foyle and Carlingford Aquaculture Regulations.

A working model for transboundary implementation of MSFD

- Will the territorial boundary dispute in the two sea lochs prove to be an insurmountable issue for delivery of the MSFD and achieving GES?
- Although some limited discussions taking place, no real communication occurs between the two administrations on the island.
- GES is required at a European level – obvious benefits to the two administrations to working collectively.
- Next few years – MS to deliver details of their monitoring programmes and programmes of measures to achieve GES (synergistic opportunities!?)

Solutions for effective implementation of MSFD?

- Northern Ireland Executive not agreed on the creation of a MMO for N. Ireland's coastal waters – focus on newly developed Marine Division within DoE.
- Northern Ireland Marine Bill – unclear around coverage of the area over-seen by the Loughs Agency.
- Marine Plan – both Loughs Agency and Irish Government overlooked from proposed list of statutory consultees.
- Represents a discrete lack of transboundary consideration on the part of the N. Ireland administration, runs against ethos of MSFD and marine spatial planning.

Solutions for effective implementation of MSFD?

- 1. resolution to the historical dispute over territorial waters;
- 2. establishing a cross-border MMO
- 3. increased governance powers to the cross-border Loughs Agency.