

Guidance on the use of Fixed Monetary Penalties in Marine Protected Areas.

Consultation Paper
June 2026



Department of
**Agriculture, Environment
and Rural Affairs**

An Róinn

**Talmhaíochta, Comhshaoil
agus Gnóthaí Tuaithe**

Department o'

**Fairmin, Environment
an' Kintra Matthers**

www.daera-ni.gov.uk

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Front cover image credit: Dive Survey of Subtidal Seagrass Beds (DAERA).

How to respond to this consultation

A list of the questions that we would welcome your response to are set out at [Annex 1](#).

You are invited to respond to this consultation online by completing the Citizen Space response template which can be accessed using the link below. Please supplement your response with any relevant supporting information, evidence and/or analysis.

<https://consultations2.nidirect.gov.uk/daera/consultation-on-guidance-on-fmps>

If you are unable to complete the survey online, please contact the team by email:

MarinePolicyTeam@daera-ni.gov.uk or call 028 905 69424.

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Introduction

Purpose

The purpose of this document is to set out how the Department of Agriculture, Environment and Rural Affairs ('the Department') intends to use fixed monetary penalties in relation to certain marine conservation offences.

This guidance explains the role of fixed monetary penalties within the Department's wider, proportionate and graduated approach to enforcement, and how they may be used alongside other compliance and enforcement measures.

Background

The Marine Act (Northern Ireland) 2013 ('the Marine Act')¹ came into operation on 18 September 2013 and makes provision for the protection and management of the marine environment in the Northern Ireland inshore region.

The majority of activities that take place at sea will be subject to some form of control through existing regulatory regimes, which are the responsibility of Government departments and other public authorities. In certain cases, it may be necessary to control activities in Marine Protected Areas through the use of byelaws. Part 3 of the Marine Act enables the Department to make byelaws for such purposes and the approach followed is set out in separate byelaw guidance, available here: [Guidance on Making Byelaws under Part 3 of The Marine Act \(Northern Ireland\) 2013](#).

It is an offence for a person to contravene a byelaw that has been made to protect a Marine Conservation Zone or a European marine site (Special Area of Conservation or Special Protection Area). It is also an offence to contravene any interim byelaw that has been made.

The following sections provide further information on the enforcement of such byelaws and in particular the use of fixed monetary penalties.

¹ <http://www.legislation.gov.uk/nia/2013/10/contents>

It should be noted that byelaws for the protection of coastal Areas of Special Scientific Interest continue to be made in accordance with the provisions of the **Environment Order (Northern Ireland) 2002**².

Offences and Penalties

The Marine Act, together with other conservation legislation, includes a number of offences. These are summarised below, with further information provided in [Annex 2](#).

Contravening Byelaws

Section 32 of the Marine Act makes it an offence to contravene any byelaw made under that legislation. A person found guilty of such an offence is liable, on summary conviction, to a fine not exceeding Level 5 on the standard scale of fines for summary offences.

Section 35 of and Schedule 2 to the Marine Act provide for the use of fixed monetary penalties, which have been implemented through the **Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015**³.

Fixed monetary penalties are civil penalties of relatively low fixed amounts, intended to provide a proportionate enforcement response to low-level or minor breaches of marine conservation byelaws, where it would not be appropriate to pursue criminal proceedings. Receiving a fixed monetary penalty will not result in a criminal record.

Fixed monetary penalties may be issued when someone does not comply with a marine conservation byelaw. The Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015 sets the fixed monetary penalty values as:

- £100 for individuals (including for example, sole traders); and
- £200 for all others (companies etc).

² [The Environment \(Northern Ireland\) Order 2002](#)

³ [The Marine Conservation \(Fixed Monetary Penalties\) Order \(Northern Ireland\) 2015](#)

Damaging Protected Features of Marine Conservation Zones

The Marine Act also creates an offence under section 33 for deliberate or reckless acts, which cause damage to the protected features of a Marine Conservation Zone. Offences under section 33 of the Marine Act (Northern Ireland) 2013 cannot be enforced by way of fixed monetary penalties.

An offence under section 33 is punishable in a Magistrate's Court by a fine of up to £50,000 or an unlimited fine if heard in the Crown Court. The level of possible fine will take into account any financial benefit gained as a result of the offence and may reflect the fact that damage caused to the seabed/marine environment will take a long time (if ever) to recover.

Enforcement Principles

Principles Governing Enforcement Action

The use of fixed monetary penalties is one of an array of actions available to the Department. These range from guidance and education, the use of fixed monetary penalties for misdemeanours, through to criminal proceedings.

In the case of those we regulate who fail to comply, advice and guidance will often be the Department's first route to securing compliance. It is important that those we regulate are fully aware of legal requirements and the relevance to their activities, as well as how to comply. The Department will work with stakeholder bodies to identify barriers to compliance and to provide clear, unambiguous guidance as necessary. The Department will also seek to educate stakeholders and the public to avoid breaches in the first place.

The Department believes that in most cases, working with those it regulates in a positive and practical manner will achieve compliance with the legislation and successful delivery of policies⁴. However, where the requirements of byelaws have been ignored then the Department may consider the use of fixed monetary penalties as part of its graduated enforcement response, rather than using the criminal process for low-level breaches.

⁴ [DAERA Enforcement Policy - 2023](#)

It is anticipated that the Department will use fixed monetary penalties proportionately as advice and guidance will often be enough to ensure that a person returns to compliance.

In all instances where enforcement action is required the Department will be firm, fair and reasonable. Our overall approach to enforcement is underpinned by **the eight principles of better regulation**:

The eight principles of better regulation

1. Proportionality
2. Accountability
3. Consistency
4. Transparency
5. Targeted
6. Collaboration
7. Support
8. Regards for Economic Growth

When Fixed Monetary Penalties are Appropriate

Fixed monetary penalties are intended to be used as a proportionate, civil enforcement tool for low-level, minor non-compliance with marine conservation byelaws. Their purpose is to support compliance and behavioural change where breaches are limited in scale and impact, and where it would not be proportionate or in the public interest to pursue criminal proceedings.

In general, fixed monetary penalties may be considered appropriate where all of the following apply:

- the breach relates to a contravention of a marine conservation byelaw;
- the activity giving rise to the breach is minor in nature, typically inadvertent, technical or short-duration;
- the breach has not resulted in damage to protected features, and there is no evidence that conservation objectives have been, or may have been, significantly hindered;
- the person has no history of repeat non-compliance and has cooperated with enforcement officers.

Fixed monetary penalties are not appropriate where the facts indicate a more serious offence or higher environmental risk. In particular, fixed monetary penalties will not be used where:

- the breach forms part of persistent or escalating non-compliance, such that the use of further fixed monetary penalties would no longer be proportionate or effective in securing compliance;
- the activity that has been undertaken in breach of a byelaw has the potential to cause significant damage to the protected feature(s);
- the activity has caused damage to the protected feature(s) of a Marine Conservation Zone or European marine site.

In cases involving the risk of significant harm, the Department will consider the use of criminal prosecution.

Where there is evidence that a person has damaged a protected feature while carrying out an act that contravenes a byelaw, the Department will pursue prosecution for the offence of damaging the feature rather than the contravention of the byelaw.

Standard of Proof

If a fixed monetary penalty is imposed for an offence, there must be sufficient evidence meeting the standard applicable in criminal law. This means that the same standard of proof applies to fixed monetary penalties as it would to the prosecution of that offence in Court.

The Department must be satisfied beyond reasonable doubt that a person has committed the offence before a fixed monetary penalty is imposed.

Fixed Monetary Penalties Procedures

Byelaw Compliance and Enforcement

Enforcement officers, authorised by the Department under Section 38 of the Marine Act, will monitor compliance with the requirements of byelaws and carry out investigations in line with the DAERA Enforcement Policy.

[Annex 4](#) sets out the approach that will be taken when considering enforcement action against young people i.e. those under 18 years of age at the time of the offence.

Notice of Intent

An enforcement officer may decide following initial investigation of the incident to issue a notice of intent, if they are satisfied beyond reasonable doubt that the byelaw has been breached, an offence has been committed and that the circumstances of the case meet the criteria set out in the section [When Fixed Monetary Penalties are Appropriate](#).

In particular, this will apply to low level or minor breaches of byelaws where no damage has been caused to protected features and where criminal proceedings would not be proportionate.

Alternatively, an officer may decide to gather further evidence in order to make an assessment of the most appropriate response. If the Department is satisfied beyond reasonable doubt that the person has committed an offence and determines that a sanction is appropriate, but it is not proportionate to prosecute, a notice of intent for a fixed monetary penalty may be issued.

The notice of intent must include the following specific information⁵:

- a) the grounds for the proposal to impose the fixed monetary penalty;
- b) the amount of the proposed fixed monetary penalty;
- c) the effect of payment of the sum;
- d) the right to make representations and objections;

⁵ Article 4 of the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015.

- e) the circumstances in which the Department may not impose the fixed monetary penalty;
- f) the period within which liability to the fixed monetary penalty may be discharged; and
- g) the period within which representations and objections may be made.

Someone who has been served a notice of intent for a fixed monetary penalty will be able to either:

- a) discharge their liability for the offence by making the required payment, or
- b) make written representations and objections to the Department against the issuing of the fixed monetary penalty.

Discharging Liability

If the person decides to discharge their liability, the fine will be halved if a discharge payment is made within 28 days of the date on which the notice of intent is served (the 28-day period).

Written Representations & Objections

A person who has been served with a notice of intent can object to the issuing of a fixed monetary penalty by making written representations to the Department. A Senior Officer within the Department will review the case and make a decision on whether to impose the fixed monetary penalty. A person receiving a notice of intent has 28 days (starting from the day it was served) within which to make representations to the Department.

Decision-Making

After the 28-day period has elapsed, where a person has not discharged their liability, the Department will decide whether to:

- i. withdraw the notice of intent to impose the fixed monetary penalty and not proceed with enforcement action;
- ii. impose the fixed monetary penalty; or
- iii. prosecute through the courts.

This decision will be made taking into account any written representations, or new information which means it is no longer appropriate to impose a fixed monetary penalty having regard to the enforcement principles and suitability criteria set out in this guidance.

Final Notice

Where the Department decides to impose the fixed monetary penalty, it will issue a final notice which must include the following information⁶:

- a) the grounds for imposing the penalty;
- b) the amount of the penalty;
- c) how payment may be made;
- d) the period within which payment must be made;
- e) any early payment discounts or late payment penalties;
- f) rights of appeal; and
- g) the consequences of non-payment.

Late/ Early Payment and Interest Charges

Where a person has made representations and then received a final notice for a fixed monetary penalty, there will again be an early payment discount.

Those sanctioned will pay 50% of the fixed monetary penalty, if payment is made within 28 days of the date on which the final notice was served, and they have made written representations within the allotted time from when the notice of intent was served. This ensures that those people who choose to make representations within the allotted time are not penalised financially for exercising this right.

⁶ Article 7 of the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015.

In order to encourage those who have been sanctioned to pay fixed monetary penalties promptly, the Department can impose a late payment charge equivalent of 50% in addition of the amount of the fixed monetary penalty if the penalty remains unpaid more than 28 days after a fixed monetary penalty has been confirmed through a final notice. For example, where an individual fails to pay a fixed monetary penalty of £100 within 28 days of a final notice being served, the penalty will become £100 plus a £50 late penalty charge.

Should a fixed monetary penalty remain outstanding, the Department can recover the penalty amount through a civil debt procedure or under a Court Order.

Withdrawal of a Final Notice

The Department can amend or withdraw a final notice or reduce the amount payable, for example, in order to correct an error.

Serving Notices

Any notice that is required or authorised to be served on a person under Article 19 of the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015 may be served on that person by any of the following methods—

- a) personal delivery;
- b) addressing it to the person and leaving it at the appropriate address;
- c) addressing it to the person and sending it to that address by post; or
- d) where an address for service using electronic communications has been given by the person, sending it using electronic communications.

Permitted Combinations of Sanctions

The Marine Act places restrictions on the combinations of sanctions that may be used in relation to the commission of an offence.

- Where a notice of intent for a fixed monetary penalty is served on a person, no criminal proceedings for that offence will be initiated before the end of the period in which the person may discharge liability to the fixed monetary penalty.

- If the person discharges liability for the fixed monetary penalty, they cannot be convicted of the offence at any time.
- Where a final notice in respect of a fixed monetary penalty is imposed, the person may not at any time be convicted of the offence.

Payment of Penalties

Any money which the Department receives through the fixed monetary penalty process (that is, any discharge payment, or other financial penalty for late payment) will be paid into the Northern Ireland Consolidated Fund. The Northern Ireland Consolidated Fund is the central government account used to manage public money for Northern Ireland. The Department does not have access to the consolidated fund and any money received via the civil sanction process is not a form of income for the Department.

Accepted methods of payment will be listed on the fixed monetary penalty.

Appeals Process

Once a person has been served with a final notice for a fixed monetary penalty, they have 28 days to make an appeal to the Water Appeals Commission, in accordance with Article 13 of The Marine Conservation (Fixed Monetary Penalties) Order (NI) 2015. Full details of the Commission's procedures can be obtained from the Water Appeals Commission website: www.pacni.gov.uk

Only the person who has had a fixed monetary penalty imposed on them may make an appeal.

The Water Appeals Commission

The Water Appeals Commission has been selected as the appellate body because:

- it is an existing appeals organisation, with the necessary infrastructure and expertise in place;
- it can provide an efficient and tested process, and will be able to deliver a knowledgeable and definitive service; and

- it is an independent appellate body, established under Article 292 of the **Water and Sewerage Services (Northern Ireland) Order 2006**⁷ and is not part of any Government department.

Grounds of Appeal against Fixed Monetary Penalties

The grounds for appeal against a fixed monetary penalty are set out in section 36(6) of the Marine Act and Article 11 of the Marine Conservation (Fixed Monetary Penalties) Order (Northern Ireland) 2015 and include:

- a) that the decision was based on an error of fact;
- b) that the decision was wrong in law;
- c) that the decision was unreasonable; and
- d) for any other reason permitted by the Water Appeals Commission.

These provisions ensure that the Water Appeals Commission can fully review all decisions made by the Department.

Any fixed monetary penalty notice that is the subject of an appeal, and any requirement in such a notice, is suspended pending determination of the appeal.

Powers of the Appeals Commission

The Water Appeals Commission has powers to quash, confirm, or vary the Department's decision to impose a fixed monetary penalty.

Publication of Enforcement Action

Public confidence in the use of fixed monetary penalties calls for transparency. The Department will publish reports annually providing information on cases where:

- a) fixed monetary penalties have been imposed; and
- b) the penalty has been discharged.

⁷ [The Water and Sewerage Services \(Northern Ireland\) Order 2006](#)

In line with good practice, the Department will publish only high level, anonymised information relating to offences and enforcement action. Personal information will not be published on the website.

The Department will not publish any details on an enforcement action while it is under appeal or where a decision has been overturned on appeal.

[Annex 3](#) contains a summary diagram of the fixed monetary penalties process.

ANNEX 1: List of Consultation Questions

Question 1a: Do you agree with the Department's proposal to use fixed monetary penalties for low-level or minor breaches of byelaws made under the Marine Act?

Question 1b: Please provide examples of activities for which you consider fixed monetary penalties to be an appropriate management measure in MCZs/SACs/SPAs?

Question 2: Is there anything in this guidance document that you wish the Department to clarify?

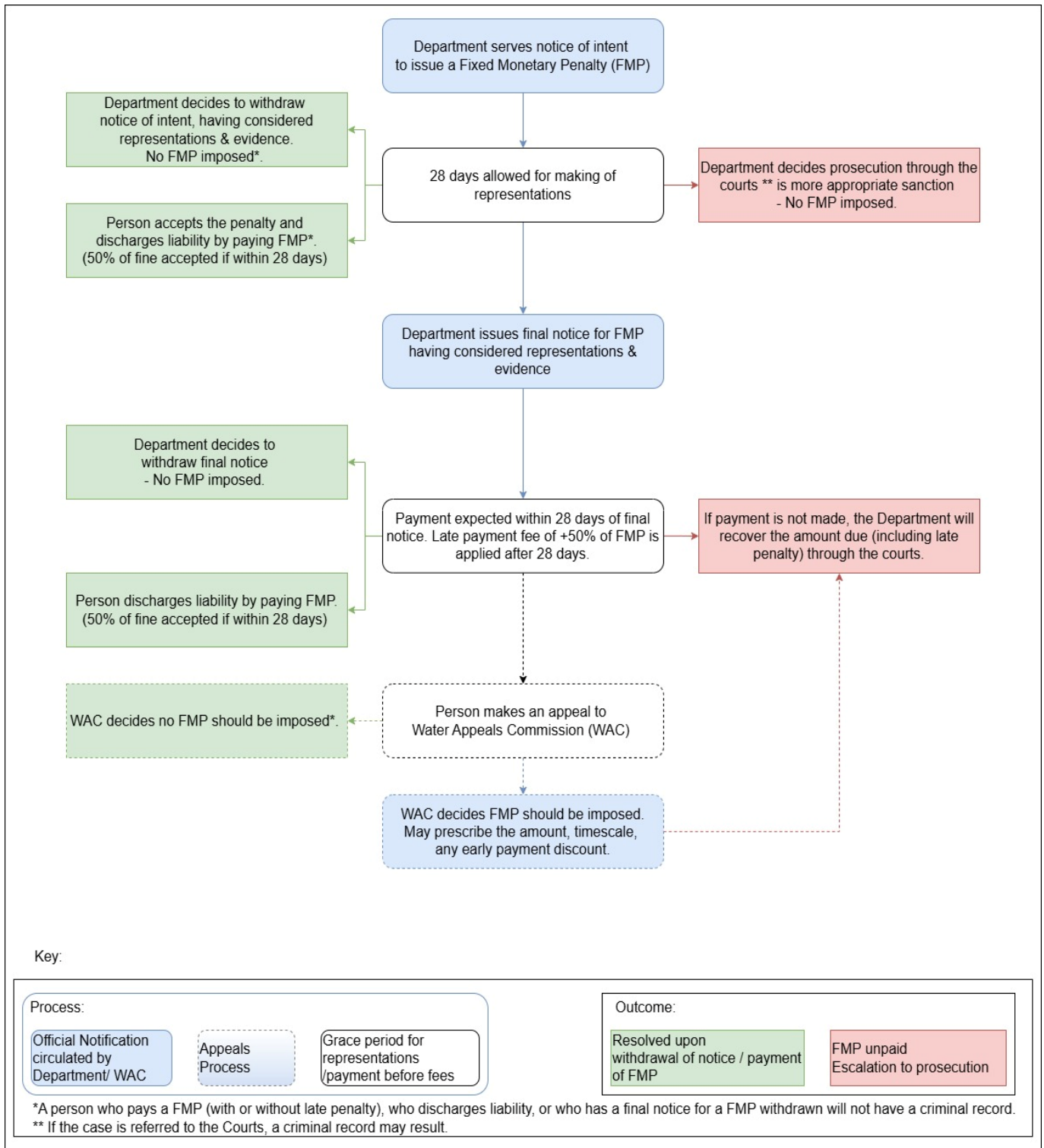
Question 3: Do you feel that your rural needs are impacted by the Department's intention to use fixed monetary penalties?

Question 4: Do you consider that the Department's intention to use fixed monetary penalties has an impact on you from an equality point of view?

ANNEX 2: Offences available under Part 3 of the Marine Act (Northern Ireland) 2013

Management	Purpose	Penalties	Amount
Section 32 Offence of contravening byelaws			
Byelaws (s 26)	For the purpose of furthering the conservation objectives stated for a Marine Conservation Zone	Fixed Monetary Penalty or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200 May not exceed Level 5 on the standard scale of fines for summary offences
Emergency byelaws (s 28)	Where there is an urgent need to protect a Marine Conservation Zone	Fixed Monetary Penalty or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200 May not exceed Level 5 on the standard scale of fines for summary offences
Interim byelaws (s 29)	Where there is an urgent need to protect feature(s) in an area and where there may be reasons to designate a Marine Conservation Zone.	Fixed Monetary Penalty or Fine on summary conviction	May not exceed Level 1 on the standard scale of fines for summary offences i.e. up to £200 May not exceed Level 5 on the standard scale of fines for summary offences
Offence	Purpose	Penalties	Amount
Section 33 Offence of damaging, etc. Protected features of Marine Conservation Zones			
General offence (s 33)	To prohibit intentional and reckless acts which will, or may, significantly hinder the conservation objectives of a Marine Conservation Zone.	Fine on summary conviction, or Fine on indictment	Not exceeding £50,000 Unlimited

ANNEX 3: Fixed Monetary Penalties – Summary of Process



ANNEX 4: Application of Civil Sanctions to Young People

The Department intends to use fixed monetary penalties to address low level offences in Marine Protected Areas and will take a cautious and sympathetic approach when considering enforcement action against young people. When developing the relevant byelaws, the Department will consider whether young people are likely to be affected by it.

The Department will pursue alternatives to issuing fixed monetary penalties to the young, recognising their limited capacity to understand their actions and discharge financial liability. Instead of penalties, the Department will endeavour to use educational measures to return individuals to compliance, such as:

- engagement through schools;
- engagement with parents or guardians;
- referrals to youth schemes; or
- awareness programmes highlighting the environmental impact of the activity.

The Department intends to take such an approach in all but the most exceptional cases when dealing with young people and will consider issuing a fixed penalty only as a last resort. In the event that the Department intends to issue a fixed monetary penalty to a young person it will engage with the person's parent or guardian and the Youth Justice Agency as appropriate according to the age of the individual.

ANNEX 5: Glossary

Areas of Specific Scientific Interest (ASSI) - declared under The Environment (Northern Ireland) Order 2002 for their species, habitat and/or geological features.

Byelaws – Byelaws are local laws made under an enabling power contained in a public general act or a local act requiring something to be done – or not done – in a specified area. They are accompanied by some sanction or penalty for their non-observance.

European Marine Sites – European Marine Sites are areas of the marine environment that have been designated for protection under European legislation, they are sometimes referred to as Natura 2000 sites and are found across Europe. European Marine Sites consist of two types, Special Protection Areas (SPA) which protect birds and their supporting habitats and Special Areas of Conservation (SAC) which protect other wildlife and important habitats. In the UK, European Marine Sites form part of the UK National Site Network (not Natura 2000). European Marine Sites aim to warrant long-term survival of Europe's most valuable and threatened habitats and species.

Fixed monetary penalties – A set financial penalty imposed for a regulatory or legal violation. These penalties are predetermined and aim to deter non-compliance while providing a more efficient enforcement mechanism than prosecution.

Marine Conservation Zones (MCZ)- are sites designated under section 13 of the Marine Act (Northern Ireland) 2013 in the Northern Ireland inshore region and in section 116 of the Marine and Coastal Access Act 2009 in the Northern Ireland offshore region. Marine Conservation Zones are designated to safeguard vulnerable or unique marine species, habitats and geological and geomorphological features of national importance.

Water Appeals Commission (WAC) – An independent body in Northern Ireland that reviews appeals on water and environmental regulations, including licensing and enforcement decisions.

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