



Northern Ireland Audit Office

# Protecting Strangford Lough



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL  
31 March 2015





Northern Ireland Audit Office

# Protecting Strangford Lough

Published 31 March 2015



This report has been prepared under Section 29 of the Police (Northern Ireland) Act 2000 for presentation to the Northern Ireland Assembly in accordance with Section 30 of the Act.

K J Donnelly

Northern Ireland Audit Office

Comptroller and Auditor General

31 March 2015

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# Abbreviations

<b>AFBI</b>	Agri-Food and Biosciences Institute
<b>CNCC</b>	Council for Nature Conservation and the Countryside
<b>CPD</b>	Central Procurement Directorate
<b>DARD</b>	Department of Agriculture and Regional Development
<b>DFP</b>	Department of Finance and Personnel
<b>DoE</b>	Department of the Environment
<b>FCS</b>	Favourable Conservation Status
<b>HRA</b>	Habitats Regulation Assessment
<b>MRRG</b>	<i>Modiolus</i> Restoration Research Group
<b>NIEA</b>	Northern Ireland Environment Agency
<b>PPE</b>	Post Project Evaluation
<b>QUB</b>	Queen's University Belfast
<b>SAC</b>	Special Area of Conservation
<b>SLECI</b>	Strangford Lough Ecological Change Investigation
<b>SLMRIG</b>	Strangford Lough <i>Modiolus</i> Restoration Implementation Group
<b>UWT</b>	Ulster Wildlife Trust

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# Executive Summary



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# Executive Summary

## Introduction

1. Strangford Lough (the Lough) is often promoted as the largest sea lough in the United Kingdom (UK) and Ireland. It is internationally important because of the exceptional diversity and abundance of its wildlife. In 1996, the Lough was nominated by the UK Government as a 'Special Area of Conservation' giving it particular protection under European law (the 1992 Habitats Directive). One of the primary reasons for granting this special status was the presence of rare horse mussel (*Modiolus*) reefs on the sea bed, the type of which are believed to be unique within Europe.
2. In the late 1980s and 1990 research emerged indicating that the *Modiolus* reefs in the Lough had been extensively damaged, most likely by commercial fishing through trawling and dredging. Despite restricting trawling and dredging to a southern zone of the Lough in 1993 and implementing a total ban on fishing within the Lough using these methods in 2003, the decline of the reefs has continued. As a result, the Ulster Wildlife Trust (UWT) has twice (in 2003 and 2011) made formal complaints to the European Commission (the Commission). UWT considered that the two departments with a responsibility for the Lough, the Department of the Environment (DoE) and the Department of Agriculture and Rural Development (DARD), had failed to protect and restore the *Modiolus* reefs as required by the Habitats Directive.

3. The Commission may take action, known as infraction proceedings, if it has evidence that a Member State is not enforcing a Directive correctly. Infraction proceedings can result in substantial fines. This report provides an overview of how DoE and DARD have responded to the decline of the *Modiolus* reefs and how they have managed the risk of infraction proceedings.

## Key findings

4. By 2003 it was confirmed that the *Modiolus* reefs were in serious decline and the most likely cause was trawling. In June 2003, the Strangford Lough Ecological Change Investigation (SLECI), established by DoE, recommended: limiting any practices likely to cause further damage; better data on the extent and condition of *Modiolus* communities; and implementation of a programme of restoration. Despite some initial reluctance, DARD introduced a temporary ban on trawling and dredging in December 2003 which was extended indefinitely in September 2004. In December 2005, following the first UWT complaint, DoE and DARD jointly published a Restoration Plan for the reefs.
  5. In our view, the departments were too slow to react to the risks to the ecology of the Lough, and to public finances (from infraction proceedings), resulting from the deteriorating condition of the *Modiolus* reefs in the years leading up to the 2005 Restoration Plan.
-

A Management Scheme (covering the period 2000-2003) had been developed to safeguard conservation features, but it proved to be ineffective. Stakeholders told us that the departments had not co-operated effectively to address the *Modiolus* issue. In particular, there had always seemed to be a conflict between fisheries and environmental interests. Stakeholders were not content with the level of engagement from the departments.

6. Implementation of the 2005 Restoration Plan was delayed significantly. Intended originally to run from 2006-2011, work began two years later than planned, in February 2008. A key factor appears to be the delay in appointing consultants to carry out the research element of the Plan. The delay increased costs and created staffing difficulties for the research project.
7. Action to establish and address the impact of pot fishing (fishing for crabs and lobsters using pots placed on the seabed) on the Lough was also delayed. An assessment of the likely impact of pot fishing was a requirement of both the Habitats Directive and the 2005 Restoration Plan. A Habitats Regulation Assessment (HRA) of the impact of pot fishing was provided by the Agri-Food and Biosciences Institute (AFBI) in February 2011. However, stakeholders considered that the HRA was flawed. A revised HRA in December 2012 addressed some of these concerns and supported the establishment of a total fishing exclusion zone "in recognition

of the potential sensitivity of recovering *Modiolus* reefs to physical disturbance".

8. The introduction of non-disturbance zones - an essential element of the 2005 Restoration Plan - was long delayed and initially limited in its extent. In March 2011, DARD banned all commercial fishing in two small areas of the Lough. DARD did not extend the ban to include new areas of *Modiolus* which had been discovered by the ongoing research project. We consider that this was unwise. In May 2011, the research project concluded that the intensity of pot fishing remained a threat to the reefs and recommended that a single, large exclusion zone should be established in the centre of the Lough. DARD did not extend the fishing exclusion zone to encompass this larger area until January 2013.
9. The 2005 Restoration Plan did not meet its short term objective to introduce total protection for remaining *Modiolus* biogenic reef sites within one year of adoption of the Restoration Plan. The departments' failure to keep to the agreed timetable for the Restoration Plan, together with the ongoing deterioration of the reefs, led to the second UWT complaint. The Commission formally opened infraction proceedings against the UK in March 2012. In October 2012, DARD and DoE agreed a Revised Restoration Plan for the Lough, informed by ongoing discussions with key stakeholders and the Commission. Officials acknowledge that the Commission will not tolerate

## Executive Summary

any failure to implement the Revised Restoration Plan. Consequently, following consultation with the UWT, the Commission has closed the infraction case.

### Summary of key recommendations

10. The departments must work together more effectively to reduce the risk of environmental damage and future infraction cases. Formal joint working structures should be introduced, with periodic reviews of the departments' performance, in terms of effective collaboration and compliance with EU environmental legislation.
  11. Departments should identify activities within their remit which represent future infraction risks and ensure action is taken to mitigate these risks.
  12. In any future consideration of proposals to restrict commercial fishing for environmental reasons, DARD should strike an appropriate balance between protecting the fishing industry and safeguarding public funds from the risk of infraction fines.
  13. The departments should monitor and report on their progress against the Revised Restoration Plan. Periodic reports should be published and made available to the relevant Assembly Committees and other interested parties.
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# Part One: Introduction



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## Part One: Introduction

- 1.1 Strangford Lough (the Lough) is often promoted as the largest sea lough in the United Kingdom (UK) and Ireland. It is internationally important because of the exceptional diversity and abundance of its wildlife. In 1996, the Lough was nominated by the UK Government as a 'Special Area of Conservation' (SAC) giving it particular protection under European law (the 1992 Habitats Directive). One of the primary reasons for granting this special status was the presence of rare horse mussel (*Modiolus*) reefs on the sea bed, the type of which are believed to be unique within Europe. The *Modiolus* reefs act as a habitat for over 100 other marine species, a number of which are important in their own right.
- 1.2 In the late 1980s and 1990 research emerged indicating that the reefs had been extensively damaged, most likely by commercial fishing through trawling and dredging. Despite restricting trawling and dredging to a southern zone of the Lough in 1993 and implementing a total ban on fishing within the Lough using these methods in 2003, the decline of the reefs has continued. The continuing decline has resulted in two complaints to the European Commission (the Commission) from the Ulster Wildlife Trust (UWT) in 2003 and 2011. The UWT alleged that the two departments with a responsibility for the Lough, the Department of the Environment (DoE) and the Department of Agriculture and Rural Development (DARD), had failed to protect and restore the *Modiolus* reefs as required by the Habitats Directive.
- 1.3 The Commission may take action, known as infraction proceedings, if it has evidence that a Member State is not enforcing a Directive correctly. The failure to properly enforce a European Union (EU) obligation can lead to substantial fines. DoE is responsible for designating European sites, providing advice and monitoring the conservation status within the Lough. DARD has a significant role in the management of the Lough in that it has administrative responsibility for aquaculture and sea fisheries policy; the enforcement of fisheries legislation; and licensing of aquaculture and fishing vessels. Both Departments can act as a competent authority under the Habitats Directive when making decisions to undertake or to authorise plans or projects.
- 1.4 In 2005, the Departments jointly published a Restoration Plan for the reefs which resulted in closure of the Commission's infraction case. The Departments' failure to keep to the agreed timetable for the Restoration Plan, together with the ongoing deterioration of the reefs, led to the second UWT complaint in 2011. In 2012, the departments produced a Revised Restoration Plan. The UWT has given its support and the Commission has agreed to close the case. Had the Commission upheld the UWT complaint and found against the departments, it could have imposed retrospective fines of up to €9m, in addition to ongoing daily fines of up to €650,000. Any fines would be payable by the Northern Ireland Executive.
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## Methodology and scope of the report

1.5 This report provides an overview of how DoE and DARD handled the risk to the *Modiolus* reefs and the risk of fines.

- **Part Two** of the report looks at emerging evidence of a decline in the *Modiolus* population, resulting in the first complaint to the Commission in 2003. It considers the period up to the publication of the Strangford Lough *Modiolus* Biogenic Reef Restoration Plan in December 2005, and acceptance of the Plan by the Commission in December 2006.
- **Part Three** examines the actions of the two departments to implement the Restoration Plan, and why a second complaint of non-compliance was made to the Commission in November 2011.
- **Part Four** reviews the departments' subsequent response to the second complaint.

1.6

This study involved the examination of papers held by the Northern Ireland Environment Agency (NIEA) and DARD; we also met with officials from these bodies. We met with and received written responses from major stakeholders; the Ulster Wildlife Trust, the Strangford Lough and Lecale Partnership Advisory Committee, the Northern Ireland Fish Producers' Organisation, and the Chair of the group established to oversee the 2005 Restoration Plan. Copies of these submissions can be found at Appendices 2 to 5.



## Part Two:

Actions taken resulting from the first complaint to the Commission in 2003



**Good *Modiolus***



**Bad *Modiolus***



## Part Two:

### Actions resulting from the first complaint to the Commission in 2003

#### By 2003 the *Modiolus* reefs were in serious decline and the most likely cause was trawling

2.1 Following previous research which indicated the *Modiolus* reefs had been damaged, surveys of the Lough conducted by Queen's University Belfast (QUB) between 2000 and 2002 showed the damage was extensive. In March 2003, DoE set up the Strangford Lough Ecological Change Investigation (SLECI) to determine the cause or causes of the decline and commissioned QUB to undertake the investigation. SLECI's interim findings, published in November 2003, confirmed that the reefs were no longer in Favourable Conservation Status and identified commercial fishing by trawling or dredging as the most likely cause. SLECI's final report of June 2004 recommended limiting any practices likely to cause further damage; better data on the extent and condition of *Modiolus* communities; and implementation of a programme of restoration. The report called for "the support and commitment of all stakeholders in Strangford Lough who should now start to recognise their shared responsibilities rather than their individual interests". Following emerging evidence in the late 1980s and 1990 that the *Modiolus* reefs in the Lough had been extensively damaged, DARD restricted trawling and dredging to a southern zone of the Lough in 1993.

#### Departments are required to take precautionary action to safeguard protected habitats

2.2 In view of the emerging evidence that commercial fishing had seriously damaged *Modiolus* beds, in June 2003 DoE requested that DARD introduce a complete ban on trawling in the Lough. Initially DARD would not consider a ban until the SLECI investigation was completed. DoE considered that there was 'great resistance [in DARD] to taking action'.

2.3 DARD's position changed for a number of reasons:

- The first UWT complaint to the European Commission was made in October 2003;
- DoE received legal advice that a total ban on trawling/dredging was unavoidable if the departments were to prevent infraction action (DARD told us that it had reservations about this legal advice, on which its own legal advisors had not been consulted. In particular, it did not address significant fisheries issues rooted in the relationship between the Common Fisheries Policy and the Habitats Directive, which limited its scope for action).
- In November 2003, the SLECI interim report concluded that trawling was the single most likely causative factor in the decline.

In December 2003, DARD introduced a temporary ban on trawling and dredging. Normally, such a change to regulations would be preceded by a six week consultation period. However, in light of information received that there was a possibility that some fishermen would engage in protest fishing, DARD used emergency procedures to implement the ban. The temporary ban was extended indefinitely in September 2004.

2.4 The legal advice of October 2003 is significant in terms of influencing the introduction of a temporary ban on commercial fishing. It provided the context for and guidance on the future management of the infraction risk that remains relevant. The legal advice:

- Made clear to the Departments their obligation, under Article 6 of the Habitats Regulations, to take preventative action to ensure that no deterioration of designated features takes place. The advice states “it is not acceptable to wait until deterioration or disturbance occurs before taking measures”. Where an activity is a cause of concern it need not be the only or even the principle cause of the deterioration: action is required in relation to all potential sources of deterioration.
  - Confirmed that failure to take preventative measures exposes the UK to a ‘very serious risk of infraction’ and to potentially large scale EU fines for breaches of Article 2 and 6 of the Habitats Directive and that the payment of any fines would fall to the Northern Ireland Executive, specifically to DoE and DARD.
  - Identified that, to avoid fines, it was essential that the departments establish a credible restoration programme capable of withstanding Commission scrutiny and, secondly, ensured that they were in a position to prove, within a two to three year period, that they had made substantial progress in implementing the programme.
  - Reminded the departments of the obligation under the Habitats Directive to restore damage caused to SACs and pointed out that since neither DoE nor DARD had taken remedial action they were also exposed to infraction on this basis.
  - Urged DoE and DARD to review the application of the non-deterioration principle to all candidate SACs in Northern Ireland (NI) and take any remedial action required.
  - Recommended that the 1995 NI Habitat Regulations be amended to allow DoE to judicially review any refusal by DARD to take the recommended action to address the UK’s infraction risk and also consider amending the Habitats Regulations to allow DoE to direct all other competent authorities to take action to avoid deterioration of any European site.
-

## Part Two:

2.5 The 2003 legal opinion put the Departments on notice that the deterioration of the *Modiolus* reefs was a significant legal matter of great interest to the Commission, that they had limited time to act and that any failure to address the issue appropriately was likely to have severe financial consequences. This should also have prompted the Departments to take pre-emptive action in relation to other environmentally sensitive sites under their protection and to eliminate any structural barriers to effective management of the risk of failing to protect SAC sites.

### A Management Scheme was developed to safeguard conservation features but it proved to be ineffective

2.6 The Habitats Regulations provide for the development of a management scheme for marine areas to manage activities in the area in a way that safeguarded its conservation status. An early Management Scheme<sup>1</sup> (the Scheme) covering the period 2000-2003 was developed for Strangford Lough by DoE in conjunction with DARD which was to:

- Identify the conservation features, set standards to which the features should be maintained and establish a programme to monitor the features.
- Highlight where there is a need to regulate activities affecting the

conservation features, in consultation with local interests.

- Clarify where statutory responsibilities lie and provide a structure for better management co-ordination between bodies.

2.7 The 2000-03 Management Scheme did not achieve its objectives for a number of reasons:

- While it recognised the need to ensure there was no further deterioration in the *Modiolus* reefs, the Scheme failed to identify adequately the pressures on the reefs and did not address in any detail, how further deterioration would be prevented or how the deterioration that had already occurred would be remedied.
- The Scheme had included a commitment to undertake a comprehensive monitoring programme but this was still not in place by February 2004 when the Strangford Lough Management Committee, an advisory body<sup>2</sup> of key stakeholders, commented<sup>3</sup> on the failure to start a monitoring programme and the absence of even the most basic environmental information to guide the management of the Lough.
- The NIEA representative on the Strangford Lough Liaison Group<sup>4</sup>

1 <http://www.ukmpas.org/pdf/Sitebasedreports/StrangfordMgmtScheme.pdf>

2 A body representing the principle stakeholder organisations, set up to advise the Government on matters relating to the conservation and sustainable management of the Lough, later known as the Strangford Lough Management Advisory Committee.

3 <http://www.strangfordlough.org/strangfordloughSite/files/f6/f6853577-7fc4-4a61-b98b-1e824869cb61.pdf>

4 The Liaison Group of bodies with statutory responsibility for the management of the Lough.

acknowledged that the Scheme '... had been ineffective in a number of respects. Actions were not sufficiently detailed or targeted and the relevant bodies had not taken ownership of their part of the Scheme'.

DARD operated monitoring sites at the northern and southern ends of the Lough during this period. Data was gathered on the salinity, temperature and turbidity of the Lough's water.

## Stakeholders consider the departments had not co-operated effectively to address the *Modiolus* issue

2.8 We asked a range of stakeholders how effectively the Departments had dealt with the *Modiolus* issue in the years leading up to the 2005 infraction case. A number of themes emerged in the responses received (see Appendices 2 to 5):

- The approach to managing the Lough had been fragmented and DARD had been unwilling to bring management of fisheries under the overall management of the Lough. DARD disagrees with this view. Legislation meant many fisheries management responsibilities could not be delegated outside of the Department. DARD also told us fisheries management and Strangford Lough was a standing agenda item at quarterly Marine Science

Committee Meetings held between 1995 and 2005.

- Neither department had given a high priority to environmental monitoring or to assessing the impact of human activity on the ecology of the Lough.
- The focus of the departments appeared to be on the crisis in hand while tacitly allowing future crises to develop.
- There had always seemed to be a conflict between the interests of the fishing industry and environmental interests, to the extent that there had been obvious tensions between officials from the two Departments at some meetings. This conflict had delayed action to protect the reefs.
- DARD had not engaged effectively with fishermen either in responding to a number of proposals over the period which were intended to address environmental concerns or in communicating properly with them in relation to an unsuccessful request for compensation following the 2003 ban.

2.9 It is clear from the evidence of stakeholders that DARD and DoE have not worked effectively together to address either the decline of the *Modiolus* reefs or more widely to ensure the successful management of the Lough. Stakeholders are not content with the level of engagement with them.

## Part Two:

### The 2005 Restoration Plan stopped the imminent threat of infraction but imposed challenging targets on the Departments

- 2.10 The UWT's complaint of October 2003 was on the grounds that the *Modiolus* reefs, one of the features for which the Lough had been designated, was in decline and was being destroyed by a lack of appropriate regulation and management of activities in the Lough. In October 2005, the Commission agreed that the UK had failed in its obligations to implement the Habitats Directive requirement to maintain natural habitats and species of interest at Favourable Conservation Status or to restore sites to that status. The Commission also considered that the UK had failed in the requirement to ensure that any activities that might affect a designated site should undergo an appropriate assessment to determine its implications for the site.
- 2.11 In response to the complaint and the Commission's finding, in December 2005, the Departments jointly published a five year Strangford Lough *Modiolus* Biogenic Reef Restoration Plan (the Restoration Plan), comprising three essential elements:
- Strict protection of the remaining extant *Modiolus* biogenic reefs and areas where they were previously reported within the Lough.
  - Monitoring of the effectiveness of protection measures.
  - Intervention action to artificially restore the reef if natural recovery failed to achieve movement towards Favourable Conservation Status.
- 2.12 Timetabled to run from 2006 to 2011, the long term objective of the Restoration Plan was to restore the *Modiolus* reefs to Favourable Conservation Status (FCS). Given the long life span of *Modiolus*, it was not possible at that stage to predict when FCS would be achievable. Planned objectives for the first year of the research project were challenging: to identify and map the remaining reef sites; to introduce total protection for those sites; to protect damaged reefs from further damage; and to assess the feasibility of restoring reefs by relocating healthy *Modiolus* communities to the Lough. The end point was June 2011 by which time the Departments should have moved the reefs to, at least, 'recovering status'. The Restoration Plan was formally accepted by the Commission in September 2006 and, on this basis, infraction proceedings were closed in December 2006.
- 2.13 In our view, the Departments were too slow to react to the risks to the ecology of the Lough, and to public finances, from the deteriorating condition of the *Modiolus* reefs in the years leading up to the 2005 Restoration Plan. During this period the Departments demonstrated a



lack of understanding of and commitment to their responsibilities under the Habitats Directive. The management of the Lough is shared between two departments working towards their own disparate goals and the differences between them delayed effective action to protect the reefs. The Departments believe strongly that these differences have been resolved with the publication of the Revised Restoration Plan in October 2012 (see paragraph 4.2).

### Recommendations

- 2.14 The Departments must continue to work together effectively to reduce the risk of environmental damage and future infraction cases. Formal joint working structures should be introduced, with periodic reviews of the Departments' performance, in terms of effective collaboration and compliance with EU environmental legislation.
- 2.15 The Departments should identify activities within their remit which represent future infraction risks and ensure action is taken to mitigate these risks.
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## Part Three:

Implementation of the Restoration Plan and a second complaint in November 2011



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## Part Three:

### Implementation of the Restoration Plan and a second complaint in November 2011

3.1 The 2005 Restoration Plan identified three essential elements for its successful implementation:

- **Strict protection** of the remaining reefs through maintaining the ban on mobile gear; establishing non-disturbance zones (including disturbance by anchoring, potting and diving); and reviewing the possible impact of existing activities such as commercial fishing and aquaculture.
- **Monitoring** the effectiveness of protection measures including policing of banned activities; detailed mapping of the *Modiolus* reefs and monitoring of any natural recovery.
- **Intervention** action to identify ways of artificially restoring the reefs if natural recovery was not returning the reefs to Favourable Conservation Status.

In this Part we consider whether these essential elements were completed within the necessary timescales and assess the extent to which the 2005 Restoration Plan was successfully implemented.

### Implementation of the Restoration Plan was delayed significantly by the procurement of the research project

3.2 The Restoration Plan, which was accepted by the Commission in September 2006, was originally intended to run from 2006-2011. However, implementation began two years later than planned in February 2008, a significant delay in a five year project. In order to maintain the completion date of 2011, the project timescale was reduced to three years. Professor Ray Seed, independent Chair of the inter-departmental group charged with overseeing implementation of the Restoration Plan (the Strangford Lough *Modiolus* Restoration Implementation Group or SLMRIG) told us that the protracted delay in implementing the research project was never satisfactorily explained to him. A key factor appears to be the delay in appointing consultants to carry out the research element of the Restoration Plan, including detailed mapping of the *Modiolus* reefs. The contract for this work, worth approximately £1 million, was awarded to Queen's University Belfast (QUB) in December 2007.

3.3 The procurement process, led by DoE, to award the research contract was delayed at a number of key points:

- The specification for the research project was drafted seven months after the Restoration Plan was completed.

- The initial draft of the economic appraisal was not completed until October 2006, and not formally submitted to the Department of Finance and Personnel (DFP) for its approval until March 2007, 10 months and 15 months respectively after the Restoration Plan was completed.
- There was confusion over whether or not the competition was required to be advertised in the Official European Journal and this confusion delayed completion by at least four months.
- DARD had raised concerns that the research contract as initially drafted would in effect delegate its statutory responsibility for fisheries management to the research project. It asked for urgent action to be taken to address this matter.

### **Contracting out the research project increased costs and created staffing difficulties**

- 3.4 In October 2011, the Restoration Plan research project was subject to initial Post Project Evaluation (PPE) which found that it would have been beneficial to retain the work in-house, that is, using staff from the Northern Ireland Environment Agency (NIEA). NIEA had initially favoured this approach but could not release experienced staff from their other statutory or regulatory work and

concluded that recruiting additional staff might unnecessarily delay the research project.

3.5

A final PPE in September 2012 concluded that the research project had achieved value for money, but also highlighted some significant issues:

- The cost of contracting out this work to QUB in 2007 was £970,000, £433,000 greater than the estimated in-house cost of £537,000. (The actual cost of the project was £800,000, some £263,000 greater than the estimated in-house cost).
- A significant investment was made in the QUB staff employed who subsequently found other employment before the end of the contract.
- Any follow-on research work would inevitably be more expensive and time consuming because there would be no continuity in staff to pass on the knowledge gained from the research project.

### **An assessment of the impact of pot fishing on the Lough was long delayed**

3.6

Under the Habitats Directive, the Government is required to undertake an assessment (known as a Habitats Regulation Assessment or HRA) of any activity likely to have an impact on the

## Part Three:

management of a protected site. Any activity impacting on the site can only be authorised if Government is certain there will be no adverse effect. In 2006 DARD asked the Agri-Food and Biosciences Institute (AFBI) to undertake a desk review of the available research to appraise the impact of pot fishing on the Lough's biogenic reefs. This review concluded that pot fishing was a benign activity and there was no evidence that it had a significant effect on *Modiolus* reefs.

3.7 AFBI started work on a HRA of the impact of pot fishing in the Lough in April 2008 and its initial draft report was sent to DARD for comment in February 2011. The assessment stated that "no evidence has been found within relevant scientific literature at this time that pot fishing activities cause damage to...*Modiolus* habitats. In fact recent investigations undertaken by [the Countryside Council for Wales] have shown that pot fishing does not negatively impact.... *Modiolus*". These findings were widely quoted by the fishing industry and its supporters in seeking to prevent any restriction on pot fishing in the Lough.

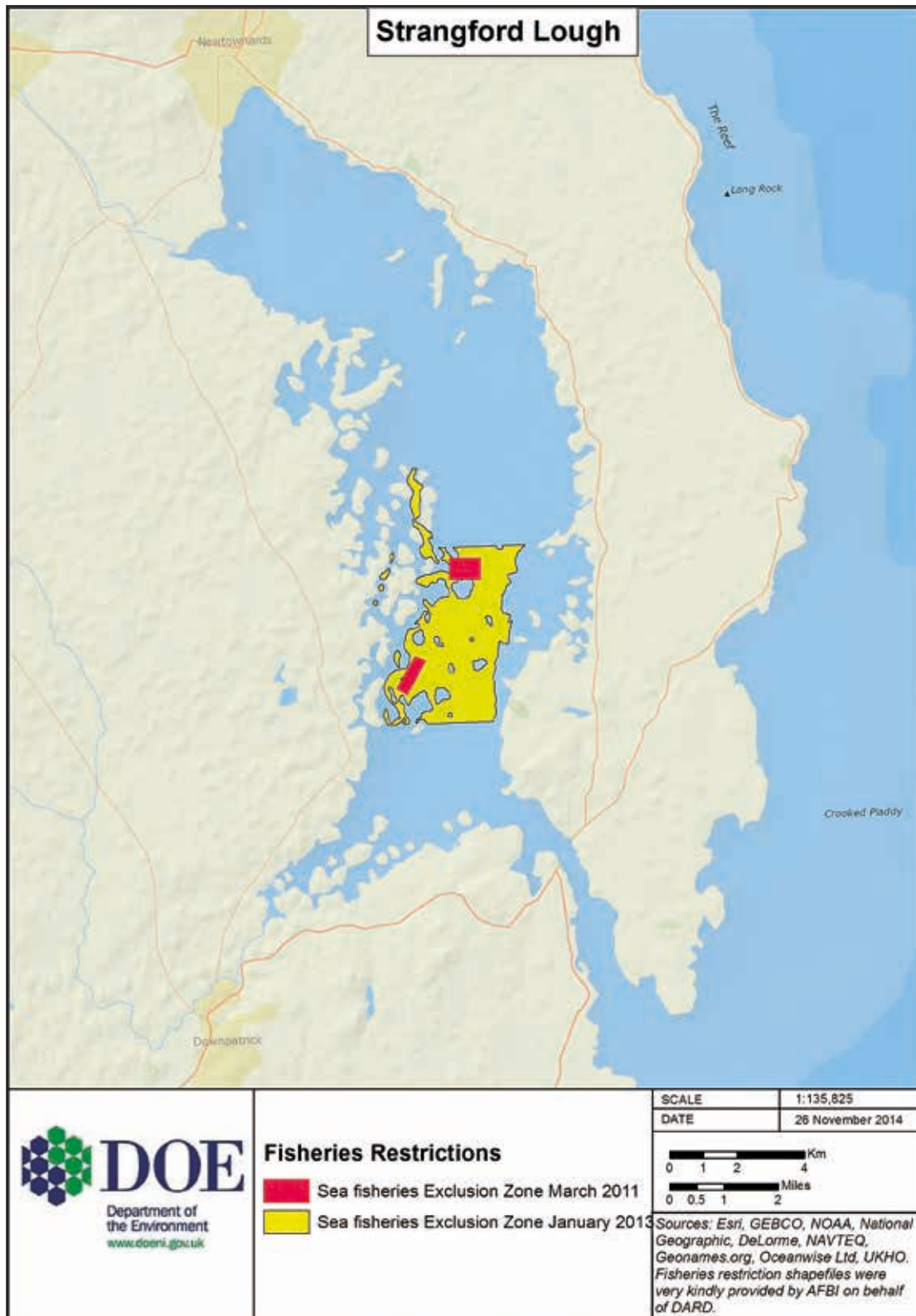
3.8 Concerns about the robustness of AFBI's February 2011 findings were raised by statutory bodies, environmental groups and the fishing industry. Perhaps most significantly, the Council for Nature Conservation and the Countryside (CNCC), the statutory advisor to DoE on matters relating to nature conservation, advised that the marine biologist heading the Countryside Council for

Wales's investigation had confirmed his work was not designed to look at the impact on pot fishing on *Modiolus* reefs and it did not demonstrate that potting had no impact.

3.9 In response to concerns raised by stakeholders, AFBI produced a final HRA in February 2013 that concluded "there is no evidence to suggest that pot fishing activities within Strangford Lough are negatively impacting the designated features". However, AFBI now supported the establishment of a total exclusion zone "in recognition of the potential sensitivity of recovering *Modiolus* reefs to physical disturbance". The final assessment did not refer to the research in Wales, the inclusion of which originally had been subject to criticism from the CNCC.



Figure 1  
Strangford Lough Sea Fishery Exclusion Zones



## Part Three:

### The introduction of non-disturbance zones - an essential element of the Restoration Plan - was long delayed and initially limited in its extent

- 3.10 The imposition of non-disturbance zones (including disturbance by potting, anchoring and diving) was an essential element of the 2005 Restoration Plan. DARD, as the body responsible for the regulation of fishing and aquaculture in the Lough, was responsible for identifying and establishing the zones<sup>5</sup>. In its consideration, DARD gave extensive weight to the views of the fishing industry which strongly opposed the implementation of non-disturbance zones in the absence of definitive proof that pot fishing damaged the *Modiolus* reefs.
- 3.11 The identification of the extent of the non-disturbance zones was Objective No. 1 within the Restoration Plan. Initially therefore, DARD delayed a decision on the extent of non-disturbance zones awaiting further information from the *Modiolus* Restoration Research Project. In early 2008, based on the findings of the 2003 SLECI review (see paragraph 2.1), DARD proposed banning pot fishing in two small areas of the Lough (indicated in red at Figure 1). However, as the research project progressed, its surveys had identified further areas of live *Modiolus* outside the two proposed exclusion zones: by June 2010 surveys had revealed four new areas of *Modiolus*. The Chair of the *Modiolus* Restoration Research
- Group recommended that all four areas should be protected by a larger, single exclusion zone (marked in yellow at Figure 1), a recommendation supported by the CNCC and the NIEA.
- 3.12 DARD consulted NIEA when drawing up possible exclusion zones. In June 2007, the NIEA advised DARD that it was content with the exclusion zones then proposed by DARD. However, by June 2010, the NIEA considered that the two smaller exclusion zones proposed by DARD would be judged insufficient by the Commission should a further complaint be lodged. This view was reinforced by a December 2010 meeting between the Commission and the Departments. The Commission expressed its disappointment at the limited progress made since it withdrew the threat of infraction proceedings in December 2006. Its view was that it was now more critical than ever to have exclusions zones in place to protect the remaining biogenic reefs.
- 3.13 Despite the Commission's reservations, in March 2011 the two small areas identified by the SLECI review in 2003 were designated<sup>6</sup> as non-disturbance zones and total fishing bans were imposed. This solution was acceptable to DARD, the NIEA and the fishing industry. The ban was not extended to the new areas of *Modiolus* discovered by the research project. DARD told us that the delay in introducing non-disturbance zones was, in part, due to direction from the Committee for Agriculture and Rural Development

5 DARD was responsible for the fishing element of the exclusion zones and not activities such as anchoring or diving.

6 The Strangford Lough (Sea Fishing Exclusion Zones) Regulations (Northern Ireland) 2011



in September 2009. The Committee insisted that DARD took account of the views of the fishing industry to determine the location and size of the area to be zoned. However, this only became an issue after the Restoration Plan target to identify, map and introduce total protection for the remaining *Modiolus* by September 2007 was missed.

- 3.14 In our view, DARD was too slow to act to implement non-disturbance zones and it was unwise to limit those zones to the two small areas identified by the SLECI review in 2003 when that research had been overtaken by the emerging findings of the *Modiolus* Restoration Research Project. DARD should have been much more focused on arriving at a solution that would meet its legal obligations and satisfy the Commission's requirements given the risks involved in failing to do so.

### **DARD did not implement the recommendation of the *Modiolus* Restoration Research Group to extend the non-disturbance zones for almost two years**

- 3.15 The final report of the *Modiolus* Restoration Research Group was published in May 2011. It found the *Modiolus* reefs remained in unfavourable conservation status; the decline in the reefs had not been halted and *Modiolus* beds were much reduced in extent, density and condition. The increased intensity of pot fishing remained a

threat to the *Modiolus* reefs. The report recommended the imposition of a single large total exclusion zone, in the centre of the Lough, covering the bulk of the remaining *Modiolus* communities. In light of these findings, the Independent Chair of the Strangford Lough *Modiolus* Restoration Implementation Group, Professor Ray Seed, recorded his "serious concerns regarding the limited size of the protected zones in Strangford Lough". He considered that this scheme weakened other efforts by his group and "undermined the scientific validity of their work".

- 3.16 In January 2012, DARD proposed to the Commission that two further small non-disturbance zones be introduced. The Commission found this unacceptable and a completely inadequate response to the UWT's November 2011 complaint. It was not until January 2013, that DARD extended the fishing exclusion zone in the Lough to encompass the larger area which had been recommended by the Strangford Lough *Modiolus* Restoration Implementation Group 22 months earlier.

- 3.17 The *Modiolus* Restoration Research Project successfully completed some essential elements of the Restoration Plan: it mapped the extent of the reefs and researched the prospects of natural recovery and the scope for intervention action to artificially restore the reefs. The Research Project was published in May 2011, five and a half years after publication of the Restoration Plan and within the agreed contract terms. The interim Post Project Evaluation of October 2011, completed by DoE, found:

## Part Three:

- The objective of identifying and mapping the remaining *Modiolus* biogenic reef sites within one year of adoption of the Restoration Plan was 'almost impossible...because of the patchy and fragmented nature of *Modiolus*'.
- The Research Project was too short to take action to reverse the decline in the *Modiolus* biogenic reefs and demonstrate a move towards 'recovering status'.

3.18 In our view, DARD was largely responsible for the lack of progress in implementing many of the essential elements of the Restoration Plan. Nevertheless, the Plan contained short and long term objectives agreed by both Departments - such as completion of the short term objective of identifying, mapping and introducing total protection of remaining *Modiolus* biogenic reef sites within one year - which were simply unachievable within the agreed timescales (see Appendix 6).

### The failure of the Restoration Plan to fully meet its objectives led to a second infraction case

3.19 In view of the Departments' failure to fully meet some of the objectives of the Restoration Plan, in November 2011, the UWT brought a complaint to the Commission (see Appendix 6). The grounds for the complaint included:

- DARD's failure to carry out an acceptable Habitats Regulation Assessment on the impact of pot fishing within the Lough.
- DARD's imposition of two small fishing exclusion zones in March 2011 which fell far short of the zones proposed in the 2005 Restoration Plan, were seriously outside the timescale of total protection within one year, did not provide total protection for the existing and damaged *Modiolus* reefs as identified in the Restoration Plan and did not encompass newly surveyed *Modiolus*.

The Departments' responses to the resulting infraction proceedings are considered in Part 4 below.

3.20 We can only conclude that there was an unacceptable delay, of at least seven years, in completing an adequate Habitats Regulation Assessment of the impact of commercial fishing on the *Modiolus* reefs. The assessment was clearly required both by the Habitats Directive and under the terms of the 2005 Restoration Plan. AFBI's February 2011 initial draft assessment of the impact of pot fishing on *Modiolus* was criticised by stakeholders and required revision. During this period, DARD clearly did not give sufficient weight to its obligation under Article 6 of the Habitats Directive to take preventative measures against an activity which was potentially damaging to the *Modiolus* reefs. The process of identifying and implementing

non-disturbance zones, for which DARD was responsible, was also long-delayed. DARD told us that given the risks to *Modiolus* reefs were believed to be from mobile rather than static fishing gear, total protection of the reefs was established in 2003 by its prohibition on trawling and dredging. The Department was rightly conscious of the desire to protect the relatively small pot fishing industry on the Lough: however, the significant risk of incurring multi-million pound infraction fines was well known. In our view, DARD should have taken more urgent action to deliver a solution that met its legal obligations and satisfied the Commission's requirements in the face of this risk.

### Recommendations

- 3.21 Habitat Regulation Assessments should be conducted without undue delay and they should be subject to an appropriate peer review process.
  - 3.22 In any future consideration of proposals to restrict commercial fishing for environmental reasons, DARD should strike an appropriate balance between protecting the fishing industry and safeguarding public funds from the risk of infraction fines.
-



## Part Four:

The Departments' response to the second complaint to  
The Commission



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## Part Four:

### The Departments' response to the second complaint to The Commission

#### The Commission formally opened infraction proceedings on the grounds that inadequate progress had been made in implementing the Restoration Plan

4.1 The Commission formally opened infraction proceedings against the UK in March 2012. It found that the failure to progress measures to protect and restore the reefs was a breach of the UK's obligations under the Habitats Directive. The failure to honour the promises given in the 2006 agreement closing the 2003 infraction case also breached the Treaty on European Union. In a strongly worded letter of March 2012, the Commission asked for a formal explanation of the failure to introduce total protection for the reefs; to control the increase in pot fishing; and to implement any restoration work for damaged *Modiolus* reefs, six years on from the publication of the Restoration Plan.

#### The Revised Restoration Plan provides for total protection, investigation of options to restore the reefs and more robust monitoring arrangements

4.2 In October 2012, DARD and DoE agreed a Revised Restoration Plan for Strangford Lough, informed by ongoing discussions with key stakeholders and with Commission officials. Some critical actions outlined in the plan have already been introduced<sup>7</sup>:

- In January 2013, DARD introduced the non-disturbance zone in the area recommended in 2011 by the Strangford Lough *Modiolus* Restoration Implementation Group. Commercial fishing of any kind is banned in this area.
- DARD appointed a dedicated Fisheries Officer for Strangford Lough, responsible for ensuring compliance with the fishing ban.
- DoE appointed a Strangford Lough Ranger who will ensure bye-laws restricting anchoring and mooring in the non-disturbance zone are followed.
- DoE funded a three year post-doctoral research post in Queen's University Belfast as an initial step in developing intervention methods to aid *Modiolus* recovery, with a view to conducting a large scale project to relocate healthy areas of reef to the Lough. The restoration element of the Revised Restoration Plan will be overseen by a Restoration Working Group involving both Departments, AFBI, QUB, UWT and Seafish<sup>8</sup>.

4.3 In the Revised Restoration Plan, DARD undertook to address the potential for the displacement of pot fishing into areas of the Lough outside the non-disturbance zone, and to introduce a pot fishing permit scheme by 30 September 2014. AFBI has conducted some initial research into the capacity of the Lough to support

<sup>7</sup> All DARD controlled fisheries related critical actions have been introduced.

<sup>8</sup> A non-Departmental Public Body set up by the Fisheries Act 1981 to improve efficiency and raise standards across the seafood industry.



pot fishing; this indicated that the area of the Lough now open to pot fishing could not sustainably support the current number of vessels. Options to reduce the number of vessels involved in pot fishing will be considered in a Pot Fishing Management Plan which DARD is currently developing in association with the fishing industry, based on a draft management plan proposed by the industry itself in 2008-09.

- 4.4 Regular monitoring is a key feature of the Revised Restoration Plan in order to determine the status of the reefs and the impact of intervention action. The Departments also undertook to commission experimental research on the impact of pot fishing on *Modiolus*. AFBI will review its Habitat Regulations Assessment on pot fishing in the light of emerging scientific research.
- 4.5 Delivery of the Revised Restoration Plan will be monitored by an Interdepartmental Group of DoE and DARD officials. The Group will receive six-monthly reports from the *Modiolus* Restoration Plan Working Group and may commission peer reviews of the findings of scientific research. The Revised Restoration Plan is to be formally reviewed by the Departments in five years.

### **The Revised Restoration Plan has been accepted by the Commission**

- 4.6 In January 2014 the Commission advised the complainant (UWT) that it was satisfied that the proposed

plan, if delivered, will ensure DoE and DARD meet their obligations under the Habitats Directive. The Commission has proposed, subject to the agreement of the complainant, to close the infraction case. The UWT has confirmed that it is content with the Revised Restoration Plan and with the Commission's decision, and the infraction case is now closed.

### **The fishing industry has not been compensated for losses incurred as a result of the introduction of non-disturbance zones**

- 4.7 In January 2012, the Northern Ireland Assembly (the Assembly), passed a resolution calling on the Northern Ireland Executive to introduce measures to protect the Lough's *Modiolus* habitat in accordance with the requirements of the Habitats Directive and to "ensure that people who derive an income from the Lough are not economically disadvantaged". Despite representations from the fishing industry and local representatives, DARD has not introduced a scheme to provide financial compensation to the fisherman affected by the imposition of the non-disturbance zone in March 2011 or its expansion in January 2013. This response is of concern to the fishing community given its experience in 2003 when fishing by trawling and dredging was banned in the Lough. At that time, DARD accepted there was a case for compensation and surveyed fishermen to establish the extent of their financial losses. However, DARD was slow to progress the case for

## Part Four:

compensation, and it took several years of discussion with the Commission to establish that the proposed compensation package was outside state aid rules.

- 4.8 DARD intends to deal with the current compensation issue by developing, in the first instance, a Pot Fishing Management Plan in consultation with the fishing industry. This Plan would consider data on fishing capacity in determining whether a compensation scheme was appropriate. DARD has undertaken to provide financial assistance to fishermen, where appropriate, to purchase more sustainable fishing gear and introduce electronic vessel monitoring systems which would generate better data on fishing activity. A Strangford Lough Fisheries Partnership Group was established in May 2014 to progress such initiatives and meetings have taken place regarding the creation and operation of a "Strangford Pot" which could attract financial assistance.

### **The Commission will not tolerate failure to implement the Revised Restoration Plan**

- 4.9 In briefing the Assembly's Agriculture and Rural Development Committee in November 2013, DARD officials acknowledged that the Commission would have no tolerance of any failure to implement the Revised Restoration Plan:

"...the problem in the past has been a lack of urgency in implementing the original Restoration Plan. We must not make that mistake again. We must move forward and implement the Plan to the satisfaction of the Commission and others because there is going to be no second chance".

- 4.10 There is no scope for failure in implementing the Revised Restoration Plan within the five year timeframe, if the Northern Ireland Executive is to avoid significant financial penalties. There is an absence of reliable data on the fishing capacity of the Lough and the fish landed. The absence of such data undermines the effectiveness of any management plan for commercial fishing in the Lough and the sustainability of the fishing industry in the future.

#### **Recommendations**

- 4.11 The Departments should monitor and report on their progress against the Revised Restoration Plan. Periodic reports should be published and made available to the relevant Assembly Committees and other interested parties.
- 4.12 DARD should review its information requirements and the arrangements in place to generate data on landings and fishing capacity and should work with stakeholders, particularly the fishing industry, to improve the quality and quantity of available information.



- 4.13 DARD should agree a sustainable management plan with the fishing industry, based on a formal assessment of the fishing capacity of the Lough. If the management plan indicates that, following the introduction of a fishing permit scheme, a compensation scheme is required this should be progressed, in consultation with the fishing industry, without undue delay.
-



# Appendices



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## Appendix 1: Timeline of Events

Date	Event
Late 1970s and 1980s	Surveys of Strangford Lough show <i>Modiolus</i> reefs to be extensive throughout the Lough.
Late 1980s and 1990	Surveys carried out in the late 1980s and early 1990 revealed evidence of damage to <i>Modiolus</i> biogenic reefs.
May 1992	European Union governments adopted the Habitats Directive (the Directive), designed to protect the most seriously threatened habitats and species across Europe. The Directive requires Special Areas of Conservation (SACs) to be designated for species, and for habitats.
1993	Queen's University Belfast (QUB)/ DARD Survey shows major disintegration of the <i>Modiolus</i> reefs as a result of trawling and dredging. The Inshore Fishing (Prohibiting of Fishing and Fishing Methods) Regulations (NI) 1993 prohibits certain methods of fishing but not all forms of mobile fishing were banned.
1996	<p>Strangford Lough proposed by the UK Government for designation as an SAC under Article 4(1) of the Directive. The presence of clumped rare reef-forming <i>Modiolus</i> is one of the primary features of the Strangford Lough SAC.</p> <p>Strangford Lough is also a Special Protection Area under the Birds Directive, a Ramsar-designated wetland, an area of Special Scientific Interest and a Marine Nature Reserve.</p>
2001	<p>Strangford Lough Management Scheme launched for SAC and Special Protection Areas (SPA) with conservation and management objectives.</p> <p>Ulster Wildlife Trust warns of the potentially catastrophic loss of benthic biodiversity within Strangford Lough.</p> <p>Concerns begin to be expressed that there had been a serious decline in <i>Modiolus</i> in Strangford Lough.</p>
December 2002	The QUB survey (in collaboration with DARD) indicates a severe decline in <i>Modiolus</i> reefs. The reefs are not now in Favourable Conservation Status. Habitat disturbance by mobile fishing gear has been identified as the most likely cause of the initial damage.
May 2003	DoE notifies DARD that the reefs were not in Favourable Conservation Status.
June 2003	DoE requests that DARD considers introducing a complete ban on trawling in the Lough. DARD responds that a ban will not be considered until further investigation work is completed.

Date	Event
October 2003	The Ulster Wildlife Trust makes a formal complaint to the European Commission regarding the conservation of Horse Mussels in Strangford Lough.
October 2003	DoE receives legal opinion stating that the departments are obliged, under Article 6 of the Habitats Regulations, to take preventative action to ensure no deterioration of a SAC designated feature takes place. Action is required in relation to all potential sources of deterioration: where an activity is a cause of concern it need not be the only or even the principle cause of the deterioration. The legal opinion confirms that failure to take preventative measures exposes the UK to a 'very serious risk of infraction' and to potentially large scale EU fines for breaches of Article 2 and 6 of the Habitats Directive. Also, under Article 6 of the Directive, member states must subject any activity to an appropriate assessment of its implications for the site in view of the sites conservation objectives.
October 2003	The Council for Nature Conservation and the Countryside (CNCC) advises DoE of its concern at the lack of action and reinforcing the EC view that "Where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation".
November 2003	SLECI's interim findings confirm that the reefs were no longer in Favourable Conservation Status and identified trawling as the most likely causative factor.
December 2003	DARD implements a temporary ban on use of mobile gear for fishing in Strangford Lough; this is extended indefinitely in September 2004.
June 2004	SLECI's final report painted a picture of widespread damage to the reefs and recommended the limiting of any practices likely to cause further damage; better data on the extent and condition of Modiolus communities; and implementation of a programme of restoration.
May 2005	The Lough was formally designated as a Special Area of Conservation.
January 2006	Draft Restoration Plan submitted to the Commission.
June 2006	Commission requests amendments to the draft Restoration Plan. DARD informs EC that regulations to prevent potting in the zoned areas of the Lough would be in place by the autumn of 2006.

## Appendix 1: Timeline of Events

Date	Event
July 2006	Specifications drafted for a research project to deliver technical aspects of the Plan (the Modiolus Restoration Research Group (MRRG) project).
September 2006	Commission request for submission of the finalised Restoration Plan; completed by DoE.
November 2006	Draft economic appraisal submitted to DoE Finance Division and Department of Finance and Personnel (DFP) for comment.
December 2006	The infraction case against NI on the deterioration of Modiolus reefs in Strangford Lough is closed by the EC.
March 2007	Economic appraisal completed after input from DFP. DFP was supportive of using an existing research contract with QUB to progress the research element of the Restoration Plan. The economic appraisal was cleared by DoE's Economists and passed to DFP for final approval.
April 2007	DFP's Central Procurement Directorate (CPD) advises DoE that the contract to progress the Restoration Plan should be let via open competition, possibly through the European Journal.
June 2007	Advertisement for contract placed on CPD's website but subsequently withdrawn after as DARD required revisions – it had not been involved in drawing up the tender specification. A revised advertisement is listed in the European Journal in October 2007.
December 2007	Contract awarded to Queen's University, Belfast. The contract price is £969,779, to be jointly funded by DARD and DoE.
February 2008	Work on the Restoration Plan via the Modiolus Restoration Group Project (MRRG) project begins.
September 2009	The Strangford Lough Fishing Exclusion Zone Regulations (NI) 2009 was considered by the Assembly's Agriculture and Rural Development committee. The Committee, while agreeing in principle with the need for the fishing exclusion zones, was not satisfied that the zones as proposed were properly placed and considered that the proposals lacked stakeholder agreement. The Committee asked the departments to consult relevant stakeholders again and come back with proposals which would garner wider support.
February 2010	Discussions with stakeholders on the extent of the fishing exclusion zones and recognition that there was a lack of data on the quantity and quality of Modiolus and the extent of damage.

Date	Event
February 2011	AFBI produces the Habitats Directive Article 6 Test of Likely Significance on Pot Fishing within Strangford Lough SAC. The report draws the conclusion that pot fishing does not significantly impact on the Modiolus reefs.
March 2011	The Strangford Lough (Sea Fishing Exclusion Zones) Regulations (Northern Ireland) 2011 come into operation, six years after it was first proposed in the restoration plan. All fishing by any sea-fishing boat is prohibited within two specified zones.
May 2011	Final report of the Modiolus Restoration Group Project delivering the technical aspects of the Modiolus Restoration Plan. It found the Modiolus reefs remain in unfavourable conservation status, the decline in the reefs had not been halted, and Modiolus beds remain much reduced in extent, density and condition. Remaining threats to the Modiolus included increases in water temperature, eutrophication, disease and an increase in the intensity of pot fishing. However, experience in New Zealand was that Modiolus could recover naturally, over long periods, if undisturbed. The report recommended the imposition of a single large total exclusion zone, in the centre of the Lough, covering the bulk of the remaining Modiolus communities. It also recommended an annual programme of monitoring and the establishment of at least one new artificial reef.
June 2011	Independent Chair of the Strangford Lough Modiolus Restoration, Professor Ray Seed records his "serious concerns regarding the limited size of the protected zones in Strangford Lough" and considered that this scheme "weakened other efforts by the MRRG and undermined the scientific validity of their work". His view was that in other parts of the world, total protection would be the norm.
November 2011	UWT makes a second complaint to the EC regarding the failure to make substantial progress in implementing the 2005 Restoration Plan.
January 2012	DARD proposals for two further small non-disturbance zones are not acceptable to the Commission which favours the Modiolus Restoration Group's recommendation to impose one large zone covering the central area of the Lough.
March 2012	The European Commission formally opens infraction proceedings against the UK in respect of Strangford Lough.
October 2012	A draft Revised Restoration Plan is passed to the Commission.

## Appendix 1: Timeline of Events

Date	Event
January 2013	The Strangford Lough (Sea Fishing Exclusion Zones) Regulations (Northern Ireland) 2012 come into operation on 8th January 2013.
September 2013	Strangford Lough becomes Northern Ireland's first Marine Conservation Zone.
2014	DARD and DoE worked together to implement a Revised Restoration Plan for Strangford Lough, informed by ongoing discussions with key stakeholders and with officials in the European Commission. In January the Commission advised the complainant (UWT) that it was satisfied that the proposed plan, if delivered, will ensure DoE and DARD meet their obligations under the Habitats Directive. The Commission has proposed, subject to the agreement of the complainant, to close the infraction case. UWT has indicated that it is content with the revised plan and with the Commission's decision, subject to the introduction of a suitable permit scheme for pot fishing by end of September.

Source: NIEA/NIAO



## Appendix 2: Northern Ireland Fish Producers' Organisation Response

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(Registered No. IP 152)

Chief Executive/Secretary: Mr R.H. James



Northern Ireland Audit Office  
106 University Street  
Belfast  
BT7 1EU

18<sup>th</sup> February 2013

Dear

Strangford Lough SAC

The fishermen of the Strangford Lough Fishermens Association have always been aware of the sensitive nature of the environment in which they ply their trade and have always been proactive in proposing measures to alleviate environmental concerns.

These fishermen over the years have proposed many initiatives such as the zoning arrangement of 1993 and associated technical measures. In 2008 & 2009 proposals were put to DARD on the management of the Strangford Lough fishery. Consultation followed.

To supplement the proposed regime an application was worked up in 2010 and submitted to DARD for EFF grant aid funding. This was done in November 2010 & since then the applicant (NIFPO) has heard nothing back from DARD although recognition of receipt of the application can be found on the website.

Significantly what the fishermen proposed in 2010 is very similar with management proposals being discussed today. If the project & plan had been adopted it could well be that the complaint made by the Ulster Wildlife Trust would have been pre-empted and the threat of infraction forestalled.

Papers enclosed.

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## Appendix 2: Northern Ireland Fish Producers' Organisation Response

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Northern Ireland Audit Office  
106 University Street  
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15<sup>th</sup> February 2013

Dear Sir,

### Strangford Lough SAC

The fishermen of Strangford Lough are now facing a closure of 40% of their fishing grounds as a consequence of the new Modiolus restoration project. I have written to you under other cover of the effects of the previous mobile gear closure in terms of financial impact on the fishermen. Since 2003 we have seen two heavily funded projects one to establish the cause of Modiolus decline (SLECI) and a second to restore the Modiolus community in the Lough. Both of those projects failed as SLECI failed to find a cause for the decline and the restoration project may be deemed a failure as there are less Modiolus in the Lough now than when the project started.

The proposal now is for a third project again Government funded employing the same principal that undertook the first two projects using the similar and probably same strategy which will come to the same conclusion i.e. don't know the cause of the decline and can't reverse it. Comments made by Roger Mann at the SLECI conference on 30/31 March 2004 and the debate at that conference can now be seen to be prophetic.

We presented evidence to the Environment Committee of the Assembly twice and in the debate in the Assembly in January 2012. The Assembly resolution following that debate was that the fishermen would not be financially disadvantaged as a consequence of Modiolus protection. Subsequent to the closure of the mid section of the Lough to fishing on 8th January 2013 we have had one meeting with DARD officials on the issue of future management of the Lough. No compensation is to be forthcoming and the best they could come up with for taking a fisherman's livelihood was to offer him the value of his boat if he scrapped his boat i.e. nothing more than a fisherman would get if he sold his boat!

I think it would be important to establish what the economic losses are to the fishing community as a result of this closure and what impact it has had on employment around the Lough if only to inform the Assembly. An exercise similar to the Jim Watson survey of 2004 should be undertaken and this time including the buyers of the fish harvested from the Lough.

In 2009 DARD issued a consultation paper on fisheries management measures for the Lough developed by the Strangford Lough Fishermens Association. Consultation response was favourable but the plan was never continued. If it had been then perhaps there would have been less grounds for complaint from the Ulster Wildlife Trust.

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Lynn Gilmore is to provide you with a timeline of recent events and the consequences and I attached the agenda for the SLECI meeting (we have the presentations made if you require them) a briefing note and the Consultation paper referred to above.



## Appendix 2: Northern Ireland Fish Producers' Organisation Response

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Northern Ireland Audit Office  
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BT7 1EU

15<sup>th</sup> February 2013

Dear Sir,

You have requested I write to you on the issue of compensation for the 2003 closure of Strangford Lough to mobile gear.

There are two issues:-

The first is in respect of a project undertaken by the Strangford Lough Shellfishermans Cooperative in the late 1990's and early years of 2000. This was a project to re-introduce Native Oysters into the Lough. The outline of the project is enclosed with this letter labelled Oyster. Basically the Department of Agriculture supported the Co-operative scheme to re-introduce native oysters into the Lough by several means. This was seen as an environmentally positive project and also a commercial one. In effect the promise of an oyster fishery encouraged the fishermen to embark on a restoration program which would yield estimated annual revenue of £200,000+. The project worked and a species once common in the Lough latterly extinct was re-introduced and in the summer of 2003 an extended fishing trial took place which confirmed the viability of the fishery. The mobile gear ban in December 2003 prevented the harvesting of the oysters after £100,000 had been invested. Furthermore the co-operative had lease agreements with the Crown Estate which involved costs which had to be met despite the ban resulting in a loss of means to make the monies needed to fulfil the obligation.

There has been several projects done by Queens University which details the recovery of Native Oysters in the Lough due to the Co-operatives work. One by Richard Kennedy one by David Smyth.

An appeal was made to the Water Board on the legitimacy of the closure was lost. No compensation was paid.

The second issue is the promise of compensation which was made by DARD for the loss of the mobile gear fisheries based on Nephrops, Queen Scallops and King Scallops. An economic impact assessment was commissioned by DARD and was undertaken by an economist called Jim Watson from Seafish. This study was to quantify losses with an assessment of compensation due. I enclose in bundle labelled Fishery correspondence on this and EU legislation detail on applicability of using EFF funds for this. The letter sent from Watson to DARD which summarised all the affected claims we do not have but we understand DARD have recently been provided with a copy by Seafish. We only have the assessment made in respect of A O'Neil & D Clarke.

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We now have a second round of losses following the closure of the static gear fishery in the Lough & I enclose a letter I have written to John Speers of the accuracy of the Article 6 assessment particularly on the extent of lost fishing grounds.

Despite a promise in Assembly debate in January 2012 that fishermen would not lose financially from any protection afforded to Modiolus in the Lough no efforts are being made to substantiate losses. What is happening in that even more money is being given to Queens University to resurrect a project which has failed twice before under their stewardship.

Trust the above is helpful.

## Appendix 3: Strangford Lough *Modiolus* Restoration Implementation Group Chair Response

### Ysgol Gwyddorau Eigion

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Northern Ireland Audit Office  
106 University Street  
Belfast BT7 1EU

2<sup>nd</sup> January 2013

Dear

Thank you for your correspondence of December 10<sup>th</sup> 2012 concerning the “**NIAO Review of Strangford Lough EC Pilot Infraction Case**”. I apologise for the delay in my response to your letter but trust that you received my earlier, pre Christmas, e-mail message explaining the reasons behind this delay.

As a marine scientist with a long-standing interest in the ecology of Strangford Lough generally, and horse-mussel (*Modiolus modiolus*) reefs in particular, I was invited in 2005 by what was then the Environment and Heritage Service (EHS) of the Department of the Environment (DOE) to help formulate an action plan designed to help restore the Strangford Lough Special Area of Conservation (SAC) to Favourable Conservation Status, and subsequently, to serve as independent Chairperson of the “**Strangford Lough Modiolus Restoration Implementation Group (SLMRIG)**”, which would be responsible for overseeing this restoration plan. The final version of the action plan was submitted to and agreed by the European Commission in 2006 but, regrettably, was not initiated until early 2008. Between 2008 and 2011 SLMRIG met at least twice a year to consider interim reports and recommendations from the **Modiolus Restoration Research Group (MRRG) Field Team** based at the Queen’s University Marine laboratory in Portaferry. The comprehensive Final Report and Recommendations of this research group were considered by SLMRIG in the summer 2011. You ask specifically about the handling of this issue by the two relevant government departments- the Northern Ireland Environment Agency (NIEA) and the Department of Agriculture and Rural Development (DARD).

- the views and concerns of key **stakeholders** were, I believe, fully considered and sympathetically addressed at all stages of the implementation plan either directly or indirectly via representatives on SLMRIG. In addition to those representatives from **DARD (Fisheries Division)** and the **DOE (Northern Ireland Environment Agency)** SLMRIG also included representatives from the **Council for Nature Conservation and the Countryside** and from the **Strangford Lough Management Advisory Committee**. All scientific reports from



MRRG and minutes of SLMRIG meetings are in the public domain. Furthermore, the Queen's University Research Team hosted at least **2 open day conferences** in Portaferry at which their most recent scientific findings were presented and discussed.

- **actions** taken to implement the restoration plan were **generally** both appropriate and timely. There were, however, some notable exceptions. For instance it was never satisfactorily explained (to me at least) why there was such a protracted (almost 2 years) delay between the acceptance of the implementation plan by the EC and its eventual implementation. In mitigation, however, it should perhaps be recognised that an appropriate funding programme for this ambitious and expensive project had to be organised before the Field Team could be assembled. Perhaps more seriously, one of the most important **short-term objectives** to the restoration plan approved by the EC, ie **"...(the) total protection for the remaining *Modiolus* biogenic reefs within 1 year of the adoption of this plan....."**, was never satisfactorily addressed during my time as Chair of the Implementation Group. This failure to establish adequate protection zones in which there was a **total ban on fishing activities** and which potentially undermined the interpretation of the key research findings and recommendations of the Field Team, appeared to stem from the sensitivities accorded to the strong fisheries lobby with vested interests in the Lough.

- whilst the **two relevant departments** were represented on SLMRIG there always seemed to be a conflict between **fisheries and environmental interests**. This conflict sometimes surfaced at meetings of SLMRIG and effectively prevented one of the central recommendations of the restoration plan agreed with the EC from being implemented (see above). Throughout my time as independent Chair of the Implementation Group I was surprised not to have been approached either by the EC or, with one exception (a brief letter from the then Minister of Agriculture and Rural Development in early 2011), by the relevant Ministers in Stormont regarding progress with the Restoration Action Plan. It was my impression that some senior Northern Ireland politicians never actually took the threat of infraction seriously and that paying lip-service to the agreed Restoration Plan was all that was required to avoid infraction proceedings. My term as independent Chairperson of SLMRIG finished in June 2011- I understand that more recently, as personnel within the departments have changed, cooperation has improved quite significantly.

I hope that these few comments are helpful to you. The issue of restoration of the ecologically important, highly biodiverse, *Modiolus* reefs in Strangford Lough is extremely complex particularly given the potential longevity of horse mussels, and **full restoration** may never be attainable. It will take several more years of protection and careful monitoring of selected sites within the Lough before we will know whether restoration remains on track but the detailed scientific information so far accumulated by the Queen's research team does suggest that there are reasons to be cautiously optimistic. The well-being of the Lough as a whole would certainly be facilitated through more integrated management rather than the fragmented approach, with too many interested parties often with conflicting interests, that has tended to prevail hitherto.

Should you require any further information regarding this issue then please do not hesitate to contact me either at the above address

## Appendix 3: Strangford Lough *Modiolus* Restoration Implementation Group Chair Response

Your sincerely

Dr. R. Seed  
Emeritus Professor of Marine Ecology  
Bangor University



# Appendix 4: Strangford Lough and Lecale Partnership Advisory Committee Response



No. 1 The Square, Portaferry, County Down,  
BT22 1LW

Tel: 028 4272 8886

The Controller General  
Northern Ireland Audit Office  
106 University Street  
Belfast  
BT7 1EU

20 March 2013

Dear Sir,

I am writing on behalf of the Strangford Lough and Lecale Partnership Advisory Committee in response to the NIAO Review of Strangford Lough EC Pilot Infraction Case.

In this response the term *Committee* and *Advisory Committee* is used to refer to the current Strangford Lough and Lecale Partnership Advisory Committee and its predecessor the Strangford Lough Management Advisory Committee. SLLPAC comprises 20 stakeholder organisations with a total of 25 representatives. (Ref 14)

## **A. How this issue has been handled by the two departments.**

The Advisory Committee consider that the two Departments (to varying degrees) have not handled this issue well. They both failed to give environmental monitoring, or assessment of the ecological and human interaction sufficient attention in the years prior to the SLECI report, nor is there a vision for the development of an environmental sustainable fishery and there is a concern that they continue to do so outside the *M modiolus* restoration area.

The present potential infraction situation has been exacerbated by the initial failure to properly monitor the seabed (and take subsequent management action). Prior to SLECI why were divers not used to “ground truth” data produced through remote surveying devices? Why was the decline in scallops landed not investigated as a potential sign of a problem on the seabed?

With respect to its statutory obligations vis a vis SPA / SAC monitoring and the SLECI recommendations, DOE has repeatedly been urged to act by the Committee. (Ref 5)

The long time taken to respond since the initial concerns were raised by divers has to be questioned and in the meantime activities which are now being banned were allowed to continue without any monitoring in place or any attempt to reduce their potential impact. Voluntary measures offered by local fishermen were not taken up.

No Article 6 Assessment was carried out by DARD when potting increased dramatically following the ban on trawling and dredging in 2003. This was despite repeated requests (Ref 1) from the Advisory Committee, in line with the requirements of the Habitats Directive, for such an assessment.

DARD granted an aquaculture licence at a time when the Committee had reached agreement amongst stakeholders that there should be a moratorium on development. No appropriate assessment appears to have been undertaken as none was made available to Committee or to DOE.

The Committee’s perception is that DARD do not recognise that they are managing a fishery in an environmentally sensitive area. They have made concessions to the environment only under threat of infraction (Ref 2). This is contrary to the ecosystem approach and the spirit of the Habitats Directive and is likely to lead to further threats of infraction in the future.

DOE seems to have been unable to ensure that DARD takes their environmental responsibilities seriously despite DARD having specific environmental powers under the Fisheries (Amendment) Act (Northern Ireland) 2001. Perhaps more robust leadership and firm direction is required within DOE to undertake this function. This may in part be down to a lack of robust leadership and direction within DOE.

# Appendix 4: Strangford Lough and Lecale Partnership Advisory Committee Response



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DARD used SLECI data to identify the Sea Fisheries Exclusion Zones, March 2011 (ref 31), at that time and long before these zones were introduced more recent data was available through the *Modiolus* Restoration Programme and could have been used. Why was it not?

DARD have not provided specific catch data for the purpose of managing the Lough (either before or after the ban on mobile gear fishing) and do not appear to have encouraged or assisted fishermen to take on board the Lough's wider interests.

The Departments tend to focus exclusively on the crisis in hand while tacitly allowing future crises to develop.

There is still no evidence of a wide-ranging comprehensive survey of the Lough that is needed or a commitment to the development of an environmentally sustainable fishery. (Ref 10)

DARD's NI-wide survey (Ref 3) was on a scale that Strangford Lough details could not be identified and was therefore not useful with respect to the condition of *M. modiolus*. However DARD has repeatedly cited its findings as evidence with regard to the Lough.

## **B. The extent to which stakeholders were consulted and their concerns addressed**

As described above, on this issue, the Committee has repeatedly had its concerns deferred, ignored and, where responses have been given, these have either not addressed the issues, or provided comment based on inappropriate or out-of date data.

Committee minutes over the last 10 years have frequently mentioned the urgent need for action and requested information about progress of surveys and action, etc. (Ref 1, 2,3, 4) The Strangford Lough Management Plan (2000-2003) states " *It is recognised that for some communities, the information available is very limited and related biotopes have not been fully identified. For this reason the completion of broadscale surveys is a priority under the management scheme*" (Ref 8). No such survey happened.

This lack of response from Government is extraordinary in view of the representative nature of the Committee and its formal advisory role.

The Advisory Committee, established by the Minister for the Environment, represents the opinion of the wide range of stakeholders (Ref 14) concerned with the heritage of Strangford Lough and Lecale. Its advice is formulated through extensive consultation and discussion and its value lies not only in its objectivity but also in its applicability and in the likely local / stakeholder support for any initiatives it recommends ie real management. By ignoring the Committee not only is there a waste of public funds but also a loss of stakeholder goodwill to implement the very management that Government purports to support.

The Committee has some UK or NI-wide organisations which in some instances also comprise many organisations (NIEL, SportNI, etc). Since Strangford Lough is of local, regional, national and international importance, both with respect to its protection and its use, the Committee can provide much more than local insight and can draw on a high quality of professional advice. It is facilitated by an Office which also has a high level of professional expertise and local knowledge to draw upon.

In 2003, (Ref 1) the Advisory Committee (AC) identified the need to establish a presumption against aquaculture development (including current applications) in the Lough until such time as adequate environmental information was available. The AC, in its report in 2005, recorded that it had written about this to, among others, DARD (Ref 1c) and EHS, highlighting their responsibilities under the SAC designation.

Despite this, in 2005 NW Shellfish were granted an aquaculture licence in an area where *M. Modiolus* had previously been identified. DOE stated that they had also not seen the appropriate assessment for this proposal.



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The Committee commends the DOE for setting up an EHS Aquatic unit in 2003 as this had been one of the Committee's recommendations (it has since evolved into the Marine Unit). This (Ref 5) was welcomed by the AC.

EHS observer Mr Seymour suggested that SLMAC write to the Chief Executive of EHS urging the need for a broadscale survey. (Ref 1) A letter was sent (Ref 1a) While the reply (Ref 1b) refers to broad-scale survey, this is not comparable to the multi-habitat; holistic, whole-of-lough survey looked for by the AC and required for the SAC. Such a survey and its correlation to human activity is even more important now, since nothing is known of the effects of displacement and concentration of pot fishing effort in non-excluded parts of the Lough.

DARD do not appear to have engaged in constructive discussion with local fishermen. Not until January 2013 have they included Strangford Lough fishermen as part of the Modiolus Restoration Working Group (Ref 9)

However the Revised Restoration Plan (2012) merely indicates that "The Restoration Working Group will establish channels of communication with the Strangford Lough Fishermen's Association".

Strangford Lough pot fishermen had been involved with others around NI to devise a code of conduct which they felt could have addressed many of the issues. DARD do not appear to have acknowledged this. More recently DARD did not include fishermen from discussions regarding the Exclusion Zones (apparently on the advice of their lawyers – Ref 9)

DARD declined to meet with the Committee, fishermen and DOE despite progress being made by the Committee with fishing interests to develop plans for a more sustainable fishery within the context of the wider management of the Lough. This narrow approach to management and lack of collaboration is part of the problem. (Ref 7)

### **C. If the action taken to address the issue with the Modiolus biogenic reefs was appropriate and timely**

The SLECI report Work Package 2 identified a 3.7km<sup>2</sup> reduction in clumped Modiolus communities between 1993 and 2000. Given the identification of a significant issue in 1993, identification of continuing deterioration in 2000, the lack of action till 2012 is neither appropriate nor timely. DARD and DOE have been very slow to implement the SLECI recommendations.

Since before 2003 (SLECI report) repeated requests for broadscale surveys of the Lough seabed in order to establish the ecology in which the M. modiolus is, or is not surviving have been met with, at best, partial, fragmentary dives, desk research, some ROV surveys, etc. Most of these are not comparable and therefore do not contribute to a comprehensive survey.

While delays in implementing some actions could have had financial reasons, there were at least two opportunities to identify and implement virtually cost-free actions. Strangford Lough Pot Fishermen had devised and offered to implement a Management Plan. The only commitment required from DARD was measures to ensure that non-local boats would not have access to either the voluntary exclusion zones or to the rest of the lough where local boats would be displaced to. Strangford Lough yachtsmen could have been amenable to a voluntary ban such as is now the subject of the bylaw. Both voluntary schemes could have been initiated many years earlier than 2012 and with much more goodwill than the current situation has engendered.

No measures were put in place in 2003 to monitor the level of catch from the pot fishery and / or provide such data for management purposes despite requests from the Advisory Committee. Such measures might have reduced the impact (if there was any impact) on any remaining Modiolus and would have shown that the Depts were managing the situation.

Since there is no evidence that pot fishing, anchoring, mooring or diving damaged or continue to damage M. modiolus, there's no guarantee that the restriction will make a positive difference. (Though DARD state (Ref 9) that they plan to commission research into the impact of pot fishing on Modiolus.) There's a worrying

# Appendix 4: Strangford Lough and Lecale Partnership Advisory Committee Response



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implication that enough has been done to prevent further damage. The final paragraph under monitoring in the Revised Restoration Plan (2012) mentions nitrates monitoring. The AFBI monitoring record is fragmentary, surface only and relates only to the Northern end of the Lough and to the Narrows – very different environments to where the *Modiolus* is found.

Turbidity monitoring at the North end of the Lough seems to have ceased in 2005, (<http://eservices.afbini.gov.uk/coastalmonitoring/default.aspx?s=Strangford+Lough&p=AvgSeaTurbidity>) though it was cited in the (First, 2011) *Modiolus* Restoration Plan Survey. (Ref 11, p 61) The *Modiolus* areas are, by implication from the restricted zones, in the middle of the Lough, where no abiotic monitoring is, or has been done. (Ref 13) Therefore there is no historic data applicable to *Modiolus* waters. The Green Island, Bird Island and Trawled areas infaunal surveys already show a sharp drop in *Modiolus* clumping from 2000 onward. (Ref 12) Overall, there seems to be no attempt to identify the cause of continuing *M. modiolus* decline.

The monitoring identified in the Revised Restoration Plan (2012) is unclear. What does a re-evaluation (i) mean? The infaunal survey (ii) of 30 additional points is not broadscale. The bathymetric and habitat-mapping (iv) survey is already late (“initiated during 2012”)

In the view of the SLLPAC, the actions taken by DOE and DARD were not timely. As regards to appropriate, there has been no work done to identify whether the restrictive actions (post 2003) have any bearing on the plight of *Modiolus*.

#### **D. Whether, in your view, the two departments co-operated effectively to address this issue.**

While the Committee’s early minutes mention apparent co-operation, (DARD/EHS Marine Science Sub-Committee, the presence of representatives of both on the SLMAC Environmental Monitoring Working Group)

DARD’s presence did not manifest as co-operative. Questions were addressed, but not answered appropriately or in context.

DARD has not joined the present Partnership of DOE and local councils) to take shared ownership of the area’s heritage management strategy. This seems to show a lack of commitment to bring the management of the fishery within the overall management system for the greater environmental and socio economic good.

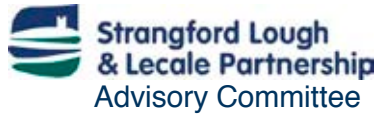
There are also concerns for DARD’s approach to date in examining the potential impact of intertidal winkle harvesting on the ecology. Their focus has been on the impact on stock levels disregarding the impact on the wider environment despite the Committee’s repeated calls for an investigation into the effect of shore based shellfish harvesting on the environment. (We understand that intertidal fishing is finally being considered under the most recent Review of Inshore Fisheries).

The Committee has observed obvious tension between senior officers of DOE and DARD at a number of meetings.

DOE seems to have been unable to ensure that DARD takes their environmental responsibilities seriously. The difference in *Modiolus* restricted areas relevant to fishing and to other activities may be the latest manifestation of a lack of co-operation and of fragmented management. (Ref 9). It is generally perceived amongst stakeholders that the rationale that the larger exclusion zone for pot fishing will provide a form of control area was developed after the fact.

In issuing consultation documents and press releases the Departments appear to have acted independently causing unnecessary concern and confusion amongst stakeholders.

The lack of co-operation only seems to exist at senior officer level. Both departments seem co-operative ‘on the ground’.



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Thank you for this opportunity to provide the Advisory Committee's insight to your investigation. Please come back to me if there is any further information or response we can give or if anything herein is unclear.

Yours sincerely,

Isabel Hood  
Chairman  
Strangford Lough and Lecale Partnership Advisory Committee.



## Appendix 5: Ulster Wildlife Trust Response

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Ulster Wildlife Trust

NIAO

106 University Street  
Belfast  
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12 February 2013

Dear

### **Strangford Lough Pre-pilot Case**

Further to your letter of 10.12.12 regarding the Strangford Lough complaint, please find enclosed:

1. A copy of the complaint letter submitted to the European Commission on the management of Strangford Lough, inclusive of appendices.
2. A dissertation on 'The Implementation of the Habitats Directive in NI: A Case Study on the Protection of Strangford Lough' written by Ben Matson, submitted as part of the requirements for a Degree of LLM in Environmental Law and Sustainable Development. This report drew upon a weight of evidence gathered over a substantial period of time and should provide answers to the queries outlined in your email (3.01.2013). The assessment informed the decision making process of the Ulster Wildlife Trust Council prior to submission of the complaint to the European Commission. This complaint was subsequently upheld by the Commission with the case then entering a pre-pilot phase.
3. A schedule of meetings held over an extended period of time at the request of UWT to highlight the continuing decline of the *Modiolus* reefs and the need for remedial action. This includes meetings with departmental officials and Ministers from both NIEA and DARD (see attached). We understand that concern was also expressed by CNCC, Strangford Lough and Lecale Partnership and several other eNGO's following the release of the QUB report. This should be evident from Departmental files.
4. A schedule of meetings and contacts following submission of the complaint has also been attached for information. These primarily relate to the preparation of the revised HRAs.



**Page 2 of 3**

UWT is currently represented on the Revised Restoration Plan (RRP) working group together with stakeholders from NIEA, DARD, QUB, AFBI, & Sea Fish with membership from the fishing community also being proposed. This group has met once to date (19/9/2012) and the Terms of Reference should be finalised at the next meeting planned for February/March 2013. In the interim period, UWT has provided scientific references and evidence to feed into the preparation of the revised HRAs through Dr Jade Berman and Dr Bob Brown, both of whom are qualified and experienced marine biologists.

We have recently received the final draft of the HRA and will consider this at our next Council meeting before responding to the European Commission. We would stress the importance of ensuring that a similar peer review approach is integrated as routine within the assessment process for any future activities that may have an impact on the integrity of SAC and SPA sites within NI, inclusive of specified features. As the Habitats Directive is environmental legislation and the precautionary principle applies, our view is that the advice of NIEA/DOE Marine Division should be actively sought, fully considered and incorporated into the HRA process at the outset. The EC now requires that all SACs and SPA's both terrestrial and marine must be assessed for their Conservation Status as part of the 6 yearly review and evidence of scientific monitoring must be provided for each of the features protected under EU Law. Previously submissions to the Commission have been based on 'expert opinion' however this is no longer acceptable.

Following the introduction of the 'Total Protection Zone', the issue of potential displacement will need to be actively managed for both fisheries and recreation. We understand that DARD is waiting for a reply from the Commission to confirm the acceptability of the proposals submitted by NIEA/DARD in response to the complaint. They will then progress a fisheries management plan for Strangford Lough to minimise the risk of further damage, identifying the carrying capacity of the Lough (based on science) and introducing a fishing permit scheme. We would hope to be consulted along with other key stakeholders as this management plan is developed.

You will be aware of the plenary session at the NI Assembly last week tabled by Simon Hamilton, M.L.A. where the need to consider a decommissioning scheme (or compensation for diminished returns) was agreed by all political parties participating in the debate. To achieve a sustainable future for the lough and reduce potential issues that may be caused by displacement following the introduction of the fishing exclusion zone, UWT would support the need for decommissioning within the Strangford inshore fishing fleet.

**Contd/.....**



## Appendix 5: Ulster Wildlife Trust Response

**Page 3 of 3**

Finally, due to the complexity of effectively addressing cross cutting issues that impact on more than one Department, the eNGO sector (inclusive of UWT) has consistently recommended that Government considers the formation of an independent Marine Management Organisation, similar to the approach adopted in Scotland. This would merge fisheries and environmental interests and should reduce the risk of similar problems arising in the future that could result in significant infraction fines for NI. Whilst it is fully recognised that there seems to be little political support for such a proposal at present, we would suggest that this is considered within the context of the investigation and as a minimum, joint working structures should be formalised and the performance of both departments reviewed in terms of collaboration to ensure compliance with EU environmental legislation.

I trust the attached documents will provide the information required for the NIAO investigation.

Yours sincerely

Jennifer Fulton  
**Chief Executive**

Encs

## Appendix 6: Ulster Wildlife Trust's 2011 complaint to the European Commission

Ulster Wildlife Trust  
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Northern Ireland  
BT30 9EP

Ms Sibylle Grohs  
European Commission  
Directorate - General  
Environment  
Legal Affairs and Cohesion  
B- 1049 Brussels  
BELGIUM

8<sup>th</sup> November 2011

Dear Ms Grohs

**Subject: Complaint on the Management of Strangford Lough SAC**

We are writing to you to make a further formal complaint regarding the management of Strangford Lough SAC by the UK and the Northern Ireland Governments.

Strangford Lough, is an SAC, and one of its designated features is the sublittoral horse mussel (*Modiolus modiolus*) biogenic reefs. The standard of protection afforded to this feature under the Habitats Directive has been of concern to us and others for a number of years.

The responsibility for compliance with the Habitats Directive in relation to Strangford Lough lies between two departments, the Department of the Environment (DOE) which is the primary competent authority, having responsibility for the transposition of the EU Directive and providing advice and guidance to other departments on it. The Habitat Regulations (the transposed legislation) places a duty on all Northern Ireland Government Departments to comply with and be bound by the European legislation,

We believe that the Northern Ireland Government has been and continues to be, in breach of the Habitats Directive in terms of its responsibilities in relation to the

## Appendix 6: Ulster Wildlife Trust's 2011 complaint to the European Commission

management of Fisheries within Strangford Lough and its responsibilities as a competent authority for the purposes of this Directive. This behaviour has continued despite earlier intervention by the European Commission in the context of enforcement proceedings and the Departments agreement to take specific action to remedy this situation.

### **1.0 Initial Complaint: Complaint 2003/5272**

In 2003 The Wildlife Trusts submitted a complaint to the European Commission over the "damaging activities" occurring in Strangford Lough. Friends of the Earth also submitted a similar complaint to Europe at this time indicating their concerns.

In 2004 an investigation report, the Strangford Lough Ecological Change Investigation (SLECI) report [Tab A], confirmed that damage had occurred and that the reefs were "no longer in favourable conservation status". The report made the connection of the continuing trawling and dredging in Strangford Lough with the damage which had and was occurring to the *Modiolus* reefs. The then Environment Minister, Angela Smith, put DARD on notice that if infraction occurred, that DARD would have to pick up the cost if they did not put a complete ban on trawling and dredging in the Lough. A temporary ban was introduced and later fully implemented. This was challenged at the Water Appeals Commission. The ban was accepted and has been in place ever since. However, since the ban came into place fishermen switched to potting for lobsters, and the issue of both legal and illegal potting activities came into question as to the damage that this activity may have on the *Modiolus* reefs. The issuing of licences for this activity were given by DARD without an Appropriate Assessment being undertaken for which they are the competent authority. DOE have no powers to ensure that DARD comply with this Habitats Directive requirement.

In response to an Article 226 letter dated 18.10.2005 being issued to the UK Government by the European Commission, an undertaking was given by the UK Permanent Representation to the EU that among a range of activities that a restoration plan would be put in place that would bring Strangford Lough, and specifically the *Modiolus modiolus* feature, into favourable condition. In 2005 the Strangford Lough

Restoration Plan was presented to the European Commission as the proposed route to compliance. This Plan was accepted by the European Commission. The Wildlife Trusts were informed that the enforcement proceedings were consequently closed by the European Commission on the basis that satisfactory action was being taken by the competent authorities.

## **2.0 The Basis for Our Second Complaint**

Six years after the formulation of the Restoration Plan it is clear to the Ulster Wildlife Trust that little, if any action, has been taken by the Department of Agriculture and Rural Development (DARD) to implement the terms of this Plan. This in turn has delayed the site specific restoration and remediation activities proposed by the Plan from having been implemented. Despite significant efforts on our part to urge and encourage action we have been left with no alternative but to make a second complaint to the European Commission. The Ulster Wildlife Trust believes that there has been a systemic and deliberate failure to honour the commitments set out in the Restoration Plan which has seriously compromised both the protection of the *Modiolus* reefs in Strangford Lough but undermined wider compliance with the Habitats Directive in Northern Ireland. DARD is a key institution tasked to collaborate in the implementation of the Habitats Directive in Northern Ireland. We believe that this scenario reflects the Department's disregard for its commitments to the European Commission and the Directive in general. The scenario has also revealed the inability of the Department of the Environment to compel compliance and also the failure of the Water Appeals Commission in Northern Ireland to interpret the Habitats Directive correctly and thereby to compel the Department of Agriculture to comply.

The following is a summary of the experiences concerning the protection of the Strangford reefs since 2005 which we believe shows clear evidence of this continuing systemic failure. Where possible we have evidenced this initial outline of issues with documents, correspondence and reports as enclosed in **Tab A, B, C** etc

### ***A. Failure to fund and deliver implementation of the Strangford Lough Modiolus Biogenic Reef DOE/DARD Restoration Plan***

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The Strangford Lough Restoration Plan set out clear short, medium and long term objectives spanning a 5 year period. This Plan received £1 million funding for 3 years delivery starting in 2008 to date from the Department of the Environment and Department of Agriculture and Rural Development. In January 2011 NI budget statements, DARD stated that they "no longer need to make provision for funding the *Modiolus* project in Strangford Lough " [Tab B].

### ***Progress in delivering short term objectives:***

In the context of its two short term objectives (within 1 year) the Plan committed the Departments to:

**Objective 1)** Identify, map and introduce total protection for the remaining *Modiolus* biogenic reef sites within 1 year of adopting this plan. They also undertook to identify damaged biogenic reefs and to ensure their protection from further damage.

**Work completed:** Identification and mapping work was completed in 2011, which is 5 years behind the short-term objective aim of completion of mapping within 1 year.

**Work not completed:** The Departments have failed to introduce anything approximating 'total protection for remaining or damaged biogenic reefs'. We regard this as a critical point for a sensitive habitat requiring stable conditions and as such have left the reefs open to further damage.

### *Specific activities not completed include:*

1. Restrict pot fishing in pristine area - only two small areas have been given protection and a Code of Conduct for the Lough is still to be consulted on and implemented. The Fisheries Exclusion Zones for two small areas of the Lough were not introduced until March 2011 (The Strangford Lough [Sea Fisheries Exclusion Zones] Regulations [Northern Ireland] 2011 No. 360), five years behind thereby leaving reefs to again be damaged. This means that it was impossible to compare protected and unprotected areas as no reference areas were selected as declared for year one in the restoration plan.

2. Legislate to restrict anchoring – development of the legislation is underway in November 2011



3. Legislate to restrict diving – development of the legislation is underway in November 2011
4. Obtain funding – no further funding has been sourced by DARD, DOE have put in a budget but we are not aware of how much and for how long for further restoration work.
5. Obtain Crown Estate lease – Not Known
6. Obtain consent under Fisheries Act. -Not Known

**Objective 2)** Assess whether conditions in appropriate areas within Strangford Lough are currently favourable for restoration using pilot scale translocation experiments.

**Work completed:** assessments and experiments have been done and recommendations concerning the nature of further work required have also been formulated in the Modiolus Restoration Research Project: - Final Report and Recommendations [Tab C] produced by Queens University Belfast, released August 2011. This information has been produced 5 years later than originally planned in the Modiolus Restoration Plan.

***Progress in delivering Medium term objectives (five years):***

In this context the Departments committed to show, to using appropriate reference and control sites, evidence of recovery of the Modiolus biogenic reef feature towards “Unfavourable Condition, Recovering’ within five years of initiation of this proposed plan.

**Work completed:** Surveys were undertaken during project period.

**Work not completed:** the reference and control sites were vandalised by boat based operations so this has not been completed. Evidence from the surveys indicates that, aside from small experimental locations, no recovery can be demonstrated, and (as the 2011 report by Queen’s University, undertaken on behalf of NI Government cites) the site remains under Unfavourable Conservation Status.

***Progress in delivering Long term objective:***

In this context the Departments committed to restore the Strangford Lough Modiolus biogenic reef feature to ‘Favourable Conservation Status’. They furthermore

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committed to identifying a target date for achieving this longer term objective once the shorter term objectives had been completed.

However, as these short term objectives have not been met, no date was ever provided for bringing the reefs to Favourable Conservation Status. Indeed, there has been little change in the level of protection or management of the site since 2005 when the EU Commission initially intervened.

Any monitoring has been of the status quo and not of any active management of the site. We would therefore argue that very little apart from the experimentation with intervention activity and the detailed mapping has been achieved over the last six years. Indeed, the outcomes of the experimental work have been scientifically compromised by the failure to institute complete protection.

The Northern Ireland Departments, having given their explicit undertaking to the Commission to protect and restore this SAC feature has, in our view, almost entirely failed to comply with this commitment.

### ***B. Concerns Relating to Habitats Directive Article 6 Test of Likely Significance - Pot Fishing Within Strangford Lough SAC concerns relating to the Appropriate Assessment February 2011***

In order to comply with the Habitats Directive Appropriate Assessments should be carried out for any activities which could be potentially damaging to an SAC feature. Therefore we believe that an appropriate assessment for pot fishing should have happened in 2003 when concerns were raised about increased pot fishing activity in the Lough and its potential impact and possible damage to the *Modiolus* reefs. This was followed up by a letter highlighting this to the European Commission from the Ulster Wildlife Trust in December 2006.

An Appropriate Assessment for pot fishing was promised by the UK Permanent Representation to the European Union for completion in 2006 and was finally commissioned and presented by DARD to the European Commission in January 2011 [Tab D]. The time taken to undertake this assessment is totally unacceptable and the assessment itself was seriously flawed. It does not take into account the ecological impacts of potting (removal of key species in large quantities) but concentrates on the physical impacts of potting. In addition the science on which the assessment was made was inappropriate to the Strangford Lough situation and we know that the content of the assessment was challenged by the Department of the Environment and did not meet with the agreement of the Department of the Environment and the Northern Ireland Environment Agency. We share these concerns; namely that the assessments



undertaken did not comply with the requirements of the Habitats Directive. We have concerns over DARD's capability as a competent authority to undertake the appropriate assessment work. However the Northern Ireland regulations which implement the Directive confer powers on DARD to undertake this work. It appears that DARD unable to comply with the spirit or letter of these requirements which are central to compliance with the Habitats Directive.

In addition, further Fish Culture Licences have been granted on and adjacent to sites that had *Modiolus*, with no Appropriate Assessments having been undertaken. DARD also has no powers to revoke a licence once given due to current legislation. We believe that there has been a failure to ensure compliance with the requirement for Appropriate Assessments under the Habitats Directive for licensed activity in the Lough.

The Commission was told at the 1<sup>st</sup> December package meeting that only 5 vessels were involved in pot fishing on the Lough. In a letter from DARD responding to an EIR request it is stated (point 2) [Tab E] it is stated that there are 23 licensed vessels potting in Strangford Lough.

### **C. Final Regulatory Impact Assessment (FRIA) – The Strangford Lough ( Sea Fishing Exclusion Zones) Regulations ( Northern Ireland) 2011**

In March 2011 two small “fishing exclusion zones” were put in place. These zones fall far short of the zones, which the Department (DARD) was party to proposing in the Restoration Plan submitted to the Commission. They also fall seriously outside the timescale set by the plan agreed of total protection within one year. (Ref: Strangford Lough *Modiolus* Biogenic Reef DOE/DARD Restoration Plan [Tab F]. They do not provide total protection of the existing and damaged *modiolus* beds as identified by the Strangford Lough *Modiolus* Biogenic Reef DOE/DARD Restoration Plan, and refer only partially to existing beds whilst completely neglecting the damaged beds referred to in the agreed short term objectives.

DARD have said that they have developed a Code of Conduct which would be adopted and implemented in order to provide further protection beyond the designated exclusion zones. While the code has been drafted it has not been consulted on, which is vital in this area with a range of stakeholders involved, or implemented in practice.

The two small DARD zones chosen, identified in the Final Regulatory Impact Assessment [Tab G], have been chosen in preference to choosing a zone which covers “all newly surveyed *Modiolus*”. The option appraisal indicates that the Department of Agriculture is fully aware that there are wider areas of *Modiolus* (including the damaged areas) and that if they chose this other option they would “ eliminate all risk of infraction

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from Europe". However instead they have chosen the smallest of area as one of its benefits would be to get greater support from the fishing industry. Again we believe that this speaks volumes in terms of DARDs attitude in relation the implementation of the Habitats Directive.

### ***D. Final Report and Recommendations of Modiolus Restoration Research Group***

In August 2011, the findings of the research undertaken by Queen's University Belfast, commissioned by both the Department of the Environment (DOE) and Department of Agriculture and Rural Development (DARD), a key part of the Restoration Plan, was released. The report identifies a far larger Non Disturbance Zone (NDZ) than the two very small Fishing Exclusion Zone areas designated by DARD in March 2011. The report states that in order to comply with the European protection requirements of the site that a total protection zone is established below the 10m contour line between Castle Island to Gransha Point in the North and the Southern tip of the Island Taggart to Kate's Pladdy [map page 194 Tab F]. It is also recognised that this area does not include some previously damaged *Modiolus* beds, but were agreed to find some level of compromise – again, outwith the requirements of UK Government's undertaking in the Strangford Lough Modiolus Biogenic Reef Restoration Plan [Tab F].

### ***E. Incorrect interpretation of the Habitats Directive by the Water Appeals Commission and DARD's failure to use its powers to overturn the Commission's decision***

Fish culture and shell fishery licences have continued to be issued by DARD [Tab E] and this has been further supported by rulings by the Water Appeals Commission (WAC) on a number of occasions. In a decision in 2007 the WAC ruled that DARD could proceed without an appropriate assessment for a fish culture licence at South Rock as "if restricted to a ten year period, would not have significant effects on the Strangford Lough SAC. It is therefore not necessary to subject the proposal to an AA". [Tab H] The WAC is the statutory appeals tribunal with jurisdiction to rule on appeals against regulatory decisions under the Fisheries Act. Again in 2009 a successful appeal against a decision by DARD to amend a fish culture licence [Tab I] showed a clearly flawed interpretation of the Habitats Directive. It is also important to note that under the Fisheries (NI) Act DARD is empowered to depart from this decision but failed to do so within the prerequisite timescale of 28 days and therefore failed to ensure compliance with the Habitats Directive.

### 3.0 Additional Information to Support in support of this Complaint.

The Ulster Wildlife Trust has been transparent about its ongoing concerns in its approach to challenging the DOE and DARD with regard to their duties relating to the implementation of the Habitats Directive in Strangford Lough. This has been carried out through meetings with Ministers of both departments, requests for information both formal and informal, and through discussions with the department's officials.

In addition to the key issues outlined in Sections A-D in this document there are a number of other facts that have led us to make this complaint and are integral to it. They are:

- i. In December 2010 the Ulster Wildlife Trust formally requested the provision of landing data from the DARD specifically in relation to Strangford Lough [Tab E] The Trust was informed that this information was unavailable. We understood that this monitoring information was to be gathered and should have been used in the Appropriate Assessment for Pot Fishing. In the 23<sup>rd</sup> December 2005 letter from the UK Permanent Representative to the European Commission we understand that specific landings data will be required which DARD in 2010 [Tab E] states has not been done (page 3).
- ii. UWT got confirmation that no potting licences had been reviewed, despite undertakings that were given in 2006 that licences would be reviewed after 5 years. The current licences and amendments all lack appropriate assessments, in breach of the requirements of the Habitats Directive. DARD have not answered our question as to whether full risk assessments for potentially damaging activities for the SAC features are available since 1995 [Tab E]
- iii. UWT met with Minister for the Environment on 25th July 2011, who made clear his intentions to implement the recommendations of the *Modiolus* Restoration Research Group Report [Tab C], and more specifically the development and implementation of bye-laws for which his department has responsibility for the licencing of diving and anchoring in the area identified by the research under the 10m line using the powers available to him in the geographical area identified by the report. These are yet to be consulted on.
- iv. UWT met with the Minister for Agriculture and Rural Development on 25 August 2011. The Minister made clear that her Department had no plans to increase or review the current two fishing exclusion zones, but that her department would continue to work with the DOE on the further development of the restoration work, with a plan drawn up by the end of

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December. She also explained that the Department has not got funding to support this specific activity.

- v. Our concerns are further magnified by the letter received in January 2011 [Tab B] stating that provision for funding the *modiolus* project in Strangford Lough was no longer needed and that reductions will apply to DARD's part of work "on Article 6 Assessments under Habitats Directive" .

#### 4.0 Provisions of Community Law considered to be infringed

The Ulster Wildlife Trust have followed and monitored the implementation of the Strangford Lough *Modiolus* Biogenic Reef Restoration Plan and we are firmly of the view that the UK and Northern Ireland Governments have acted contrary to the requirements of the Council Directive 92/43/EEC in failing to ensure favourable conservation status of this unique and European important community (*Modiolus biogenic reefs*), or even achieved any significant progress towards that objective. Any that has been achieved has been delayed and in some instances has required further intervention from the European Commission for example the production of the Article 6 Assessment on Pot Fishing in the Strangford Lough.

#### 5.0 Details of Approaches already made to the Commission's services:

Mrs Heather Thompson has been in contact with Ms S Grohs from the European Commission since June 2010 in relation to the concerns the Ulster Wildlife Trust has had in relation to the continuing non-compliance of the Habitats Directive by the NI Government, and met with Ms Grohs, Monsieur Brickland and Mr M O'Brian in November 2010 to outline the Ulster Wildlife Trust's concern over this matter. As mentioned previously the Ulster Wildlife Trust was involved in the bringing of the initial complaint in 2003 brought by The Wildlife Trusts.

#### 6.0 Additional Evidence

The Ulster Wildlife Trust has amassed a wide and comprehensive range of information in support of this complaint in addition to the information attached. We will rely on this in further substantiating this case if required.

In conclusion, we are concerned that without further intervention from the European Commission that no further action will be taken by the UK and Northern Ireland governments to ensure Strangford Lough SAC has the protection in place that it is afforded through its designation. Without a clear undertaking for protection and further remediation work in a proactive and timely fashion that the SAC will continue in unfavourable conservation status.

We authorise the Commission to disclose our identity in its contacts with the authorities of the Member State against which the complaint is made. I understand that this will be managed under the EU Pilot system



Yours sincerely

Joe Furphy OBE  
Chairman  
Ulster Wildlife Trust

Heather Thompson  
Chief Executive  
Ulster Wildlife Trust

**Attachments/ Weblinks : Evidence Provided to Support Complaint**

TAB No.	Documents Name	Documents Date
A	Strangford Lough Ecological Change Investigation	June 2004
B	DARD January 2011 Letter to Stakeholders	31.01.11
C	<i>Modiolus</i> Restoration Research Group Final Report and Recommendations	May 2011
D	Habitats Directive Article 6 Test of Likely Significance - Pot Fishing Within Strangford Lough SAC	February 2011
E	EIR letter 2090 - Fish Culture Licences and Article 6 Assessments	December 2010
F	Strangford Lough <i>Modiolus</i> Biogenic Reef DOE/DARD Restoration Plan Final Regulatory Impact Assessment - The Strangford Lough Regulations	December 2005 14.02.11
H	Water Appeals Commission Ruling re South Rock, Strangford Lough	September 2007
I	Water Appeals Commission Ruling re Dunsey Island, Strangford Lough	November 2009

**Tab A and F** can be accessed on line all other documentation is attached in pdf format.

**Tab A** : [www.strangfordlough.org/strangfordLoughSite/files/2a/2a5cd9ab-87bb-431d-8ef8-8050a86e3267.pdf](http://www.strangfordlough.org/strangfordLoughSite/files/2a/2a5cd9ab-87bb-431d-8ef8-8050a86e3267.pdf)

**Tab F**: [www.qub.ac.uk/research-centres/ModiolusRestoration](http://www.qub.ac.uk/research-centres/ModiolusRestoration)

Cc: Minister for the Environment  
Minister of Agriculture and Rural Development  
Chair of Environment Committee  
Chair of Agriculture and Rural Development

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Published and printed by CDS

CDS 128558

ISBN 978-1-910219-80-5



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