

STATES OF JERSEY



PROTECTING OUR MARINE ENVIRONMENT (S.R.15/2011) – RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT

Presented to the States on 10th January 2012
by the Minister for Planning and Environment

STATES GREFFE

**PROTECTING OUR MARINE ENVIRONMENT (S.R.15/2011) – RESPONSE
OF THE MINISTER FOR PLANNING AND ENVIRONMENT**

Ministerial Response to: S.R.15/2011

Ministerial Response required by: 21st December 2011

Review title: Protecting our Marine Environment

Scrutiny Panel: Environment Scrutiny Panel

Introduction

As the Minister for Planning and Environment, I am committed to the protection of the Island's unique marine environment. This is of great importance, not only for the ecology and associated designated Ramsar sites, but also for tourism, the shellfish and fishing industries and the intrinsic well-being of the public.

As such, I welcome the findings and recommendations of the Review and acknowledge the large amount of work the Panel has dedicated to this matter. I accept almost all of the recommendations in their entirety and recognise their value in refining the delivery of our shared goal of Environmental Protection. I am keen that the Department becomes the 'environmental conscience' of the States and many of the recommendations made will assist us in achieving this.

The Environmental Protection team are both dedicated and proficient and have already actioned many of the recommendations made. As identified, manpower and financial resources continue to be a barrier and the Department will need to assess how it can resolve these issues in the present CSR climate.

Findings

	Findings	Comments
1	Manpower and resources within the Department cannot always meet legitimate stakeholder aspirations, and in the event of a serious environmental incident the regular workload of the Environmental Protection team is compromised	Partly accept. The Panel's and the Advisor's report correctly state that the manpower and financial resources of Environmental Protection team (EP) remain extremely stretched. The EP of 13 officers delivers an increasingly large and diverse remit; including pollution prevention and control, waste management regulation, management of water resources, drinking water quality regulation, plant protection and pesticide control. The regulation and monitoring of the marine environment, as focused on by the Panel's review, is only part of this remit. Due to insufficient resources EP need to routinely prioritise and adjust their work in order to continue to deliver identified key business plan objectives (for example proactive pollution prevention work, engagement with the farming community etc.), as

		<p>well as responding to unplanned and reactive work that may arise. This is achieved using a risk based approach that attempts to deliver the most beneficial environmental outcome given the constraints. In the event that this is unforeseen or re-active, this inevitably takes resources away from other areas of work.</p> <p>In the context of the Panel's comment, Stakeholders often adopt a hazard-based approach (i.e. a general concern about <i>all</i> chemicals entering the environment), whilst EP, like the UK Environment Agency, adopt a risk-based approach (assessing the risk and targeting resources to deliver the best environmental outcome based on the likelihood and severity of impact). This is a normal tension between stakeholders and the regulator (as cited in P:56 of the Scrutiny Panel Advisor's report).</p> <p>Notwithstanding this, and particularly as dialogue and engagement with stakeholders is a key aim for EP, all the concerns and aspirations of the stakeholders are <u>assessed</u>, and providing that they satisfy the risk based approach for best environmental outcome they will be acted upon.</p> <p>A serious environmental incident will add pressure on EP's manpower and time resource and again pull resources away from other areas of work. EP use a risk based approach when securing compliance with the various laws that it administers and uses appropriate enforcement powers including prosecution as an important mechanism for achieving this Environmental safeguard.</p> <p>In the context of the Panel's second point, a serious environmental incident involves extensive work and will always be prioritised. The criminal process for prosecution requires sufficient, admissible and reliable evidence that the offence has been committed, that there is a realistic prospect of conviction and that it is in the public interest to proceed. This will involve the submission of a comprehensive case file to the Law Officers' Department. The decision to prosecute then lies with the Law Officers.</p> <p>EP uses a coordinated team approach and, when necessary, re-allocation of resources. For the last two case files requiring submission, the pulling of resources from other areas was not possible, due to the nature and complexity of the offences and this resulted in a delay in submitting a case file to the Law Officers.</p>
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2	<p>While some aspects of European legislation are adhered to locally, resources available are currently insufficient to permit full compliance with wider environmental directives, such as the Water Framework Directive. There is potentially some lack of clarity amongst the public concerning which elements are legally enforceable</p>	<p>Accept. The EU Water Framework Directive (WFD) and the EU Marine Strategy Framework Directive (MSD) are 2 key European initiatives/tools that set the future direction of travel and context for the delivery of a robust, holistic and recognised management and enhancement approach to the Island's unique freshwater and marine resource.</p> <p>EP are therefore developing a strategy to assess and enable the necessary elements of the Water and Marine Strategy Framework Directives to be adopted in Jersey. Since the Marine Monitoring Scrutiny Review, EP (the regulator) and TTS (the Island's sewerage undertaker have commissioned WCA (the Scrutiny Panel's consultants) to scope out the data requirements to classify the environmental status of St. Aubin's Bay according to the Water Framework Directive. WCA are also scoping similar work to classify the Island's freshwater resource (surface and groundwater). Both the Water Framework Directive and the Marine Strategy Framework Directives are holistic in that they consider broader ecosystem functioning in relation to the aquatic environment and this will promote and necessitate thematic working across States Departments and engagement with stakeholders.</p> <p>The Panel's finding is correct. The current financial and manpower resource of EP are not sufficient to implement the WFD in its entirety. The Department will therefore submit a growth bid for two full time employee (FTE) posts and funding to enable delivery of the Directives by current EP officers. In the event that the growth bid is fruitless, a prioritised approach will be taken.</p> <p>It is agreed that some lack of clarity exists among the public concerning which elements are legally enforceable (given the requirements of Protocol 3). However, for clarity, the Water Pollution (Jersey) Law 2000 states the Minister's 'General Objectives' and 'Operating Considerations'. This includes, amongst other things, maintenance and improvement of Water Quality and the conservation of the flora and fauna that are dependent on the aquatic environment. It also states that the Minister <u>shall</u> have regard for best environmental practice. The WFD provides an integrated best practice framework to deliver this. The EU Bathing Water Directive is well documented in Jersey (results and reports uploaded to the States web site). It is envisaged that the strategy for WFD and MSD will</p>
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		include involvement of various non-governmental environmental organisations and necessitate close public engagement.
3	<p>Knowledge of the chemical status of Jersey waters is limited. Existing discharges and continuing development on the Island's coastline create pressures which are not adequately understood. Some important priority pollutants are not included in current monitoring</p>	<p>Accept. Chemical status of marine waters is not fully understood. This is due to the historic emphasis of EP's monitoring on the freshwaters that flow into the marine environment and their importance given to protecting the Island's freshwater drinking water supply. The lack of large industrial processes and industries in Jersey are also a consideration.</p> <p>As part of the future planning application for the ash cell headland, and in line with requirements of the forthcoming Waste Management Licence for the La Collette Waste Management Facility, TTS have undertaken a baseline water quality characterisation and proposed a future monitoring strategy for the site.</p> <p>All major discharges into the marine environment are regulated through discharge permits issued by the Department under the Water Pollution (Jersey) Law 2000. The permit for the discharge into the Ramsar site from the EfW is conditioned to require monitoring of the discharge area by TTS.</p> <p>The Department has a long-term data set of heavy metals in coastal marine biota. Following the Panel's review this has been increased to include 2 sites off La Collette and to include some priority pollutants (including mercury that was recorded in a recent sample at below the detection limit). Analysis for PCBs and brominated flame retardants in shellfish flesh, as recommended in the Advisor's report, has also been undertaken and concentrations below the level of detection were recorded. Screening for priority pollutants in the discharge of the Sewage Treatment Works will take place shortly.</p> <p>Priority pollutants are identified within the Water Framework Directive and assessment of these will be included in the monitoring, assessment and subsequent classification of the environmental status of local marine and freshwaters under the system proposed by the Water Framework Directive.</p>
4	<p>Excluding a service level agreement with the States Analyst, out of a total monitoring budget for all environmental purposes of only £10,000 per annum, only £3,000 is currently available for monitoring and analysis of results from inland</p>	<p>Accept. The value of the service level agreement has not increased in line with cost of living since 2003. The current monitoring budget will need to be increased to enable the monitoring proposed by the Review.</p> <p>The scoping documents for the WFD relating to St. Aubin's Bay and the island's freshwaters</p>

	and marine waters; this is insufficient to obtain a clear understanding of the main sources of marine pollution and its possible impacts	currently being prepared by WCA (Ref: Finding 2) will identify required monitoring costs. These analyses are complex and expensive (for example endocrine disruptors). The Department does not have the financial resources and this will be included as part of the growth bid (Ref: Finding 2). In addition, monitoring is also a time intensive activity.
5	Existing laboratory arrangements are a barrier to meeting stakeholder expectations for investigative monitoring, and any significant additional work would need to be out-sourced. Solutions to chronic microbiological quality issues will not be found with existing approaches and resources	Partly accept (answer related to Finding 1). The laboratory presently only receives water samples for microbiological analysis between Monday and Wednesday. This is due to the length of analysis time required that necessitates weekend work. The number of samples that the Analyst can process at any one time is limited to approximately 6. However, if the Department recommended that urgent analysis were required then the Analyst would arrange for the samples to be analysed at any time. The cost of this work would need to be met by the Department's limited budget (ref. Finding 4).
6	The Bellozanne Sewage Treatment Works (STW) fails nitrogen limits under the EU Urban Waste Water Directive	Accept. The latest study of the trophic status of St. Aubin's Bay was received from TTS at the end of the fourth quarter of 2010. This project replicated work undertaken in 1997 which identified St. Aubin's Bay to be potentially eutrophic, thereby informing decisions when drafting the original discharge permit in 2000. Changes to the scientific methodology used to assess eutrophication led to the bay no longer being classified as 'sensitive' according to the EU Urban Waste Water Directive. The Department informs the Attorney General (AG) in a quarterly report of all pollution instances and breaches of discharge permits operated by States Departments. This includes the exceedence of the Total Nitrogen condition for the sewage treatment works. Two formal warning letters have been issued to TTS by the Department relating to the failure to comply with limits for nitrogen on the Discharge Permit. TTS have instigated a number of significant and costly Modifications/improvements designed to lower the discharge of nitrogen. Unfortunately, these have had little impact. The Department have discussed the matter with the AG and he recommended that a case file be submitted for his legal opinion. This is presently being finalised by the Department.

7	<p>Public knowledge and access to the results of microbiological and other sampling carried out by different departments are currently limited. The transition to the new States website has made it more difficult for the public to access data held by Environmental Protection</p>	<p>Accept. I fully support the public being able to access all monitoring data. Unfortunately, the new States web site has limited the Department's ability to upload the quantity of data required to fully inform stakeholders.</p> <p>Full access of data by the public could increase public awareness and engagement and decrease the time required by Department officers who presently respond to requests for information. Requests range from companies asking for data to inform desktop studies for contaminated sites, legal requests for information appertaining to property sales and data to school students working on pollution related projects.</p>
8	<p>There is currently no 'one-stop shop' for public or stakeholder enquiries about environmental or public health data relating to the marine environment</p>	<p>Accept. Environmental Protection already provides some information e.g. the EU Bathing Water Directive and associated WHO guidelines (ref: Finding 7). However, the wider health of the marine ecosystem and public health are overseen by other sections in other Departments. Presently officers coordinate responses and pull together such information requests.</p> <p>Closer working with Environmental Health and the joint identification of mutually beneficial strategic and operational objectives will help coordinate such enquiries. Cross departmental thematic working and the holistic approach demanded by the Water Framework Directive and the Marine Strategy Directive will further assist.</p>
9	<p>More investigation is needed into the metal burden entering the Bellozanne Sewage Treatment Works and its eventual disposal into the marine environment</p>	<p>Accept. This is regulated through the Drainage (Jersey) Law 2005 administered by TTS. The Environment Department requested a report on the suitability of disposing of the leachate arising from partially filled and capped ash cells via the sewage treatment works (STW). This report was made available to the Panel. The report recommends future monitoring of the STW which TTS are currently undertaking. The Environment Department has further requested information held by TTS on the trade effluent consents permitted under the Drainage Law to enter the STW. TTS are not currently obliged to consult with the Department concerning trade effluent consents, however this aspect will be conditioned within the revised discharge permit as all such discharges can potentially flow into the marine environment and the Department need to have knowledge of these.</p> <p>The work currently being undertaken by WCA (Ref: Finding 2) will further help characterise the composition of the discharge and any potential</p>

		impacts to the marine environment.
10	The Department's recent paper on trends in oyster contamination throws more light on a complex situation. However, in the time available the Panel has not been able to test its findings. An independent review of these is therefore desirable	Accept. The Panel is correct in stating that this is a complex situation. Not only with respect whether contamination levels are improving or getting worse but also in respect in benchmarking bed grading results achieved in Jersey with those in the UK. The Department drafted a preliminary paper to assess whether there is continued deterioration or an improvement in bed quality. This will be reviewed by Professor Ron Lees (CEFAS).

Recommendations

	Recommendations	To	Accept / Reject	Comments	Target date of action/ completion
1	We recommend undertaking a risk-based assessment of the chemical contaminants most likely to be present in Jersey's waters, and the estimated reasonable worst case loads of these substances in the Bellozanne effluent and diffuse inputs from the La Collette reclamation site. This should not be a hazard assessment. This would deliver a clear list of potential contaminants of concern and evidence to support their selection. This exercise should then be followed up with limited, but targeted monitoring of effluents and sessile biota close to these sites		Accept	<p>The Department has commissioned WCA (the Scrutiny Panel's consultant) to provide a detailed scoping study regarding the full water quality and biological indices and data requirements to enable a classification of St. Aubin's Bay and the island's freshwaters (surface and groundwater) according to the EU Water Framework Directive (WFD). This will include all priority hazardous substances as required by the WFD. The work will initially centre on the assessment of chemical inputs to St. Aubin's Bay (including heavy metals and endocrine disruptors from the Sewage Treatment Works (STW)) and be supported by the recent study and onward monitoring of the STW as part of TTS work to assess chemical loadings through the disposal of ash cell leachate via the STW.</p> <p>TTS have recently finalised a baseline water quality review and an operational water quality monitoring plan for the La Collette Waste</p>	Ongoing, scoping work already commenced.

				<p>Management Facility. This includes an assessment and recommended future monitoring of all potential sources of pollutants arising from all waste activities. The Environment Department has been closely involved in this work. The future monitoring strategy will be conditioned within the La Collette Waste Management License issued by the Environment Department.</p> <p>Since the Review, the Environment Department has augmented the existing monitoring suite of heavy metals in marine biota to include mercury, PCBs and brominated flame retardants as recommended in the Panel's report). A monitoring strategy for the Island's Ramsar sites has also been drafted.</p> <p>TTS have installed a monitoring point for the Cavern discharge – EP are awaiting a storm event to sample.</p> <p>The Environment Department does not have sufficient funds to undertake all of the long-term monitoring as required by the WFD. TTS have engaged with and funded part of the initial scoping work. Additional funds will be required to undertake this work (Ref: Finding 2).</p>	
2	Having undertaken the above exercise, longer term monitoring can be refined and targeted to cover only key contaminants of concern, NOT all chemicals		Accept	This is in total agreement with the principles of risk based monitoring strategy that the Department is working toward for all monitoring activities.	Commenced finalised key contaminants identified by June 2013.
3	The scope of marine chemical monitoring around Jersey should be reviewed to ensure that analytical data are compatible with EU regulatory		Accept	Ref: Recommendation 1. The recommendation is entirely in line with the principles and envisaged benefits of the Department's proposed	Ongoing, scoping work already commenced.

	requirements in order to allow effective comparison with international standards. This would deliver greater understanding of the status of waters, and provide confidence to those markets reliant upon Jersey's resources, such as shellfish and tourism			implementation of the EU Water Framework Directive and the EU Marine Strategy Directive. The scoping work for this has started.	
4	Additional resources and more flexible arrangements for aqueous microbiological sampling and testing on the island are essential to meet reactive monitoring demands and stakeholder expectations. A policy review of delivery capability for long term reactive monitoring is necessary		Accept	Ref: Finding 4. An informal agreement to enable out of hours work with the States of Jersey Official Analyst exists. This will be made more official within the revision of the service level agreement in early 2012. The Department has held initial discussions to see whether the laboratory at Jersey Water can assist and undertake certain analyses. The Department will continue to investigate the cost and benefit of forwarding samples to the UK for analysis.	SLA and policy review by March 2012.
5	Structured microbiology monitoring surveys should be undertaken to characterise the sources and pathways of faecal pollution. These surveys will need to be significant in size and scope to be effective and will require external laboratory services		Partly accept	The Department remains committed to identifying and preventing all forms of point and diffuse pollution. As correctly mentioned, the surveys identified in the advisors report represent a major cost and undertaking by the Department. Accordingly, the Department needs to ensure that the methodology represents the best available science that will deliver the results required to enable practical solutions. The Department also needs to assess whether a significant problem exists or whether occasional bad results are due to environmental factors characteristic of densely populated and heavily utilised coastline; problems which are harder to solve (for example wash down of general diffuse	Initial views of UK experts by March 2012. Further work time-tabled according to report recommendations and funding.

				<p>pollutants during rain events).</p> <p>The views of two UK experts in this field Professor Ron Lees (CEFAS) and Professor David Kay (CREH) will be sought by the Department to inform this issue.</p>	
6	<p>Monitoring data from sites of public interest such as Bellozanne should be more readily available. The establishment of public registers in a similar manner to the UK Environment Agency would help create a more informed dialogue with stakeholders and remove some of the prevailing suspicion</p>		Accept	<p>Ref: Finding 8.</p> <p>A Departmental approach is required for all monitoring data</p>	<p>Strategy for public register by June 2012.</p>
7	<p>The use of external providers should be considered to address shortcomings in on-Island monitoring and analytical resources for the purposes of additional survey work (as recommended in 1 and 5 above)</p>		Accept	<p>This is entirely in line with the current work of the Department. The EP team deliver an extremely wide and diverse remit in comparison with specialist colleagues in the UK Environment Agency.</p> <p>External providers who are familiar with the island and the Department are able to provide quick and informed advice. It was for this reason that the Department used the Panel's Advisor to discuss the future progress of these recommendations.</p>	<p>Ongoing. External providers identified as and when required.</p>
8	<p>Departmental resources should be increased to enable more emphasis to be given to marine monitoring</p>		Accept	<p>Ref: Recommendation 1. A growth bid will be submitted in 2012.</p>	<p>Growth bid submitted by February 2012.</p>
9	<p>A position statement clearly defining aims and objectives for improving water and shellfish quality should be prepared in consultation with stakeholders and brought to the States for approval</p>		Accept	<p>Grade A beds only occur in waters of pristine quality. Jersey has 2 Grade A beds compared with one in the whole of the UK. The UK are aspiring to meet at least Grade B standard. This helps farms plan for required depuration units etc.</p> <p>A similar position statement for Jersey was discussed with</p>	<p>Marine review of industry completed by January 2012.</p>

				stakeholders during the Department's recent Aquacultural Strategy workshop. It will be further discussed as part of the forthcoming Departmental strategy for the wet fish and shellfish industries.	
10	Jersey should adopt all relevant sections of the European Water Framework Directive to enhance the protection of all local waters (both inland and coastal)		Accept	Ref: Finding 2. The implementation of the EU Water Frame Directive will provide for the holistic protection of the island's inland and marine waters. The Department has already scoped out some of this work. It remains that financial and manpower resource will be required. The Department will submit a growth bid to enable this.	Ongoing, scoping work already commenced.
11	Jersey should also adopt and comply with the provisions of the Marine Strategy Directive as a framework for protection of the marine environment		Accept	As above – The EU Marine Strategy Directive provides a holistic and cross departmental initiative that, like the WFD, will help secure buy-in and participation by Environmental non-governmental bodies.	Ongoing, implementation dependant on outcome of growth bid.
12	A dedicated section of the States website (or a standalone site) should be created as a public register for easy access to all available environmental data. This should also feature relevant information from other departments such as public health data on the results of monitoring of commercial species for public consumption		Accept	Ref: Finding 7.	Strategy for public register by June 2012.
13	There should be a presumption that all data held by States departments on environmental matters (other than commercially sensitive information relating to specific stakeholders) should be freely available to the public		Accept	All Department data relating to water quality is publicly available. The only exception is data relating to ongoing criminal investigations. The Department will work toward informing the public on the information that it collects.	Strategy for public register by June 2012.
14	Effluent monitoring data to		Accept	TTS already forward	January 2012

	include relevant information on heavy metal content, coliform counts and details of any exceptions and overflow events should be provided automatically to the aquaculture industry, with a failsafe system put in place to communicate urgent warnings			information on overflows to stakeholders. The provision of an early warning system will be discussed with TTS.	
15	Additional laboratory capacity is required to permit microbiological samples taken throughout the week to be analysed. Incidents can occur 24/7 and laboratory services should be available to meet the needs of the industry		Accept	Ref: Finding 5. This is outside the remit of my Department.	n/a
16	A task group involving both regulators and industry representatives should be set up to coordinate action on water quality. This should be separate from the Ramsar Management Authority, although that group could be represented		Partly accept	The Department endorses the need for open and transparent dialogue with the public and NGOs. However, the Department already sits on various groups including Fisheries Panel, Aquaculture Panel and Ramsar and these provide effective forums for joint discussion.	n/a
17	A review of the terms of reference and working of the Ramsar Management Authority should be carried out in consultation with stakeholders and other interested parties		Accept	This will be undertaken during the appointment of a new Chair for Ramsar.	January 2012
18	To ensure the robustness of its findings, the paper 'Long-term trends of bacterial contamination in Oysters (<i>Crassostrea gigas</i>) cultured in South-East Jersey' should be submitted for independent peer review		Accept	This is central to Recommendation 5 (Ref: Finding 10). The paper will be reviewed by Professor Ron Lees (CEFAS).	January 2012
19	A full explanation of the circumstances of the alleged environmental incident at the Energy from Waste plant construction site at La Collette in April 2009, together with the steps taken to investigate it			Unable to agree or disagree. The Department is committed to transparency and adhering to legal protocols. The release of information pertaining to criminal cases is dependant on the legal advice received from	According to the AG's advice. Matter being chased by the Department to bring this to a conclusion.

	should be published without delay			the Attorney General. EP are guided by legal principals as set out in the 'Enforcement and Prosecution Policy'. The Department are in regular contact with the Law Officers' Department to determine the possibility of release of this information. The Department hopes to be able to inform the Panel of their advice shortly so that this matter can be resolved.	
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Conclusions

My Department welcomed the Review and considered it along the same lines as a scientific peer review of its work regarding monitoring and regulation of the marine environment. Officers therefore worked closely and openly with the Panel and the experienced Panel Consultant, who had extensive knowledge of comparable practises with the Environment Agency, UK.

The Department and Environmental Protection remain committed to ensuring utmost protection of the Island's marine environment through the advance of best practise and a risk-assessed approach that ensures best environmental outcome. We welcome the review initiative as helping informing and directing this.

I therefore endorse the recommendations made and see them as a natural step in securing the Island's environmental safeguard and building on the good work by the Environmental Protection team. Evidence of this is that Environmental Protection have already implemented many of the recommendations made.

I particularly recognise the advantages to the Island's marine environment of implementing the EU Water Framework Directive and the EU Marine Strategy Directive. These provide a tried and tested approach that necessitates joined up and coordinated thinking and action between Departments and stakeholders.

I am pleased that the Panel's report recognised the resource constraints faced by Environmental Protection, especially given that "best practise" continues to move forward. The team frequently assess and refine their delivery of their Business Plan to ensure that available resources provide the best environmental outcome.

It remains however that the full implementation of these two important directives will require me to submit a growth bid for 2 FTE posts and the identified budget (currently being scoped out).

The review has confirmed that, in the opinions of an experienced advisor and the Scrutiny Panel, the department are progressing in the right direction in many respects and has helped us consider and prioritise other areas of work following discussion with the Panel's Advisor.