

Delivering Marine Conservation Zones and European Marine Sites

A draft Strategy for Marine Protected Areas

UK Business Council for Sustainable Energy and Wider Energy Industry Detailed Comments

1.0 Purpose of Appendix A

This appendix provides detailed comments on the draft Strategy for Marine Protected Areas, and should be read in conjunction with our covering letter of the same date. The headings below correspond to those contained within the Strategy. As previously stated, the comments are provided within the context of overall energy industry support for a co-ordinated approach to marine conservation and collective commitment to undertaking the very substantial number of marine developments that are necessary to mitigate climate change and ensure continued security of the UK's energy supplies, in a manner which minimises the impact on biodiversity.

2.0 Executive Summary

We support the objectives outlined in the Executive Summary, however believe that, given the acknowledged greatest threat to the marine environment is climate change, it should include specific reference to both the need to mitigate climate change, and the contribution marine renewables are expected to play.

3.0 Introduction

The Council and industry support the principle of a Strategy to deliver the Government's vision of '*clean, safe, healthy, productive and biologically diverse oceans and seas*', but, as above, the threat of climate change needs to be emphasised.

3.1 Aim

Equally, we support the aim of the Strategy, but make the point that the document states that the "*MPA network will be one of the most important tools to ensure the loss of our marine environment is halted*". However, the impact of climate change is already being seen, and without active intervention, and support for renewable energy, it could negate this aim.

3.2 The Process

Comprehensive Approach – we support the comprehensive approach being proposed, with a suite of documents that collectively can potentially aid clarity. However, whilst the four MCZ Guidance Notes have now been published, the

Strategy makes reference to a range of supplementary guidance and the detailed Network Scenarios for MPAs which are not yet available. Without access to all the proposed draft Guidance / documentation it is difficult to holistically assess the overall impact on the energy industry's ability to contribute to both mitigating climate change and ensuring continued security of supply.

We welcome many of the points included within the Strategy, but would like to flag that the four associated MCZ Guidance Notes contain some significant areas of concern for the industry, and we will be providing a separate set of comments on these shortly.

Best Available Science – as mentioned in our covering letter, there is a need for Government to clarify exactly what 'best available science' means. In our recent meeting with Lord Hunt he helpfully assured us that 'best available science' would be that which is 'peer-reviewed in the normal way.' We welcome this assurance but would urge Government to put in place further safeguards requiring any science being used in the implementation of the various provisions of the Marine and Coastal Access Bill, to be science that is accepted by Government, the MMO's Chief Scientific Adviser and the Scientific Advisory Panel. This will ensure that there is not inappropriate reliance on the precautionary principle, which can be used to justify most anything in these risk-averse times

Equally, we urge Government to ensure that "science" is defined as both local and global environmental science, which should include climate change.

MPA Network Workshops – UKBCSE and the wider energy industry would welcome the opportunity to be involved in the planned stakeholder workshops.

3.3 Scope

We welcome the clarity of the proposed Scope, however suggest that due to the limited availability of suitable tidal and wave locations, and the high energy potential, particular recognition of the importance of supporting this technology should be included.

4.0 Importance of Marine Diversity

This section states that the direct and indirect 'use benefits' from establishing a network of MCZs could be between £8.6bn and £19.5bn over 20 years. However without mitigating climate change, marine biodiversity will be irrevocably eroded and / or damaged and this cost should be included.

Additionally, offshore wind and marine renewable energy is identified as potentially leading to an inward investment into the UK of around £39 bn (Bain and Co) for wind, and £4bn for wave and tidal (Entec / Carbon Trust), with the added benefit of creating up to 57,000 jobs (Bain and Co). These benefits should also be included.

Worldwide market conditions for investment continue to be difficult, and it is vital that the need for a robust framework for marine conservation is balanced against attracting the necessary investment to deliver the UK's agreed contribution to the EU Renewables targets and the massive infrastructure programme required to ensure continued security of the UK's gas and electricity supplies.

5.0 The Legislative and Policy Framework for MPAs

The Strategy helpfully identifies all the different EU and national designations for protecting the marine environment, which with the addition of MCZs is intended to establish a coherent network. However, there is a need to guard against overlapping and possibly conflicting levels of protection which could be potentially complex for developers, stakeholders and communities to effectively engage / comment on. Additionally, the international commitments made by the UK Government on carbon reduction and development of renewable energy, need to be fully integrated into this MPA Protection Strategy.

5.1 National Sites – Marine Nature Reserves (MNRs)

One of the key areas the industry would like greater clarity on is the different level of conditions / restrictions that differing features will attract. This will enable developers to better understand where varying energy developments may or may not be best located. It is worth noting that marine renewables have already been successfully deployed within MNRs.

The Strategy confirms that Lundy Island will become the first MCZ once the Bill receives royal assent, and we would urge Government to use it as a pilot to enable transparency around the level of restrictions / conditions that different features will be afforded, and the impact for differing technologies. This can build on the already successful deployment of marine renewables within the area.

For future MCZs the Government propose extensive dialogue and engagement with stakeholders and we would therefore welcome clarification on how this will be undertaken for Lundy Island, given the proposal for designation by January 2010.

5.2 National Sites – Existing MPAs for Nature Conservation in UK Waters

The Strategy continually stresses the importance of establishing an ecologically coherent network, which we understand and support. However we would welcome further detail on what this means in practice i.e. is it intended that MCZs and other MPAs will be interlinking or within 12nm of each other? In seeking to ensure appropriate protection of features / species it appears Government is intending to protect the same feature or species in multiple sites, which is contrary to our original discussions with DEFRA which indicated that blanket or wholesale protection would not be applied for every / nearly every area where a feature or species exists.

Page 17 talks about the current MPA network being limited in its ability to, amongst other things, allow ecosystems to respond and adapt to the impacts of climate change, and therefore this is why there is a need to identify and designate the new network of MPAs identified in the Strategy.

The industry strongly believes that as well as recognising the need to manage and support the marine environment and its ecosystems to enable it to respond to and adapt to climate change, the Strategy needs to stress the importance of balancing the conservation of the marine environment, with the contribution it must make in mitigating the effects of climate change.

5.3 National Sites - Future MPAs in English and Offshore UK Waters

We welcome the inclusion of the table as a useful aid to clarifying the differing designations and types of sites, and in particular the inclusion within the MCZ section of the commitment Government has given that there is a requirement to take into account the social and economic factors.

However, there is no mention within the table of mitigation measures, which could enable development to take place with little or no lasting impact on the ecology or biodiversity of an area. These should be included.

The proposed plans outlining activities to be completed by 2010 and 2020 are helpful in setting out a clear road map, and in particular we welcome the following commitments:

- *Stewardship of the marine environment will be undertaken in an inclusive way that has secured the commitment of stakeholders*
- *Protective measures will be proportionately, efficiently and effectively enforced*
- *Public authorities will work collaboratively to manage the impact of human activities and protect MPAs*
- *Management of the network will be based upon delivering the conservation objectives for MPAs using the best available scientific and socio-economic evidence (our previous comments on the need for safeguards and the definition of science apply)*
- *The MCZ component of the network will be reviewed, site boundaries altered, new sites identified and where necessary existing sites will be re-designated, based upon the best available scientific and socio-economic data (our previous comments on the need for safeguards and the definition of science apply).*

We urge Government to trial the inclusion of sustainable energy developments within MCZs to ensure full understanding of the benefits, impacts and possible mitigation measures that may enable such technologies to co-exist alongside certain features / species, and to identify what restrictions and conditions may be necessary.

5.4 The Value of Marine Protected Areas

Within the first paragraph (page 22) the Strategy states “*effective licensing of activities occurring in the marine environment and marine spatial planning are examples of other management measures that will need to be implemented to ensure protection of marine diversity*”. Given Government’s overarching energy policy goals of mitigating climate change and ensuring continued security of supply, we believe that these should also be included, or at least reference to balancing with Government’s other key public policy goals such as sustainable energy and fishing.

Paragraph 4 again talks about MPAs being a valuable tool to help biodiversity adapt to climate change, which whilst helpful is merely a passive acknowledgement of the impact that climate change is already having, whereas the industry believes that a positive commitment to balance marine conservation with use of the seas to contribute to mitigating climate change is needed.

Paragraph 1 (page 23) states *“proposals for MPAs are not incompatible with other uses of the marine environment. For example it is conceivable that wind energy production may have synergies with the conservation objectives of some MPAs.”* The industry believes that this statement is rather tentative and should be strengthened to at least recognise Government’s wider energy policy goals. We suggest the following:

“With increasingly sophisticated mitigation measures and continual innovation, sustainable energy developments can co-exist and have synergies with the conservation objectives of MPAs”.

Paragraph 1 also states that restrictions within a site will be judged on a case-by-case basis and will be consistent with the conservation objectives for that site. Whilst we support a proportionate and flexible approach, consistency and clarity over what type of development can and can’t live alongside certain features is paramount.

Finally in this section there is a helpful list on what MPAs as a management tool can help deliver. The list includes increasing economic opportunities for tourism and leisure activities, and it would be sensible to also include sensitive deployment of sustainable energy.

6.0 Costs and Benefits

6.1 Costs

The Council and industry welcome the commitment to a full Impact Assessment, which should include the potential impacts / additional costs to energy developers and other industry stakeholders. This is particularly important given the scale of development necessary to deliver the UK contribution to the EU renewables target and meet the UK’s continuing energy needs in a carbon constrained and increasingly import-dependent world.

6.2 Economic Costs of MCZs

Paragraph 2 of this section (sixth para of page 24) highlights that costs will depend on the current activities in a prospective MCZ, however in many cases either Government (various licensing rounds for offshore wind farm development) or individual developers have firm plans for developments, which will need to be considered when assessing a site for suitability as a MCZ.

This paragraph also lists activities most likely to be affected by MCZs, but currently does not include carbon capture and storage. Equally whilst it includes renewable energy it does not include other types of sustainable energy, which could also be affected by an MCZ designation, particularly one that includes coastal elements. We suggest both these activities are included.

The final sentence within Paragraph 2 (page 25) helpfully states that *“we intend to meet our conservation objectives in ways which, where possible minimise socio economic impacts, or perhaps even provide synergies between activities that may result in positive socio-economic impact”.* The industry welcomes this positive statement and looks forward to working with DEFRA, Natural England, the MMO and other key stakeholders as early as possible to develop how this will work in practice.

UKBCSE and industry acknowledge that there will be costs to developers in complying with MCZs (p24), however it is important that these costs are kept to a minimum. This is particularly important for the laying of subsea cables, when deviations will prove very costly indeed. UKBCSE believes that the unit rate for the supply and installation of 33kV and 11kV submarine cables is estimated to be in the range of £300k - £350k per km. For HDVC (high voltage cables) our estimates are nearer £750k per km, although the price can vary on account of different seabed conditions, cable length and cable capacity/sizes.

Paragraph 3 of this section, again lists certain industries that are likely to be affected but makes no mention of the sustainable energy industry, who, given the scale of development, are likely to be significantly impacted.

UKBCSE and the wider energy industry are committed to actively engaging with the four regional MCZ projects, Natural England, the MMO and other key stakeholders in the process of developing the MPA / MCZ network. Initial contact has been made with the four regional projects but it would be very helpful if DEFRA could publish on their website and circulate to known stakeholders, contact and planned workshop details as they arise.

6.3 Economic Benefits of European Marine Sites and MCZs

Paragraph 2 of this section (page 26) helpfully talks about the benefit derived from the ocean's ability to store carbon as an indirect use value, which is welcome. However it is unclear how in practice this, and indeed the equally essential development of carbon capture and storage, will be accommodated within the network of MPAs and MCZs, and early dialogue with developers is essential.

7.0 Developing the MPA Network

Whilst the industry welcomes the principle of establishing a comprehensive suite of supporting documentation – the Strategy, MCZ Guidance and further technical and governance guidance, the differing timescales for publication and consultation (where appropriate) make it difficult to holistically assess the likely impact on the sustainable energy community.

7.1 Network Design Principles

We welcome the inclusion of a set of network design principles (page 30) as a useful aid to clarity, however would comment specifically about two of them as follows:

- **Replication** - the Strategy states that *“all major habitats should be replicated as appropriate in each regional sea in the network and distributed throughout the network.”* This does not align with previous Government assurances on proportionality and the protection of species / features being undertaken to ensure their continued viability / sustainability without unnecessary replication which precludes large swathes of the marine area from essential development.
- **Best available evidence** – as before, we support the need for network design to be based on the best information currently available, but this should be validated by appropriate Government bodies – such as the MMO's Chief Scientific Adviser

and the Science Advisory Panel. The document also states that “*lack of full scientific certainty should not be a reason for postponing decisions on site selection*”. Whilst we absolutely accept the need to protect the marine environment, decision-making must be both transparent and robust, and not place undue restrictions / conditions on development without appropriate evidence / reasons. This will ensure that there is not inappropriate reliance on the precautionary principle, which can be used to justify almost anything in these risk-averse times.

But, conversely, should this not be the case then lack of full scientific certainty should equally not be a reason to exclude marine sustainable energy projects.

Additionally the industry would welcome an extra network design principle of consideration of co-existence of sustainable energy projects and protected features and species, where suitable mitigation is identified or any impact can be managed or is transitory.

7.2 Process for Identifying MCZs

Working together – we welcome the confirmation that the MCZ identification process will allow stakeholders ‘*to significantly input into decisions about the location of sites and the way in which they are managed*’, and we look forward to playing our part in this process.

The MCZ Stakeholder Participation Approach – this section (page 31) says that the designation of MCZs “*may*” take account of socio-economic factors. Given the commitment given in Parliament and separately by Lord Hunt that socio-economic factors will be considered as part of the MCZ designation process, we believe that the wording should be changed to “*will need*”, to take account of socio-economic factors.

The last sentence of this paragraph helpfully confirms stakeholder involvement in the identification of potential MCZ sites and their boundaries, the conservation objectives and the management measures needed to achieve the objectives. This is most welcome, however in order to ensure that all stakeholders are able to fully assess the impact of proposed sites, the consultation on potential MCZ sites should include the detail of proposed management measures i.e. the Management Plan should be consulted on at the same time as the MCZ proposal.

We very much hope that the final version of the Bill does retain the stipulation that socio-economic factors should be taken into account during the MCZ designation process. But whether it remains or not, it is vitally important that those involved in the designation process do understand where and where not, developers are likely to seek to develop wind farms, marine energy installations and subsea cables in the future. Those interested in preserving the marine environment should take account of climate change in their thinking, therefore it is in the interest of biodiversity that renewable energy, and the means to transmit that energy do “*have room*” in the ocean to operate.

It is therefore important that Natural England, JNCC, the MMO’s Chief Scientific Adviser, the Scientific Advisory Panel and the National Stakeholder Group are all clearly aware of the likely locations of all marine renewable related installations.

Industry has undertaken extensive work on this, including the Energy Network Strategy Group work and the Crown Estate Maps (see Appendix B). In addition, simple tidal and marine resource maps (also in Appendix B) can be used. It is vital that the experts behind these maps, including the British Wind Energy Association, Crown Estate (marine energy team) and major developers (all easily contactable through BWEA, REA and UKBCSE) are heavily involved so that their plans and knowledge of these issues can be included as early on in the MCZ identification process as possible. This is particularly important for tidal technologies which have a much smaller pool of potential siting areas.

UKBCSE / industry understand that so far, the Finding Sanctuary model has not fully consulted key developers in the region. These regional models must be made to be representative: even if the exact science is undertaken by specialists, the designating teams must have access to the wind/marine industry's rough plans. Without this the designation of MCZs will not be compatible with the Government's wider goals relating to climate change and security of supply.

7.3 Key Steps in 2009

We support the key steps outlined for 2009, especially the establishment of an independent Scientific Advisory Panel and a National Stakeholder Advisory Group. As well as the assurances received that members will include experts with socio-economic expertise, we suggest that both of these groups should specifically include expertise / representation from the energy sector.

7.4 Regional Projects

The second paragraph of this section (page 32) explains the process of identifying suitable stakeholders to be involved in the four regional MCZ projects. The project group and supporting staff should include members with core sectoral expertise, including energy. Whilst, UKBCSE, BWEA and REA have made initial contact with the four regional projects, it would be helpful for DEFRA to ensure that the project teams contact the relevant sectors asking for representation when ready.

Paragraph 4 of this section confirms that sites will have different levels of protection depending on the conservation objectives and the sensitivity of the feature being protected, which can include seasonal restrictions rather than a blanket ban. Equally there is no presumption that any particular activity will be restricted within any MCZ. Both of these statements are very helpful and industry looks forward to working closely with all involved to ensure proportionate protection measures are developed, combined with suitable mitigation to minimise impacts whilst enabling development.

The second paragraph on page 33 explains the process whereby Natural England and the JNCC will collate regional MCZ project recommendations together with the advice of the Scientific Advisory Panel, and then advise Government whether the combined networks satisfy the overall MCZ network objectives. We are delighted that the Strategy confirms the need for the MMO to work with Natural England and the JNCC in selecting MCZs and identifying socio-economic issues. This should be fed directly into the Secretary of State to ensure she / he has a balanced view of the full range of issues.

8.0 Process for identifying and Designating more European Marine Sites

8.1 *The European Marine Site Designation Process (Page 34)*

Whilst we understand that European Marine Sites are selected only on scientific advice, we welcome confirmation that Natural England and JNCC will continue to consult all stakeholders on the justification for proposing possible EU marine sites, and the socio-economic costs and benefits of these sites, and that an Impact Assessment will be undertaken. The inclusive process for MCZs could also potentially be adopted for EU marine sites.

8.2 *Differing Processes for Different Designations of MPAs*

Whilst we are grateful for the clarity provided on the differing processes for the various types of MPAs, the variance in processes and consultation methods and different timescales could lead to confusion and ineffective input from stakeholders. Therefore it is important that there is a clear central stakeholder communications programme to alert stakeholders and the wider public to each step of each process.

8.3 *Research and Development*

The first paragraph of page 37 again refers to the selection of MPAs having to be made on the best available scientific evidence. Our previously stated concerns apply, about the need for suitable safeguards around what is acceptable science and the need to include global science such as climate change.

We welcome the statement in the second paragraph that socio-economic factors also **have** to be taken into account in developing the MCZ network, however this contradicts the use of the word “**may**” in the MCZ Stakeholder Participation Approach section referred to above.

The second paragraph then goes on to say that ‘*the inclusion of socio-economic factors means understanding where different activities are occurring and their pressures on the marine environment, as well as how to include such data into the planning of networks to minimise socio-economic impacts*’. The industry supports this approach and will play its part in feeding in data and information as appropriate. However future planned activities also need to be considered, and data provided, in order to ensure the best possible outcome.

8.4 *Examples of Research Underway*

The table included on pages 37 and 38 provides a useful summary of research being undertaken, however we would ask in respect of the socio-economic data, what engagement has taken place with affected sectors and their sponsor Government Departments, and in particular the energy industry.

We would welcome the opportunity to input into the socio-economic research at the earliest opportunity.

9.0 Delivering the MPA Vision

9.1 Roles and Responsibilities

These sections set out the roles and responsibilities of the various public bodies involved in delivering the MPA Vision. We are particularly pleased that:

- **MMO** – under the MMO section (page 42) it confirms that the MMO will need to work with Natural England and the JNCC in selecting MCZs and identifying the socio-economic implications of the sites, as well as holding socio-economic data in respect of its role in marine planning and licensing.
- **JNCC** – under the JNCC section (page 44) there is confirmation that the JNCC will work with international stakeholders to secure socio-economic and other relevant data from international sea users to inform the selection of sites.

10.0 Managing the MPA Network

10.1 MCZs

The second paragraph on page 47 helpfully states that “...*conservation objectives will be framed in a way that makes management implications clear and easily understood.*” This is most helpful, however as before, we believe it is essential to publicise for consultation the proposed MCZ site and its draft Management Plan at the same time, in order to ensure that all stakeholders can holistically assess the proposal.

The last paragraph on page 47 confirms that where necessary, Government will prepare guidance for regulators and developers on how impacts can be assessed and what impacts will be considered acceptable in certain circumstances.

Whilst this will be helpful in providing certainty we would like clarity on:

- **Interlinkage with NPSs** – how this Guidance interacts with / differs from the proposed National Policy Statements (NPSs) being produced under the Planning Act 2008, which are intended to include information on the differing technologies and their impacts and how they might be mitigated.
- **Timescales** – early sight of this Guidance is vital in order for developers and indeed regulators to assess the likely implications for planned and future developments. It is envisaged that this Guidance will have a direct impact on site selection.

10.2 Enforcement

The streamlining of enforcement arrangements, with the MMO taking the lead, has the potential to provide for a more effective and easily understood regime, with hopefully a resultant reduction in breaches of compliance

11.0 Additional Points emerging from the Strategy

11.1 *Timeframes*

Taking the Marine Bill as a whole, there is no timetable for the Marine Spatial Plans, yet the MCZs and MPS will both be in place by 2012. It is vital that the process leading to the designation of MCZs is an integral part of the Marine Spatial Planning process and does not precede this holistic consideration of a geographical area. As matters presently stand there is effectively a very aggressive timeline for MCZ, SAC and SPA designation that will result in any future MSP process being presented with a 'fait accompli' of a network of MPAs, which could preclude or severely hamper the development of sustainable energy projects.

11.2 *Data*

The data used to support the decision-making around designation of MCZ sites is important. When the industry responds to consultations on onshore proposals that relate to our sites we usually have data that we have collected to back up our case. Under this Strategy developers are highly dependant on the data collected by those proposing the designation. It is therefore highly important that the evidence used in designation (including methods, times of survey) is made available to the public for wider scrutiny. In addition, there are real concerns that the rushing through of studies will not allow them to be based on consistent evidence (developers generally expect to see 5 years of survey effort used by the conservation agencies to back up an SPA proposal).

11.3 *De-designation*

Knowledge of the marine environment is far from complete. It is possible that the sites designated are not the most appropriate yet there is no mechanism in the Strategy that talks about de-designating sites. Review is covered but UKBCSE / the industry urge the inclusion of a process whereby if the sites are shown to be poor choices they can be de-classified.

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The views expressed in this paper cannot be taken to represent the views of all parts of all the companies in the UKBCSE. However, they do reflect a general consensus