

UKBCSE

Draft Statutory Guidance to the Marine Management Organisation on its sustainable development objective – UKBCSE and Industry Commentary

Introduction

The UKBCSE and industry have consistently supported the objectives of the Marine and Coastal Access Act 2009, and in particular the Government's commitment to ensuring all three pillars of sustainable development – environmental, social and economic – are considered when implementing the provisions of the Act. In particular we have been especially concerned to ensure that the Marine Management Organisation (MMO), as the strategic delivery authority for the marine area, has an overarching objective to actively contribute to the achievement of sustainable development.

We therefore support the principle of the Secretary of State providing Statutory Guidance to the Marine Management Organisation on its sustainable development objective, and welcome the opportunity to comment on DEFRA's early draft.

We were extremely pleased to receive the assurances from the Minister Huw Irranca Davies MP in his 22 October letter, in which he confirmed the vital importance of ensuring that the three pillars of sustainable development are considered and factored in when implementing the provisions of the Marine and Coastal Access Act 2009.

He also confirmed that this includes the Marine Policy Statement (MPS), which will provide the policy framework for the sustainable use of the marine area, and that "the goal of the policies set out in the Marine Policy Statement is to make a real, positive and ongoing difference to the achievement of sustainable development in the UK."

He goes on to say that "these policies must make long-term economic, environmental and social sense. By ensuring that the MMO and other public authorities take decisions in accordance with the MPS, we want to see real progress and improvement in the sustainability of all our actions in the marine area."

Key comments on the Explanatory Paper

General Principles – Paragraphs 1 to 6

UKBCSE / Industry welcomes the explanatory paper setting the draft statutory guidance to the MMO in context, which lays out how the various provisions implementing the MPS, the MMO and the Marine Planning system need to work together. It also confirms that detailed guidance on marine planning will be issued to the MMO in due course, along with additional integrated guidance, which must take account of other relevant documentation to avoid duplication and to provide a coherent context for the MMO's work. This objective is particularly welcomed and is vital to enable efficient operation of the MMO, and full clarity for all other bodies and stakeholders interacting with the MMO in whatever capacity.

It is also helpful to understand the status of the draft MPS between vesting of the MMO and adoption of the agreed MPS, which will be a material consideration to which the MMO should have regard when exercising its functions. We look forward to providing our comments on the Draft MPS when published for consultation.

However, we would be grateful for clarification on whether the relevant draft National Policy Statements covering energy technologies that are constructed and operate within the marine environment, will be an equal material consideration prior to becoming adopted.

How the MMO will report on its sustainable development duty – Paragraphs 6 to 7

UKBCSE / Industry support the requirements for the MMO to:

- Prepare a corporate plan setting out its objectives for a specified time period, which will represent the contribution that the MMO will make to the achievement of sustainable development, and drawn up in the context of the High Level Marine Objectives and the Draft MPS;
- Prepare an annual report at the end of each financial year on the actions it has undertaken to discharge its functions during the year, to include an assessment of how the MMO has performed against the objectives set in its corporate plan – with actions showing how it has contributed to the achievement of sustainable development.

We welcome the clarity given on how the Annual Report flows from the Corporate Plan, which in turn flows from the Sustainable Development Guidance.

Post Marine Policy Statement – Paragraphs 6 to 9

We support the fact that the MMO will be under a duty to act in accordance with the MPS, and that following its adoption the MMO will be issued with updated sustainable development guidance, which takes account of any policy priorities for the marine area as set out in the MPS.

We also particularly support the requirement for the MMO to prepare corporate objectives that will enable it to contribute to the achievement of sustainable development. The linkage with the aims of the MPS will also ensure that the policy framework within which the MMO operates also reinforces the importance of sustainable development within the marine area.

Key Comments on the Draft Guidance to the MMO on its Sustainable Development Objective

1. Introduction

We support the content and tone of the Introduction, which, like the Explanatory Paper, helpfully sets out how the key parts of the Marine and Coastal Access Act 2009 integrate with each other, and deliver the integrated implementation of the Government policies that the MMO is responsible for delivering in the marine area.

2. Sustainable Development

It is helpful to have the five principles adopted as the High Level Marine Objectives, reiterated within this Guidance. In particular, the recognition of the importance of, and the commitment to “achieving a sustainable marine economy” is welcome. However, UKBCSE / Industry also support the remaining four objectives of ensuring a strong, healthy and just society, living within environmental limits, promoting good governance and using sound science responsibly.

Equally, expressly making clear that the Objectives will steer the country governments and the wider public sector towards their (joint) achievement of sustainable development in the marine area is very helpful.

3. Role of the Marine Management Organisation

This section clearly and succinctly sets out the functions of the MMO and is generally welcome.

We particularly support the positive wording within this part, and in particular **Paragraphs 2.5 to 2.7**, which talk about:

- The expectation of the MMO to act “to further economic, environmental and social purposes, **making a real contribution to sustainable development**”;
- The MMO evolving as an organisation, “taking on more functions over time as it shows leadership as a marine regulator and manager, **trusted by all concerned to make a significant contribution to the sustainable development of the marine area**”;
- **“Sustainable development” should not therefore be seen as a separate and additional undertaking, but as a principle which is embedded in everything that the MMO does, including the way it exercises its functions and the approach it takes to decision-making**”;
- **“In every decision the MMO takes it should take account of sustainable development within the context of that decision**”;
- **“Over time this will enable the MMO to move away from a case by case consideration of individual projects and impacts to a more forward-looking and strategic approach**”;
- **The MMO should also look for opportunities to achieve win-win solutions when looking at interactions between uses**”;
- The challenge the MMO faces in taking decisions which might have potential adverse effects on the achievement of some of the high level marine objectives, but that **“the sum of the MMO’s decisions should ensure that the MMO is making a real contribution to achieving sustainable development in the marine area and in the wider context.”**

However:

It would be helpful to include encouragement of cohabitation of marine habitats / features and sustainable energy, many of which can co-exist quite happily with appropriate measures put in place.

Within **Paragraph 2.3** there is reference to a wide range of stakeholders with whom the MMO will need to engage. The quoted list includes “renewable energy”.

However, the marine area is very important to the delivery of all the various energy technologies, including carbon capture and storage, underground gas storage, wind, wave and tidal developments, subsea gas pipelines and subsea electricity cables, gas reception and importation facilities and all forms of largescale generation (on the coast).

We therefore suggest that “renewable energy” is replaced with “sustainable energy and renewable energy”. This is particularly key given the need to import both gas and electricity going forwards, the importance of the marine area in delivering both carbon capture and storage and underground gas storage, and the coastal area for all forms of generation / gas reception facilities, as well as the already identified renewable technologies of wind, wave and tidal.

Similarly, **Paragraph 2.8** acknowledges the positive role ‘the MMO can have in influencing and / or contributing to ongoing initiatives such as plans to meet climate change targets through wind farms.’ Whilst we welcome this acknowledgement, other forms of renewable and sustainable energy also contribute to addressing climate change, and equally importantly, contribute to the continued security of the UK’s energy supplies. **We urge Government to widen this section to reflect all forms of sustainable energy or at least reflect that there are differing types that contribute to addressing climate change and ensuring security of supply.**

Other Relevant Principles

Paragraph 2.10 lays out the additional “widely accepted” principles that MMO should have regard to. These include:

- **The Precautionary Principle** – whilst we support a precautionary approach where there is a real threat of serious or irreversible damage, the Government has committed to robust and peer-reviewed science being the basis on which decisions should be made. Therefore any additional requirements to prevent environmental degradation, however proportionate and cost-effective, must be based on some form of justifiable evidence, in order to avoid developers having to undertake unnecessary or unproven mitigation measures without good reason. The increasing designation of the marine environment under EU Natura legislation and the development / increase in MPAs / MCZs, coupled with the lack of certainty and robust scientific data on the environmental (and particularly ecological) impacts of marine sustainable energy technologies, could lead to the precautionary principle being over-implemented, which could totally limit development despite significant adverse impacts not being proven or potentially not even likely in some cases.

This links to the importance of the ‘deploy and monitor’ approaches to marine renewables, which are currently being considered by the Scottish Government and we urge DEFRA colleagues to continue their dialogue with them, and to include this area within their discussions;

- **Ecosystems Approach** – again, we welcome the reference to climate change included in this section;
- **Better Regulation** – We welcome the requirement to have regard to the five principles of good regulation, which state that regulatory activities should be transparent, accountable, proportionate, consistent and targeted;
- Evidence Based Decision Making – We support the emphasis on sound evidence and monitoring needing to underpin effective marine management, and that the **MMO “must always seek to ensure that all relevant evidence is taken into account and that its decisions can be justified objectively”**;
- **Use of Sound Science** – UKBCSE / Industry has long campaigned for science being used as evidence for any decisions to be both robust and accepted by Government and to include global science, including that associated with climate change. We therefore particularly support this section, and would strengthen it even further in that all science should be acceptable to the Chief Scientific Adviser and the Science Advisory Committee, rather than as currently drafted, whereby the MMO is able to call on their advice. Additionally, any advice from the Chief Scientific Adviser / Science Advisory Committee should also be robust and transparent, resulting in accountable evidence-based justifications.
- **Facilitating Information and Data Sharing** – We support the requirement for the MMO to enter into agreements or memoranda of understanding with organisations holding relevant data in order to facilitate data sharing. Wherever possible, UKBCSE members and other developers will share relevant information that will help the MMO’s understanding of existing and emerging technologies, impacts and mitigating measures. Equally the MMO should use this process to identify data and research gaps which it should outline how to tackle. Close liaison between academic and other research organisations is vital to this process, and it also requires public sector commitment to sharing data and clarifying the role of Government and its agencies in collecting it. Is it also worth highlighting that where developers will be happy to openly share information as far as possible, there may be issues of commercial sensitivity and confidence that could constrain this?;
- **Working in Partnership – with other Regulators** – We welcome the specific requirement for “the MMO to understand the respective roles and responsibilities of the other relevant bodies working in the marine area, and to develop a close working relationship with them in order to complement, and not duplicate, each others

activities.” This is vital to ensure that no undue administrative burden is placed on either developers, public authorities or statutory consultees through either conflicting or duplicating activities, regulations and guidance;

- **Stakeholder Engagement** – This statement is helpful in setting the expectation that the MMO should engage constructively with all relevant stakeholders and consider and take on board their expertise;
- **Working in Partnership – Infrastructure Planning Commission** – This section is particularly helpful in setting out clearly and succinctly:
 - The responsibilities and role of the MMO in advising the IPC when it is considering nationally significant infrastructure projects; in advising on appropriate conditions; and in monitoring and enforcing deemed marine licences granted by the IPC;
 - The requirement for the MMO to act in accordance with the National Policy Statements for renewable energy and ports once these are in place.

However, as before, “renewable energy” should read “sustainable energy and renewable energy” because the IPC will be consenting a range of different technologies above 100MW.

Finally, the Guidance needs to include a section on **“Working in Partnership – with Devolved Administrations”** - It is important that the MMO works closely with Marine Scotland and other relevant devolved regulators, especially as the Marine Policy Statement will be UK-wide. The need for co-ordinated and effective cross-UK working is not noted in this document, as far as we can see, but could be referred to under, for example, within this paragraph (2.10), perhaps under a further bullet point on "Working in Partnership – with Devolved Administrations". It is important to note that the development of Marine Scotland has tackled some of the issues that the MMO will have to face, including for example the facilitation of information and data sharing, and UKBCSE / industry believe that lessons can perhaps be learned from discussions already underway in Scotland, including those within the auspices of the Scottish Government's Marine Energy Spatial Planning Group.

Statutory and Policy Framework

Paragraph 2.11 – helpfully sets out the MMO’s principal objective – “to manage its activities with the objective of making a contribution to the achievement of sustainable development, taking account of all relevant facts and matters and in a consistent and coordinated manner.”

However the Minister's 22 October letter goes further stating “the importance of achieving sustainable development in the marine area is also reflected in the new Marine Management Organisation’s overall objective, which is to contribute to the achievement of sustainable development, **with a power to further ‘any social, economic or environmental purposes’**. **The statutory guidance that the Secretary of State will give the MMO on its sustainable development objective will emphasise the importance of preserving the overall ‘balance’, whilst recognising that in certain circumstances or areas it might be necessary to prioritise one or more of the principles over others.**” **We would welcome the use of this specific wording.**

It also spells out that “the MMO may take any action which it considers necessary or expedient for the purpose of furthering any social, economic or environmental purposes.”

Whilst this could be helpful for developers, such an overriding power could lead to severely detrimental consequences for stakeholders. **We therefore request urgent clarification on what appeal mechanisms will exist, and to whom, to enable a negatively impacted stakeholder recourse to some form of appeal / compensation.**

Paragraph 2.14 – helpfully further stresses the links between the MPS and the NPSs, and the duty placed on the Secretary of State (via the Planning Act 2008), in exercising his functions in relation to NPSs with the objective of contributing to the achievement of sustainable development. UKBCSE / Industry therefore support this paragraph as a further strengthening of the importance of sustainable development.

Paragraph 2.15 – As previously, the UKBCSE / Industry absolutely supports the appropriate protection of priority habitats and species being implemented through the EU Marine Strategy Framework Directive and the development of an ecological coherent network of Marine Conservation Zones. However, given that the greatest threat to the marine environment is climate change, there needs to be a balance between local environmental protection and ensuring that the marine area is able to make its contribution to addressing climate change. Equally, ensuring the continuity of the UK's energy supplies also needs to be a primary consideration.

Therefore, as mentioned above in response to **Paragraph 2.10** the appropriate application of a precautionary approach, which balances the three pillars of sustainable development – environment, social and economic is essential.

Prioritisation and Accountability

Principles for Prioritisation

Whilst we understand the need for the MMO to prioritise its activities, **determining such principles by whether it has the relevant expertise is not an appropriate principle.** We have recently received assurances that the MMO will have sufficient expertise in renewable energy, **although we would also welcome confirmation that personnel will be recruited to cover all forms of sustainable energy.**

As continually stressed during the passage of the Marine and Coastal Access Act 2009 during Parliament, it is vital that the MMO has sufficient resources and expertise to be able to provide timely and appropriate advice on proposed sustainable energy developments within the marine area.

Accountability

We welcome the clarity laid out in Paragraphs 3.2 to 3.4 in providing a clear steer as to the level and type of governance, stakeholder engagement and accountability that will be required.

Summary

This document provides clear and succinct guidance on both how the MMO should contribute to the achievement of sustainable development, and also the context in which the MMO will operate, and, at a high level, how the other parts of the Marine and Coastal Access Act 2009 deliver a framework which reinforces the requirement for the MMO to contribute towards the achievement sustainable development.