

Guidance on selection and designation of Marine Conservation Zones (Note 1)

Guidance on the proposed approach to the selection and designation of Marine Conservation Zones under Part 5 of the Marine and Coastal Access Act

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About this Guidance

This Guidance document was issued in draft in May 2009. This final version reflects feedback received from the Statutory Nature Conservation Bodies and others on using the draft guidance and the adopted approach to selecting sites to propose to Government for designation. It provides guidance on the factors that the Government considers important for those involved in identifying potential Marine Conservation Zones (MCZs) to bear in mind when carrying out their selection work. It deals with key and supplementary considerations, and provides advice on how the process will work and different people's and organisations' roles in it. It also gives some guidance on the relationship of this work to other related policy areas.

The guidance covers the part of the UK Marine Area for which the Secretary of State for Environment, Food and Rural Affairs is responsible. This includes the territorial waters adjacent to England (waters out to 12nm) and the UK's offshore waters adjacent to England, Wales and Northern Ireland.

The guidance is addressed in particular to Natural England, the Joint Nature Conservation Committee, the regional MCZ Projects' teams and the MCZ regional stakeholder groups. It is also intended to help organisations and individuals with an interest in the sea.

The guidance should be read in conjunction with the other guidance notes that the Government, Joint Nature Conservation Committee (JNCC) and Natural England have published:

- Guidance on the duties imposed by Part 5 of the Marine and Coastal Access Act 2009 on public authorities (Note 2)¹
- Guidance on the exercising the byelaw-making powers of Part 5 of the Marine and Coastal Access Act 2009 (Note 3)²
- Guidance on the relationship between Marine Conservation Zones and Sites of Special Scientific Interest (Note 4)³
- JNCC and Natural England Project Delivery Guidance on the development process⁴
- JNCC and Natural England Ecological Network Guidance on the technical criteria for selecting MCZs⁵.

¹ <http://www.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note2.pdf>

² <http://www.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note3.pdf>

³ <http://www.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note4.pdf>

⁴ http://www.naturalengland.org.uk/Images/mcz-project-delivery-guidance_tcm6-20854.pdf

⁵ http://www.naturalengland.org.uk/Images/100608_ENG_v10_tcm6-17607.pdf

1 The aim of the MPA network and the MCZ designation process

Our aim is to develop an ecologically coherent and well-managed network of Marine Protected Areas (MPAs) that is well understood and supported by sea-users and other stakeholders. Achieving this aim will make a major contribution to recovering and protecting the richness of our marine wildlife and environment and will be a contribution to achieving Good Environmental Status in our seas as required by the EC Marine Strategy Framework Directive.

The MPA network will comprise European marine sites (that is Special Protection Areas and Special Areas of Conservation) together with Marine Conservation Zones (MCZs), and marine parts of Ramsar sites and Sites of Special Scientific Interest. The network will include rare, threatened, and representative species and habitats to conserve or enhance biodiversity and ecosystems.

The Marine and Coastal Access Act 2009 (referred to throughout this guidance as ‘the Act’) provides Ministers with a power (section 116) to designate MCZs, linked to a duty to exercise this power so as to contribute to the achievement of an MPA network (section 123) in the UK marine area. Social and economic impacts will be taken into account in designating MCZs, as provided for in the Act (section 117(7)). The Government wants sea-users, environmental bodies and other interested parties to have a prominent role in formulating advice to Government on the creation of MCZs and which will contribute to an ecologically coherent and well-managed network of Marine Protected Areas. Nature conservation needs to be integrated with the social and economic considerations to form the complete evidence base upon which Government will take decisions. Advice and recommendations to Government should cover not only the conservation grounds for proposed MCZs but, through Impact Assessments (IAs), also include views on options or approaches to achieve the conservation goals (options for sites and/or management measures). This will be the case in particular where the process of developing and completing IAs has not achieved stakeholder agreement on the maximum ecological benefit for the minimum socio-economic cost.

Government will decide on if, where and why Marine Conservation Zones should be designated and in doing so Government will want to be clear about the implications of the decisions it takes. It will want to be clear about the likely success of the implementation measures to achieve the conservation objectives and that means understanding what choices exist and the impact of those choices for the environment and on sea users. That is why it has put in place a different approach and has asked its statutory nature conservation advisors to come forward with advice by Nov 2011 that is accompanied by propositions drawn up and supported by sea users. In order to produce IAs, there will be a need to have the views of the Marine Management Organisation (MMO) and others, including Inshore Fisheries and Conservation Authorities (IFCAs), the Environment Agency and stakeholders, on the management measures which might be needed.

Measures of success

In order to assess whether we are succeeding in working towards achieving our aim, we will define appropriate criteria and measures of success for the sites in the MPA network within the waters covered by this guidance. These criteria and measures will be developed with the Statutory Nature Conservation Bodies (SNCBs).

2 Involvement of stakeholders

Policy Processes

Background

The UK Government has asked Natural England and the Joint Nature Conservation Committee (JNCC) to work in partnership with stakeholders to identify and recommend potential MCZs by November 2011. This is a non-statutory process and will contribute to four important aims:

- meeting the Government's vision for clean, safe, healthy, productive and biologically diverse oceans and seas;
- contributing to the UK's international commitments to establish an ecologically-coherent network of MPAs;
- best meeting the needs of society as a whole; and
- ensuring that stakeholders have a genuine opportunity to inform and influence the Government's decisions on sites to be designated and how they should be managed to achieve the conservation goals.

Stakeholder engagement

A wide range of stakeholders have an interest in the development of MCZs. They include individual fishermen operating small inshore vessels and recreational users, through to multi-national companies, international organisations, public bodies such as planning authorities, Sea Fisheries Committees or IFCA's, the Crown Estate, public agencies (e.g. the MMO) and the wider public.

As stated in Section 1, we want sea users and other stakeholders to participate in the decision making to identify MCZs. The development process has been designed to encourage and facilitate involvement from the start so that stakeholders can shape the location, conservation objectives and management of MCZs. Firstly, through the stakeholder-led MCZ Project established by JNCC and Natural England. Secondly, during a formal public consultation on proposed sites for MCZ designation, and thirdly through consultation on any regulatory management measures to be introduced by the relevant authority.

JNCC and Natural England have set up four regional MCZ projects around the coast of England. These projects cover the North Sea ('Net Gain'), the Irish Sea ('Irish Sea Conservation Zones'), the south east ('Balanced Seas') and the south west ('Finding Sanctuary') – see Figure 1 on page 6.

All interested parties are strongly encouraged to participate in the regional MCZ projects and to feed in their data, knowledge and views. This will be the most effective way for stakeholders to influence the MCZ decision-making process. Stakeholder participation in the recommendation of possible locations for MCZs will be channelled through regional stakeholder groups⁶ that will seek input from local, regional, national and international sectors. These stakeholder groups will adhere to the principles of stakeholder engagement as set out in Annex A.

⁶ To find out more information about how to get involved in the regional MCZ projects the following JNCC website provides further details; <http://www.jncc.gov.uk/page-4884>.

Figure 1 - Four areas covered by the regional projects



By providing information and data on the ecological, social and economic importance of marine features, stakeholders will help inform site selection, boundary identification, conservation objectives and impact assessments. More importantly, the regional stakeholder groups will assess the evidence and make recommendations on sites and conservation objectives to the SNCBs with the support from the regional project team. Alongside these recommendations the Groups will also provide Impact Assessments. These will be an important tool that will inform their evolving thinking on sites to be selected and options, summarising the available evidence on impacts. Amongst other things, Impact Assessments will need to set out the assumptions about site management scenarios that regional MCZ projects have made to deliver the conservation objectives.

MCZ options will be identified by stakeholders and, as far as possible, consensus reached on recommendations. We know that the support and acceptance of all stakeholders may not always be possible. If this is the case the regional MCZ projects should identify the areas of disagreement and the reasons for them, highlighting potential risks for the MPA network of non-designation and potential costs of designation.

Natural England and JNCC have provided guidance on governance and process to be implemented by the regional MCZ projects.

Science and other specialist advice

Alongside the regional MCZ projects, Defra has established an independent Science Advisory Panel. The Panel will support the regional MCZ projects and SNCBs by providing an expert and impartial scientific view on whether proposals meet the criteria set out in the SNCB Ecological Network Guidance. Specialist advice will also be made available to the regional MCZ projects on the assessment of the socio-economic information and Impact Assessment process.

Evidence and Advice for Ministers

The regional MCZ project recommendations, advice from the Science Advisory Panel and Impact Assessments will be submitted to the SNCBs. The SNCBs will consider the proposals (including areas where consensus could not be reached), and forward them by November 2011 to Defra Ministers with their advice on the extent to which they would contribute to the creation of an ecologically coherent network of MPAs, and any recommendations for changes they consider necessary.

Public Consultation

Defra will consider the information submitted to it and propose MCZ sites for formal public consultation. Government's consideration will reflect the contributions needed to establish an ecologically coherent MPA network and other Government policies and priorities. Following consultation the Government will decide which sites to designate.

Regulatory measures required to manage MCZs by IFCA and MMO byelaws will also be consulted upon. Whenever possible public consultation on regulatory measures will be undertaken at the same time as consultation on proposed MCZ sites.

3 Principles for design of the Marine Protected Areas network

The Government is committed to ensuring that the network is ecologically coherent and will be based on the following seven principles. These principles are based closely on those developed for OSPAR⁷:

- **Representativity** – the MPA network should represent the range of marine habitats and species through protecting all major habitat types and associated biological communities present in our marine area.
- **Replication** – all major habitats should be replicated and distributed throughout the network. The amount of replication will depend on the extent and distribution of features within our seas.
- **Viability** - the MPA network should incorporate self-sustaining, geographically dispersed component sites of sufficient size to ensure species' and habitats' persistence through natural cycles of variation.

⁷ OSPAR (2006). Guidance on developing an ecologically coherent network of OSPAR marine protected areas. Ref: 2006-3. OSPAR (2007). Background document to support the assessment of whether the OSPAR network of marine protected areas is ecologically coherent. Ref: BDC 07/03/14-E

- **Adequacy** – the MPA network should be of adequate size to deliver its ecological objectives and ensure the ecological viability and integrity of populations, species and communities (the proportion of each feature included within the MPA network should be sufficient to enable its long-term protection and/or recovery);
- **Connectivity** – the MPA network should seek to maximise and enhance the linkages among individual MPAs using the best current science. For certain species this will mean that sites should be distributed in a manner to ensure protection at different stages in their life cycles.
- **Protection** – the MPA network is likely to include a range of protection levels. Ranging from highly protected sites or parts of sites where no extractive, depositional or other damaging activities are allowed, to areas with only minimal restrictions on activities that are needed to protect the features;
- **Best available evidence** – Network design should be based on the best information currently available. Lack of full scientific certainty should not be a reason for postponing proportionate decisions on site selection.

The application of these principles will deliver an MPA network that contributes to the resilience of the marine ecosystem. That is, an ecosystem which can deal with disturbances from natural and human activities (such as climate change), recover from damage, and continue to provide essential ecosystem services such as fish to eat, beaches to visit and as a sink for carbon dioxide (CO₂).

The design principles are defined in the Ecological Network Guidance referred to on page 3.

4 Principles for identification and selection of MCZs

MCZs may be designated to conserve and/or aid the recovery of:

- The range of marine biodiversity in our waters;
- Rare or threatened habitats and species;
- Globally or regionally significant areas for geographically restricted habitats or species;
- Important aggregations or communities of marine species;
- Areas important for key life cycle stages of mobile species, including habitats known to be important for their reproduction and nursery stages;
- Areas contributing to the maintenance of marine biodiversity and ecosystem functioning in our seas; and
- Features of particular geological or geomorphological interest

The value of individual MCZs in conserving species and habitats should also be considered.

Ecological considerations in identification and selection of individual MCZs

The key consideration in identifying potential MCZs should be whether a proposed MCZ is consistent with, and furthers, the objective to achieve an ecologically coherent MPA network. JNCC and Natural England have issued Ecological Network Guidance on how

to judge this. A non-technical summary is also being produced. The independent Science Advisory Panel (SAP) will review the potential MCZs identified by regional MCZ projects and JNCC/Natural England against the Ecological Network Guidance.

The assessment of whether sites are important in terms of any of the factors outlined below should be based on the best available evidence, expert advice from the SAP and stakeholder knowledge.

Fulfilment of one or more of the following criteria may qualify an area to be a MCZ within an ecologically coherent network. These are largely based on criteria developed for OSPAR Contracting Parties to consider in MPA identification and selection:

- **Threatened, declining or rare species and habitats**

- The area is important for species and habitats that appear to be under immediate threat or subject to rapid decline (e.g. those listed within the OSPAR Initial List of Threatened and Declining species and habitats, and marine priority species on the UK Biodiversity Action Plan list).
- The area is important for nationally or globally rare habitats and species.
- The area is important for globally or regionally significant areas of geographically restricted habitats or species.

- **Features of local, regional or national significance**

- The area is an Important Plant area for algae or has nationally important marine features or particularly sensitive features, for example.

- **Ecological significance.**

- The area has:
 - A high proportion of a habitat type or a population of a species at any stage in its life cycle;
 - Important feeding, breeding, moulting, wintering or resting areas for species of conservation interest;
 - Important nursery, juvenile or spawning areas for species of conservation interest; or
 - A high natural biological productivity of the species or features being represented.

- **High natural biological diversity**

- The area has a naturally high variety of species (in comparison to similar habitat features elsewhere) or includes a wide variety of habitats (in comparison to similar areas elsewhere).

- **Representativity**

- The area contains one or more habitat types, species, ecological processes or other natural characteristics that are representative of our seas as a whole or for its different biogeographic regions and sub-regions.

- **Sensitivity**

- The area contains a high proportion of sensitive habitats or species.

- **Naturalness**

- The area has a high degree of naturalness, with species and habitats still in a very natural state as a result of the lack of human-induced disturbance or degradation.

- **Size and position of site**

- The MCZ should be large enough to protect the ecological processes and features of interest.
- The distance between potentially connected habitats across sites and the prevailing physical processes (e.g. strength and direction of currents and physical barriers) should be taken into account to maximise and enhance the linkages within the network. However, the evidence supporting connectivity is generally weak, so except where there is specific evidence about sites, this consideration is of secondary importance in identifying sites.

Taking account of ecological processes

Ecological processes play an important role in the functioning of marine ecosystems and can be hugely important for individual species or habitats that the Government is seeking to conserve in this network. As such the impact of these processes on a site's viability may be an important consideration in the designation decision. These processes can be physical, chemical or biological and can include:

- Ocean currents and the structure of the water column in the marine environment
- Erosion and deposition of sediments
- Marine cycles such as those of nutrients and carbon
- Structure within the marine food web (such as competition and predation within food webs)
- Biological productivity, such as the level of phytoplankton growth
- The provision of key habitats and places of refuge for marine species
- Patterns in the marine ecosystem such as variability within populations and their resistance and resilience to depletion)
- The provision of areas for reproduction and larval growth.

MCZs will not be directly designated for ecological processes alone. However, ecological processes should be taken into account in identifying MCZs, setting the conservation objectives and considering the management measures required (so that processes will be maintained/conserved where necessary to support a habitat or species).

Highly mobile species

Many highly mobile species are already protected under existing European and national legislation. Beyond this, sectoral measures (such as fisheries management, by-catch mitigation measures and protected species licensing) are likely to be the most effective tools in conserving widely dispersed and mobile species.

MCZs should be designated for highly mobile species only where there is clear evidence that their conservation would benefit from site-based protection measures, such as where a species is present in sufficient numbers at predictable locations in order to

establish meaningful site boundaries and conservation objectives. The Ecological Network Guidance identifies those highly mobile species that could be protected through MCZs based on currently available information and advice.

Identification and selection of MCZs for protection of seabed characteristics and rock structure

To date, the emphasis of geological conservation has been on terrestrial and coastal areas. However, there are also sites of geological (rock structure) and geomorphological (the makeup of the seabed) interest under the sea. MCZs may also be designated to protect such features. It may be appropriate to include these features when considering the selection of MCZs for ecological reasons.

Features of interest may include:

- Areas of international geological importance;
- Areas that contain exceptional geological features; or
- Areas that are representative of a geological feature, event or process, which is fundamental to understanding Britain's geological history.

The Ecological Network Guidance provides guidelines which highlight those features of geological and geomorphological interest in our marine area. By using these guidelines, stakeholders working with the regional MCZ projects and the SNCBs can identify suitable geological sites to recommend for designation.

Practical considerations

In addition to the factors set out above, the following practical considerations will be applied in selecting MCZs and drawing their boundaries. These are based on the practical criteria developed for OSPAR.⁸

- **Synergies with other or existing uses**
 - MCZs should exploit synergies where objectives are compatible (or multiple use of sites) because that is essential to allow the sustainable use of our seas. If an area has a degree of protection for other purposes, for example, it is already designated as a European marine site and is already subjected to restriction on other activities e.g. fisheries closures or military training areas, then we should consider whether it is suitable for protection of other features within the existing site boundary where compatibility can be achieved.
 - We want to achieve the maximum ecological benefit for the minimum socio-economic cost. Therefore where sustainable socio-economic exploitation of our marine resources would also support ecological conservation objectives, we should take advantage of that. For example an area can provide conservation benefits through excluding activities for reasons of safety (e.g. exclusion zones around offshore wind turbines) or danger areas.
 - MCZs cannot be designated specifically to protect marine archaeological heritage. However, regional MCZ projects will be able to take account of socio-economic considerations which includes marine heritage. This might be relevant where, for example, there would be conservation or practical site management synergies to be gained from including a marine heritage site within the boundaries of an MCZ.

⁸ OSPAR MPA stage 2 practical selection criteria (OSPAR Commission 2003-17)

- **Size**
 - The area is large enough to achieve the proposed conservation objectives and should enable effective management of that area.
- **Potential for maintenance and recovery of features**
 - Sites that are more likely to successfully achieve their conservation objectives should be favoured over those that are less likely to.
- **Degree of consensus**
 - We are committed to ensuring a high level of stakeholder engagement in the development of this network and support for the outcome. As such we want to see all views considered from the wider scientific and sea user community through the regional MCZ project process.
 - This process will ensure as far as possible that the establishment of an MCZ has good support from stakeholders through the process of open contributions, discussion and negotiation, particularly around sites and the development of management measures.
- **Scientific value**
 - Obtaining scientific data from areas will be essential to best guide our future policy.
 - All or some of the area has a high value for scientific research and monitoring.
 - All or some of the area could be used as a reference site/baseline against which to compare condition.

Taking account of social and economic factors in site selection

The Government's policy is to implement an ecologically coherent network of MPAs whilst minimising adverse socio-economic impacts of the network and its management. The existence of socio-economic interests will not prevent the consideration of an area for designation as an MCZ, nor compromise the achievement of an ecologically coherent MPA network, but will be considered as part of the process outlined here. In some cases the presence of socio-economic interests may actually afford protection of features of conservation interest and co-location may be mutually beneficial (e.g. wind farm sites, shipping lanes) where objectives could be compatible.

In taking decisions, Ministers will want to be clear about the choices they have and the impact of the decisions they are being asked to take. The approach to the selection and designation of MCZs therefore is to ensure that environmental and socio-economic information is integrated to provide the best available evidence base for decisions. This evidence needs to be set out clearly. It is likely to be based upon:

- identifying the scientific case for conserving a feature etc;
- identifying the objectives to be achieved through conservation, being clear on what is to be conserved and why;
- identifying options on how the feature can be protected and when.

The weight to be attached to socio-economic interests will depend on a number of factors and will need to be considered in the light of the particular circumstances that apply in each area. Where areas contain features which are rare, threatened or declining and come with limited options for their location, ecological considerations are

likely to carry greater weight in considering the area's suitability for designation as an MCZ. However, where there is a choice of alternative (and comparably-suitable) areas (which could be the case for many representative habitats), socio-economic factors are likely to carry increased weight (within the constraints imposed by the network design principles and the conservation objectives for the site).

Providing it does not conflict with achieving an ecologically coherent network, it will be desirable to avoid designating MCZs that would be detrimental to ongoing, licensed or planned socio-economic activities. Where there may be irreconcilable conflicts between socio-economic activities and MCZs, then suitable alternative sites should be considered. If this is not feasible (e.g. because of the rarity of a particular feature or to meet network design principles) the aim should be to reduce any conflicts to the minimum whilst ensuring that the site contributes in the required way to the achievement of an ecologically coherent network. Where appropriate, the use of longer timeframes to achieve conservation objectives which would reduce socio-economic impacts should be considered. Setting a longer timeframe would provide clarification on how and when potential measures could be put in place. For example, this could allow time for sectors to adapt or to develop voluntary measures instead of regulation, though this would very much depend on the sensitivity of the features and its priority for protection.

The following are some examples of the kind of network or site adaptations which regional MCZ projects might consider:

- where alternative areas are comparable on conservation grounds, the regional MCZ project could give preference to the area which minimises the social and economic costs, maximises the benefits, or maximises the benefits net of costs;
- proposing that an MCZ's boundary excludes areas of critical economic or social importance (e.g. to allow a cable route through the general area of an MCZ) while still achieving the conservation objectives of the features;
- proposing that an MCZ is designated with conservation objectives which take account of and minimise the socio-economic impacts on the marine environment while delivering conservation of the features; or
- proposing that an MCZ is designated with an early review of conservation objectives, boundaries or management of the site.

Impact Assessments

Defra Area

The Impact Assessment (IA) will be an integral part of the MCZ selection process and formalise the evidence base on which the MCZ recommendations are based. Each of the four regional MCZ projects will produce an IA for its project area, which will ultimately support the Minister's formal consultation on designating MCZs. The IAs will set out the anticipated costs and benefits of the proposed MCZs. This should include:

- identification of current or potential future environmental, economic and social status of the proposed regional MCZ project area in the absence of designation (i.e. the status quo or baseline);
- identification of anticipated range of environmental, economic and social impacts of designating the preferred sites, relative to the baseline;

- exploration of the alternative MCZ options considered (location, conservation objectives, management measures) and the range of associated potential costs and benefits (assessed qualitatively or quantitatively as appropriate).

The regional MCZ projects will base the IA on information gathered via the projects' stakeholders as well as relevant information from other sources. The national and international stakeholder groups being engaged by the SNCBs will also be an important source of evidence and data for each IA. Regional MCZ projects will be guided on how to produce IAs with the help of specialists employed by each project and by support from Defra. If appropriate, the SNCBs may provide further external expert support.

Drawing of site boundaries

Boundaries should encompass as much area as is necessary to protect the features of interest at the site but should follow the distribution of those features. Boundaries should be as simple as possible to ease compliance and to facilitate the enforcement of management measures. The Ecological Network Guidance referred to on page 3 gives further guidance.

MCZs for species should be drawn around areas of species concentration, using the best available data. Where there is a clear functional link between the specific habitats and species' distribution, habitats can be used as a basis for site delineation.

Landward boundaries

In general MCZs will be designated below Mean High Water Spring Tide. However, provided one or more of the conditions set out in section 118(5) of the Act are satisfied, an MCZ may extend landward of this line. Examples of circumstances when this might be appropriate include, but are not limited to:

- Avoidance of complex, fluctuating or migrating boundaries (e.g. to incorporate predicted coastal erosion);
- Inclusion of a whole intertidal biological community including the splash zone;
- Extensions to species MCZs; and
- Features that are dynamic or ephemeral (e.g. geological processes).

5 Links with other Marine Protected Areas

Relationship to other site-based nature conservation designations

The MPA network will comprise European marine sites (that is Special Protection Areas and Special Areas of Conservation) together with Marine Conservation Zones (MCZs), and marine parts of Ramsar sites and Sites of Special Scientific Interest. The Act allows for overlap of sites designated under different legislation, but the Government intends MCZs to complement (and not duplicate) the existing site designation and protection measures for European marine sites. MCZs should only be proposed for habitats and species which are protected under the EC Habitats and Wild Birds Directives in exceptional circumstances, where they are essential to meet the ecological coherence objectives of the wider MPA network.

Section 148 and Schedule 13 of the Act allows for a limited degree of overlap between MCZs and terrestrial sites (i.e. SSSIs and national nature reserves). Further information

is included in draft guidance (Draft guidance on SSSIs and National Nature Reserves in the subtidal area, note 4) which is available from the Defra website⁹.

There may be circumstances where MCZ and European designations fully or partially overlap to protect different features. This may offer a higher level of protection to part of a site than the existing designation imparts or for practical purposes (e.g. to achieve a more joined-up approach). Examples include but are not limited to:

- Designation of an MCZ for a feature within a European marine site that does not qualify under the Habitats or Birds Directive criteria;
- Designation of an MCZ for marine features covering areas (usually intertidal) that have also been notified as SSSIs for terrestrial features.¹⁰

Fisheries

Commercial species are part of the marine ecosystem and some have recognised conservation importance, i.e. those listed on multilateral environmental agreements (e.g. OSPAR). These species should be considered for MCZ identification – the Ecological Network Guidance referred to on page 3 lists fish species to be identified.. However, where commercial species are highly mobile, MCZs would only be appropriate when there is clear evidence that their conservation would benefit from site-based protection measures. It should be noted that MCZs are not intended to be used to restore fish stocks for enhanced commercial exploitation, although this may be a consequential benefit. Other mechanisms perform this fish stock management function, principally measures introduced under the Common Fisheries Policy, but also the Sea Fish (Conservation) Act 1967 and Parts 6 and 7 of the Marine and Coastal Access Act 2009.

6. Conservation objectives and management of activities for MCZs

The orders made under Section 116 of the Act will define an MCZ's area, its protected features and its conservation objectives. The purpose of conservation objectives is to define the desired ecological outcome(s) of designating the area as an MCZ on an individual site and feature level. Conservation objectives will vary from site to site. For each conservation objective the following principles should be applied:

1. Conservation objectives should either aim to maintain or enhance or recover the feature, depending on its condition, the pressures to which the feature is sensitive, any relevant socio-economic considerations, the contribution of the feature to ecological-coherence of the MPA network and the status of the feature (for example whether it is threatened or rare).
2. Conservation objectives should be realistic and achievable.
3. Conservation objectives should specify, where possible, the timeframe by which they will be achieved (again based on the feature's condition, the pressures to which it is sensitive, socio-economic considerations and the contribution and status of the feature to ecological-coherence of the MPA network).

⁹ <http://www.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note4.pdf>

¹⁰ The need for this depends on the nature of designation order and the level of management measure needed to further or achieve the conservation objective of the MCZ.

4. Conservation objectives should be compatible and integrate with the objectives of other types of MPA as well as the Marine Strategy Framework Directive and the Water Framework Directive descriptors.

Some conservation objectives may be designed to ensure that sites (or parts of sites) reach reference condition; that is they develop, as far as practicable, the full complement of biodiversity characteristic of that particular feature in that geographical area. Others may be aimed at maintaining or enhancing or recovering features short of reference conditions, enabling the consequential management measures to take account of socio-economic conditions. Conservation objectives will also enable the identification of potentially damaging activities and appropriate management. The significance of potential impacts from existing and future activities and developments, and their management, will be estimated through the use of Impact Assessments.

The regional MCZ projects should propose conservation objectives for the recommended MCZs; these objectives should include a description of the site's features and their vulnerability to damage (based on sensitivity and exposure). The SNCBs will provide advice to regional MCZ projects regarding the structure of conservation objectives as well as advice about the sensitivity of the sites' features to pressures and which activities cause the pressures.

Information on the vulnerability of the features in a MCZ could be presented in a way that makes the likely management implications as clear and easily understood as possible. Conservation objectives should also be focused on meaningful environmental outcomes. It would be helpful if the regional MCZ projects, in drafting conservation objectives, could give some consideration to how the achievement of, or movement towards, the objectives might be demonstrated pragmatically.

It is important to recognise that working towards achieving conservation objectives may mean that the composition of species changes over time and at different rates due to ecological processes such as succession. Whilst this should be reflected in the conservation objectives, it is difficult to predict and it may not be possible to set specific, measurable targets, though we should strive for these whenever possible.

Management of activities in MCZs

There are a number of regulatory and non-regulatory methods by which sites could be managed to achieve their conservation objectives. In identifying and implementing management measures, the following principles should be applied:

1. Both regulatory and non-regulatory methods should be investigated and assessed.
2. Measures with the least social and economic impact should be implemented where effective in meeting MCZ conservation objectives.
3. Management should be proportionate to the conservation objectives of the feature (i.e. management measures of a reference site should be different from management measures from a non-reference site for the same feature).

An important management measure would be the conditions attached to the granting of licences or consents for development work, for example. Conservation objectives need to be considered by public authorities, including the MMO, when taking decisions on applications for consent to carry out activities. The conservation objectives may influence the conditions attached to such consents.

A second influence is directly on public authorities themselves, which are under a duty to exercise all their functions in a way which best furthers, or where that is not possible, least hinders achievement of sites' conservation objectives. This duty will influence the way that authorities carry out work themselves.

Thirdly, the Act enables sites to be managed through the introduction of byelaws to regulate inshore fisheries and otherwise unregulated activities. Sites will also be able to be managed by applying for appropriate measures to regulate commercial fishing through the Common Fisheries Policy (CFP). Finally, the general offence set out in Section 147 prohibits the deliberate or reckless damage of a site.

These management tools will be used by a number of bodies.

The SNCBs will be able to support the work of the regional MCZ projects by providing advice on the sensitivity of features to activities. Regulators and stakeholders will help identify the kinds of management approaches that could ensure sites meet their objectives. SNCBs will give case by case advice when requested to do so by public authorities under the provisions of Sections 125 and 126 of the Act and they also have the power to issue general or specific guidance on the management of MCZs under Section 127.

The duty to best further, or where that is not possible, least hinder achievement of sites' conservation objectives applies to the Marine Management Organisation (MMO) and Inshore Fisheries and Conservation Authorities (IFCAs) just as it does to other public authorities such as the Environment Agency. The MMO and IFCAs are responsible for introducing byelaws to regulate inshore fisheries (IFCAs) and otherwise unregulated activities (MMO). They are also responsible for enforcement of their byelaws and of the general offence. They will support the regional MCZ projects by providing advice on the byelaw-making process, and also on the practicality and enforceability of possible regulation of activities.

The Government (Defra) will be responsible for making the case in Brussels, when appropriate, for fisheries controls through the CFP.

Levels of protection

The Government expects the regional MCZ projects to work together with the SNCBs, the MMO, IFCAs and stakeholders in developing their recommendations about the management measures and options necessary to deliver conservation objectives. This will result in different levels of regulation of activities for different sites depending on conservation objectives, the sensitivity of the features being protected, the scale of the ongoing activities and how they are undertaken. This is needed to feed into the Impact Assessments.

There is no presumption for any MCZ that any particular activity will be restricted. We will expect regional stakeholder groups (through the regional MCZ project Impact Assessment work) and public authorities (through their duties to protect MCZs) to think creatively about how conservation objectives may be achieved. They will need to consider which, how and when activities may need regulating, if at all. For example, it might be appropriate to have seasonal restrictions on activities rather than a complete ban, or to modify activities in a way which mitigates the pressures but allows them to continue. There may be a place for voluntary agreements.

However, we recognise that in some sites we will need to prohibit all extraction, deposition and activities that cause significant disturbance to support the achievement of

conservation objectives, for example to conserve a rare and vulnerable species or to allow a site to reach reference condition.

The regional MCZ projects will need to draw their conclusions about how far activities need to be regulated on the basis of the best evidence available at the time. However, if new evidence comes to light later that supports a different set of management conditions, those can be introduced later through the revision of statutory advice and byelaws (which would require public consultation).

Conservation objectives for geological and geomorphological sites/features

The setting of conservation objectives for geological and geomorphological features will follow the same principles as for ecological features. The features will be described in the designating order, and the conservation objectives formulated so as to maintain, these features. As with ecological features, it is expected that the Impact Assessments will contain detailed advice on the level of protection required and the management implications for each site.

Achievement of Conservation Objectives

The SNCB's will monitor the condition of features to determine whether the conservation objectives are being achieved and assess the overall condition of the MPA network to test whether improvement/recovery in ecosystems and populations is occurring. It should be possible to judge the achievement (or otherwise) of MCZ conservation objectives through a number of means including ecological monitoring, assessment of whether disturbing or harmful practices are being effectively controlled and by detecting whether populations have reached healthy levels. Section 124 of the Act requires, amongst other things, the appropriate authority¹¹ to report every six years on the number of MCZs designated within the reporting period; the size and conservation objectives of these MCZs; any changes made to existing MCZ designation orders; the extent to which conservation objectives for MCZs have been achieved; and steps required in order to achieve conservation objectives.

7. Roles and responsibilities in designating MCZs

The role of Government is to set policy direction (i.e. to have an ecologically coherent network) and to have provided for MCZs as one tool to achieve that. The Government has asked SNCBs for advice on sites to designate that brings stakeholders with them. Upon receipt of the SNCBs' advice, Government will consider that advice and be clear about the impact of decisions to be made. Government will take decisions which look best likely to achieve the policy objectives. The Secretary of State, acting under section 116 of the Act, will designate MCZs by Order. Orders will identify the boundaries of the MCZs, list the protected feature(s) and set out the conservation objectives (section 117).

English and offshore waters

As set out in chapter 2, regional MCZ projects will submit their MCZ recommendations and accompanying Impact Assessments to the SNCBs. SNCBs will then consider the recommendations, forward them to Ministers with their advice on whether they consider

¹¹ The Secretary of State in England.

them to be sufficient to meet the MCZ contribution of an ecologically coherent network, together with any recommendations on changes they consider necessary.

On receiving the recommended MCZ options, Ministers will consider how well they meet, and are consistent with, the relevant statutory considerations (e.g. sections 116 to 118 and section 123), national policy objectives, the advice of the independent Science Advisory Panel, other Government policy, and any international commitments. Although not bound by the recommendations of the regional MCZ projects or the SNCBs, Ministers will attach considerable weight to them. This will be especially so where recommendations are based on consensus between participating stakeholders. Lack of consensus should not prevent regional MCZ projects from submitting site recommendations to the SNCBs, nor prevent Ministers designating sites.

Formal public consultation by Ministers

Once Ministers have considered the MCZ recommendations and decided on sites which could be designated, they will carry out formal public consultation in accordance with section 119 of the Act. Formal public consultation is expected to take place early in 2012.

Ministers will consider all representations received before deciding whether to make a designation order. The Secretary of State may correspond, discuss or seek further information from the SNCBs, and others, before reaching a decision, and may decide to hold a hearing (section 121).

Hearings

The decision on whether to hold a hearing under section 121 will be for Ministers. It is intended that a hearing will only be held when justified by the circumstances of a particular case - such as the significance and complexity of the issues or whether public scrutiny of the proposed designation order might usefully inform the decision. Because of the approach being adopted under which sea users and other stakeholders are involved in drawing up the propositions for MCZs, it is expected that hearings are likely to be the exception. A hearing may be held to consider one or more proposed designation sites and may take written or oral evidence, or both.

Stakeholders should not regard hearings as a substitute for effective engagement with the regional MCZ projects. There will be greater flexibility to address concerns through the regional MCZ projects than there will be through the holding of hearings, because it is likely that the scope for considering alternative options (and reaching consensus with other stakeholder groups) will have been narrowed down by the time a hearing is held.

Ministers will appoint a person to chair each hearing. This person will submit recommendations to Ministers. When necessary a specialist adviser with appropriate scientific or technical expertise will be appointed to assist the chair of the hearing.

The Act allows for rules and procedures governing the holding of hearings to be set out in regulations if considered necessary, although the person who chairs the hearing will be allowed reasonable discretion to run it according to local circumstances.

Designation Orders and timetable

It is intended that the MPA network will be substantially complete by the end of 2012 with the designation of MCZs, in order to meet the UK's commitments under the Convention on Biological Diversity and World Summit on Sustainable Development. At this point we expect the MCZ contribution to the MPA network to be substantially

complete. The network will make a major contribution to achieving Good Environmental Status in our seas as required by the EC Marine Strategy Framework Directive. Management measures which impact on fisheries activities outwith the inshore area will need to be implemented at the EU level under the Common Fisheries Policy. The ecological coherence and condition of the network will be kept under review after 2012, which may give rise to a need for further Orders to be made from time to time to designate new MCZs. Orders might also be needed to amend the conservation objectives of MCZs or amend the boundaries of MCZs.

Principles for stakeholder engagement

The engagement of stakeholders in the selection of MCZs will adhere to the following principles (which are designed to be compatible with European Directive 2003/35/EC and the Aarhus Convention):

- Transparent decision making (on site selection, boundary design, and conservation objectives);
- Clarity over Government objectives (e.g. marine policy objectives) and what decisions stakeholders can make within this context;
- Early and effective opportunities for stakeholders to participate in the regional MCZ projects. Reasonable time will be allowed for public participation at each stage keeping in mind the importance of meeting the 2012 target;
- Involvement of vulnerable and marginalised stakeholder groups;
- Early and effective communication of decisions through open and responsive lines of communication with stakeholders, interest groups (including those elsewhere within the UK and in other EU member states) and the public; and
- Use of local, and/or existing institutions and organisations to maximise efficiency, transparency and involvement.