

MCZ Team

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Dear Sir

Defra consultation on Marine Conservation Zones: Tranche 2

The Seabed User & Developer Group comprises some of the key marine industries. The SUDG understands that the sea around our shores is a sensitive environment that needs to be valued and protected, but it is also a working environment that makes a substantial contribution to all our lives. From energy to aggregates and from ports to cables and leisure boating, the industries of the sea make an essential contribution to our land-based society and represent 4.2 per cent of gross domestic product supporting c.900,000 jobs.

We are an informal grouping whose participants have a common interest and commitment to sustainable development within the UK's marine environment. We believe that sustainable win-win solutions are possible from what are sometimes seen as competing needs. We are committed to working with Government, the MMO and other stakeholders to develop cost-effective regulation and marine management that benefits both business and the environment. Our website www.sudg.org.uk sets out more information about the group and our priorities which are summarised as:-

- A future for our seas based on sustainable development
- Clear objectives which cover economic and social, as well as environmental needs
- An integrated approach to planning, management and protection
- Cost-effective regulation and management
- Planning decisions based on science and knowledge
- Robust mechanisms for high level resolution of problems
- Consistency from the devolved administrations
- Transitional arrangements while any new framework or legislation is put in place.

SUDG members will be responding to the specific questions asked by Defra in the consultation on individual sites, but it is not appropriate for SUDG to do that. This response is centred round more generic issues which we feel are important to ensuring that the whole process of designating and managing MCZs as part of the wider MPA network will benefit both conservation and industry and lead to more effective ways of working and applying regulations.

SUDG members played significant roles during the development of the rMCZs and participated in all four regional projects providing data, information and support to the teams doing the work. Since Tranche 1 we have continued to work with Defra and others on the designation and management of Tranche 2 and Tranche 1 respectively. SUDG has consistently supported the move to create MCZs and continues to do so as we approach designation of the second tranche. We also made this position clear in the joint statement that we prepared with the conservation bodies and presented to Richard Benyon at the time of consultation on Tranche 1, and we maintain that position still. This set out clearly that an essential aspect of good MCZs is a proportionate approach to regulation with clear and practical guidance to meet clearly defined conservation objectives and the resulting management measures required to deliver these. We continue to urge that these remain critical and work continues to be needed to achieve them.

Many of the comments we raised in 2013 regarding the designation and management of MCZs remain valid but, very importantly, this response to the 23 Tranche 2 rMCZs also recognises that NE and JNCC have made significant improvements to the collection and use of evidence in determining which features of each site should be included in the designations. We consider that the increased objectivity in using data and evidence will make it easier to prepare clear conservation objectives and for industry to use these to help prepare development plans and EIAs to support applications. This is also borne out by the approach adopted within the consultation to indicate General Approaches to Management (GMA) which we welcome as a further aid in clarifying the direction for management of a site and the evidence behind that direction.

SUDG continues to hold the view that well managed MCZs will not prevent economic growth, but if this is to be the case we still feel that a number of important aspects must be clearly recognised and the management of MCZs must show that these points are properly embraced in determining both designation and subsequent management:

1. As we have stated previously, industry is increasingly working in collaborative ways to provide data and information about the marine environment and about the impacts of marine activities. We consider that it is important that this collaboration is maintained and that, moving forward from the Tranche 1 sites, as the standards of evidence required to identify MCZs in Tranche 2 are more rigorous this could be more easily achieved.
2. Since the introduction of Tranche 1 sites, we have worked closely with Natural England to help develop practical advice on operations and how this can be used to help meet conservation objectives and ensure that development proposals are supported with appropriate and proportionate environmental assessment. This work remains incomplete at this stage and NE are continuing to work with us to resolve some of the residual concerns, but progress has been made and there is a real prospect that with continued close working we can ensure that practical approaches linked to agreed and accepted good working practice can be achieved. Clearly, the better use of evidence in determining which sites and features should be adopted in Tranche 2 can only assist in making this process easier.
3. Linked to this point, industry has increasing knowledge of the impacts of different sector activities and has used this to develop and implement practical mitigating actions that can be applied to reduce them. To ensure effective and proportionate regulation once MCZs are designated, we still believe that it will be important for regulators to take this growing experience into account when determining licences and to work with developers to apply them rather than requiring ever more detailed baseline data. SUDG members are increasingly happy to work with regulators to develop acceptable mitigations which can be applied universally and we feel strongly that post designation (and in the absence of management measures at this stage) that regulators should also put resources and effort in helping to define acceptable mitigations. This is also dependent on NE and MMO increasingly adopting a proportionate approach to development if the environmental proposals associated with development are based on using better evidence associated with the site and better good practice developed with industry.
4. We continue to feel that the timescale associated with the development of a coherent network has been seriously lengthened as a result of the recognition that the network will need to consider aspects beyond English waters. While we recognise the logic behind this, we feel that something so fundamental to the value of MCZs should have been considered during the last five years rather than now. It would suggest that the timeframe required to deliver the Ecologically Coherent Network will be significantly more protracted given the need to link with the networks being delivered by other national administrations and the role that sites in

the Defra network are expected to play. We feel that, among other things, this could also increase the uncertainties associated with delivering cumulative and in-combination assessments and will have significant consequences for the information developers will be required to provide to inform this process. This can only increase the time and costs associated with licensing as well creating even more uncertainty over whether further sites may be required.

5. Consequently, it is also essential for a clear process and defined timescale to be developed for the delivery of the wider MPA network, the role to be played by the network of MCZ sites within this and the timeframes within which new MCZ sites and possible reference areas may be identified. We have been clear throughout the development of the Act and subsequently that it is important to resolve uncertainty associated with the MPA network. With clear approaches and timescales developers can better understand the risks and uncertainties associated with operational and development decisions and endeavour to manage their exposure accordingly. Risk management is a key aspect of corporate activity and as with any aspect of risk, the key factor here is that for business to manage effectively the risks they face, they need some understanding of where and when they may arise and, where possible, how they can be resolved.
6. SUDG remains very concerned that the consultation was made without the benefit of knowing the precise management measures that will be attached to individual licensed activities that may be in or adjacent to individual MCZs. Information about GMAs based on evidence helps to resolve some of this concern, but much more remains to be done. At the outset of the process of developing MCZs we were informed that management measures would be part of the information that would accompany any consultation to designate sites and the regional project teams collected a lot of information from stakeholders to help identify management measures that could be acceptable. It is therefore disappointing that developers and operators are now being asked to support MCZs when we still do not have a clear understanding of the implications of designation. This lack of certainty as to the practical implications of individual site designations to operators, particularly in terms of the potential for additional costs or the potential for established consented activities to be further constrained, significantly increases the perceived risks associated with the proposed designations and in turn undermines business confidence.
7. As the GMA only gives an indication of direction, we assume there will need to be further rounds of consultation, presumably by the MMO, to develop management measures post designation, creating yet a further burden on limited resources within industry to respond to yet more consultation.
8. In examining the 23 sites proposed for designation, it is clear that, by and large, the sites chosen have more socio-economic impact than in Tranche 1. Consequently, we

still feel that it is essential that Defra and the MMO put sufficient resources into developing clear and objective methods of socio-economic assessment, so that they are in place and agreed as soon as possible. Defra made it clear that more ecological evidence would be required before any future designations could be made and we have welcomed that above, but SUDG sees no reason why the same driver should not have been applied to socio-economic assessment.

9. Linked to the above, we think that the IA grossly underestimates the potential costs to industry of working in or near MCZs. We accept the logic that these costs should only be as assessed as those over and above existing costs, but the guidance which has been developed in the last two years for industry clearly creates workloads which are specifically derived from the creation of MCZs and by definition are not covered in existing arrangements. This does not mean that SUDG does not support the principle of MCZs and that has been made clear above, but we do feel that a real and accurate assessment of costs would be more valuable in ensuring industry supports the current proposals. At the conclusion of the first round of consultation we were told that a more rigorous approach to IA would be developed for Tranche 2. We do not believe that this has happened and that as a consequence the information in the consultation for each site is wrong and misleading. For example the consultation makes repeated statements that where there are costs associated with development they are small and also repeatedly states that many sectors are unlikely to be affected and that as a consequence there will be no costs. SUDG would like to see clear evidence that NE And MMO also adopt this stance and explain how they intend to ensure that the statements made in the consultation about cost are followed through.

10. The IA also states

6.7

- 1) Activities where limited or no *additional* mitigation is required due to MCZs,** such as when there is a 'maintain' GMA, but there are additional costs of obtaining a license, for the assessment of environmental impact on BSH. This includes aggregate extraction, navigational dredging and disposal sites, oil and gas-related activities, port and harbour developments, and renewable energy developments. The operator has to apply for a licence (to the MMO, DECC etc.) in order to carry out the activity. The additional costs associated with considering impacts on MCZs above what would be captured in the absence of MCZ includes familiarisation costs. This is because a business applying for a licensable activity would have to become familiar with all protected areas in proximity to the proposal and estimates provided by industry used in the IA includes the time and associated costs to gather the relevant information on MCZs. A business would only need to become familiar with a designation if it wishes to apply for a licence which requires an appropriate assessment. Existing baseline licensable activity

already has consent conditions attached to it which would continue after designation.

Why is the phrase 'appropriate assessment' used in this context and how is the need for appropriate assessment determined? The logic that we could expect to be applied by regulators is that the only way a developer can know whether he needs an appropriate assessment is by doing an EIA which takes into account the features designated in the MCZ citation and this will incur significant costs. Clearly it will be extremely important therefore that MMO and other regulators clarify their interpretation of this issue if we are to see costs stay anywhere near those anticipated in the consultation.

11. In support of this concern, emerging thinking from the MMO on licensing projects in or near MCZs makes it clear that the burdens of assessment that will be applied to development will not be significantly different to that which already applies to those sites protected by the Habitats Regulations (specifically S.126 of the M and CAA). We continue to stress that there needs to be a clear balance between the application of the precautionary principle and a risk based approach in ensuring that the needs of S. 126 are met. This principle, linked to the points made above about mitigation and the increasing knowledge we have of possible impacts means that assessment of proposals should start from a baseline of understanding and not require excessive and costly baseline assessments, particularly given the requirement for all the individual features being protected in each MCZ to be clearly defined in the site designation orders.

As always, SUDG is happy to continue to assist in the MCZ process, but in addition to seeing the outcome of this consultation exercise with regard to the 23 rMCZS, we also look forward to seeing a clear planned process for how MMO will take on and manage this and any future tranches.

I have also sent a copy of this response to the MMO as we feel that many of the comments raised in this response are of significance to them.

Yours faithfully

Peter Barham

For SUDG

www.sudg.org.uk

