

## **Wildlife and Countryside Link response to the Draft East Inshore and East Offshore Marine Plans consultation**

**October 2013**

Wildlife and Countryside Link (Link) brings together 42 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

This response is supported by the following members of Link:

- Marine Conservation Society
- Royal Society for the Protection of Birds
- Whale and Dolphin Conservation
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- WWF – UK
- Zoological Society of London

### **Overall response**

Link welcomes the draft marine plans for the East Inshore and Offshore plan areas and acknowledges the work of the MMO in producing it. The plans mark an important first step in ensuring that activities and development in English waters are managed to achieve a higher-level, forward-looking vision.

Link members have taken an active part in stakeholder discussions to inform these plans. We have attended national focus group meetings, held meetings with the MMO and submitted responses to previous consultations. We continue to support marine planning as a key opportunity to help deliver the aims of the Marine Strategy Framework Directive (MSFD), ensuring that the collective pressures of human activities and development are compatible with Good Environmental Status.

The tone, structure and content of these plans set important precedents for the future ambition of marine planning across the UK. We therefore welcome the three environmental objectives that include consideration of wider biodiversity as well as an ecologically coherent network of MPAs. We also welcome the recognition that a plan must help us to live within environmental limits in line with the high level marine objectives. To ensure these policies and objectives are delivered effectively they must be implemented in a balanced way with the sectoral plan policies.

We do have some serious concerns that the plan is not meeting the requirements of the ecosystem approach, which the MMO is committed to through the Marine Policy Statement and High Level Marine Objectives. We hope that the MMO will deliver this in future plans, and will use the information from this process to feed into the East Marine plan reviews.

We are also very concerned about the unbalanced way in which the draft plan strategically encourages growth of most activities with no equivalent strategic consideration of the environment. The draft plan defers all such environmental assessments to the project level, which this sets an extremely worrying precedent for future marine planning in England. We are particularly concerned that whereas the Marine Policy Statement states that “Marine planning will be a key tool for ensuring that the targets and measures to be determined by the UK for the MSFD can be implemented,” the sustainability appraisal for the marine plans, states that “there is no specific policy which relates to how the plans will assist in delivering MSFD and WFD targets (other than in potentially assisting in developing the evidence base through, amongst other things, its Strategic Evidence Plan)” (Page 54).

We recognise the need for further evidence and we welcome the MMO’s commitment to collect more evidence, as part of its Strategic Evidence Plan (SEP), to facilitate more prescriptive and spatial plans in future. If, however, the MMO perceives a lack of evidence at the current time, it is also required to apply precaution within a risk-based approach when creating the plan. We do not see clear evidence that this has been done. In fact, the burden of a perceived lack of baseline evidence continues to fall at the expense of environmental aspects, while evidence on technical resource opportunity and industry needs are regarded as strong enough to ascribe strategic spatial support for almost all activities.

As a result, we feel that the draft East marine plans largely describe and support the status quo, and do not offer a clear forward-looking path to the 2033 vision. However, we fully share the MMO’s aspiration to move from a position of supporting existing processes and regulations to proactively guiding such processes; this is the ‘added value’ of planning. Although the draft for public consultation does not achieve this in its current form, it is a step in the right direction. We will continue to support and engage with marine plan development, with both the MMO and statutory nature conservation agencies, to ensure that the lessons learnt from this process are used to improve future plans.

### **Vision and objectives**

While we are not opposed to the strategic vision, we think that it could be slightly improved, by providing something more strategic covering all activities in the first sentence and only talking more specifically about offshore wind in the second. We suggest something more along the lines of:

*By 2033, as a result of effective ecosystem based planning and management, the East Inshore and East Offshore plan areas' shallow and productive seas are providing sustainable socio-economic benefits to the region and the UK as a whole. Marine and coastal ecosystems are in Good Environmental Status, with biodiversity significantly recovered, and the substantial electricity generated from offshore wind is helping to meet the UK's targets on climate change.*

We support most of the objectives, which, taken as a whole, should give support for a healthy marine environment, resilient to the impacts of climate change and ongoing human activities, while encouraging sustainable use, in particular low-carbon energy generation.

We particularly support Objectives 6-8, which seek to achieve a healthy ecosystem and biodiversity interests, as well as specifically supporting the objectives of marine protected areas (MPAs). We also welcome policies ECO1 on cumulative impacts and MPA1 on the coherence of the MPA network, which although not introducing strict requirements provide useful guidance for considering these important issues. We also support Objective 11, on the need to collect further evidence to inform marine planning.

However, we do have concerns about how these strategic objectives, when underpinned with the sectoral policies encouraging development in most activities (once impacts have been identified and assessed by applicants), will be delivered. For example, there is no policy under Objective 7, which aspires for the wider reversal of biodiversity loss, only that “appropriate weight” is given to biodiversity (BIO1) and that development incorporates biodiversity-friendly features (BIO2, which are unlikely to compensate for adverse biodiversity impacts in most cases). There is also no policy under Objective 8, which supports the objectives of individual sites, only to consider impacts on the overall MPA network in strategic level assessment (MPA1). We welcome consideration of the impacts on the overall Marine Protected Area Network but we believe policy should also refer to protection of individual sites. For without adequate site-level protection, we will be unable to secure a well-managed network.

### **Clarity of the document**

We welcome the plans’ attempts to clarify existing policy and legislation in the East marine plan areas - particularly in the Marine Policy Statement. However, there is less clarity on how plan policies interact with each other, both on a spatial and temporal basis and also for area-wide policies (such as between policies on cumulative impacts, co-existence and displacement). An electronic spatial expression of the plans’ policies is therefore urgently needed.

The online marine planning portal provides the most useful mechanism for establishing which policies apply for a given location within the plan areas, and we are pleased that the spatial policies have been added as layers to this interface. However, the usability of this portal needs to be improved, for example by allowing users to draw a box as well as a single point. In addition, the policies do not appear if the layer has not already been selected. Clicking on an area outside a spatial plan policy (or policies) also gives no information on the wider policies.

The marine planning portal provides an excellent summary of the current situation, but appears of limited use to decision-makers and applicants looking for guidance on future development. By selecting an area or location, users should be able to get an individual pdf copy, targeted based on the nature of their proposal, of all the policies in and around that area (including area-wide policies) based on the marine plan, with simple maps showing necessary information. If the tool is developed further environmental policies must be given appropriate weight, and developers should be made aware that appropriate environmental surveys and assessments would still be required.

## The value of the plan to applicants

Link recognises that there are limitations to the plans' ability to guide processes which are already in place, such as Round 3 offshore wind, but there are very few obligations placed on proposals in order to satisfy decision-makers. Most policies require only that proposals should "consider", "demonstrate" or "take into account" particular factors, which largely clarify or support existing obligations.

There is also no information on what level of information is required in order to satisfy decision-makers that this has been done, and no recourse if it has not. The majority of sectoral policies place guidance for *other* activities in relation to their interactions with particular activities or areas, with no sense of prioritisation of activities if more than one activity wishes to use a particular area, and little to no direct guidance for activities within sectoral policies (aside from policies on Carbon Capture and Storage).

We recognise that there are limitations to the evidence base and how the MMO can consider cumulative impacts, and the environmental effects of development. We therefore understand why environmental considerations are currently being pushed to project-level assessment. We want to ensure that the plans make it clear to applicants that environmental impacts are not always clear and that appropriate assessments need to be carried out at a project level. However, as planning moves towards a more ecosystem based approach, we would like to see the MMO addressing these issues, establishing thresholds for the environment and therefore building these into the East plan at the review stage. This will mean in time the plan can look more strategically at the environmental impacts.

## The value to the environment

Section 2.6.1.3 of the Marine Policy Statement states that "Marine planning will be a key tool for ensuring that the targets and measures to be determined by the UK for the MSFD can be implemented." The sustainability appraisal, however, states that "there is no specific policy which relates to how the plans will assist in delivering MSFD and WFD targets (other than in potentially assisting in developing the evidence base through, amongst other things, its Strategic Evidence Plan)" (Page 54).

We believe that the marine plans do little to proactively contribute to the aims of the MSFD and Water Framework Directive (WFD), offering little in the way of influencing the achievement of Good Environmental Status by 2020 and most likely hindering it.

At the same time, the draft analysis for the marine plans states that there are "also expected to be significant environmental impacts associated with the East marine plans" (Page 25). In the context of the pressures created by encouraging widespread development in all sectors, therefore, we simply do not agree that merely signposting towards the MSFD and WFD will, in the opinion of the draft analysis, be sufficient to support and strengthen the achievement of Good Environmental and Ecological Status.

The most effective way for marine planning to contribute to the aims of the MSFD is to encourage activities in locations and at levels that minimise environmental risks and keep collective pressures within safe environmental limits. While we welcome policy ECO1 on taking

into account cumulative impacts, it is not clear how this will be done beyond existing statutory processes such as SEA (which have a history of failing to adequately consider cumulative environmental impacts or environmental risks as 'hard constraints' to development). We would like to see work being undertaken by the MMO, in conjunction with the SNCBs and other bodies, to start defining safe environmental limits, and how collective pressures will impact on this. This will help to build up the evidence base and be able to be incorporated into future plans, therefore hopefully moving towards a more ecosystem based approach to planning.

### **The strategic consideration of the environment**

Link is disappointed that the draft plan strategically encourages the growth of most activities with no equivalent strategic consideration of the environment. Indeed, by deferring environmental assessments to the project level, the draft plan sets an extremely worrying precedent for future marine planning in England. The UK Government's obligation to halt, and reverse biodiversity loss and designate an ecologically coherent network of MPAs, should form part of the plan's strategic consideration of the environment.

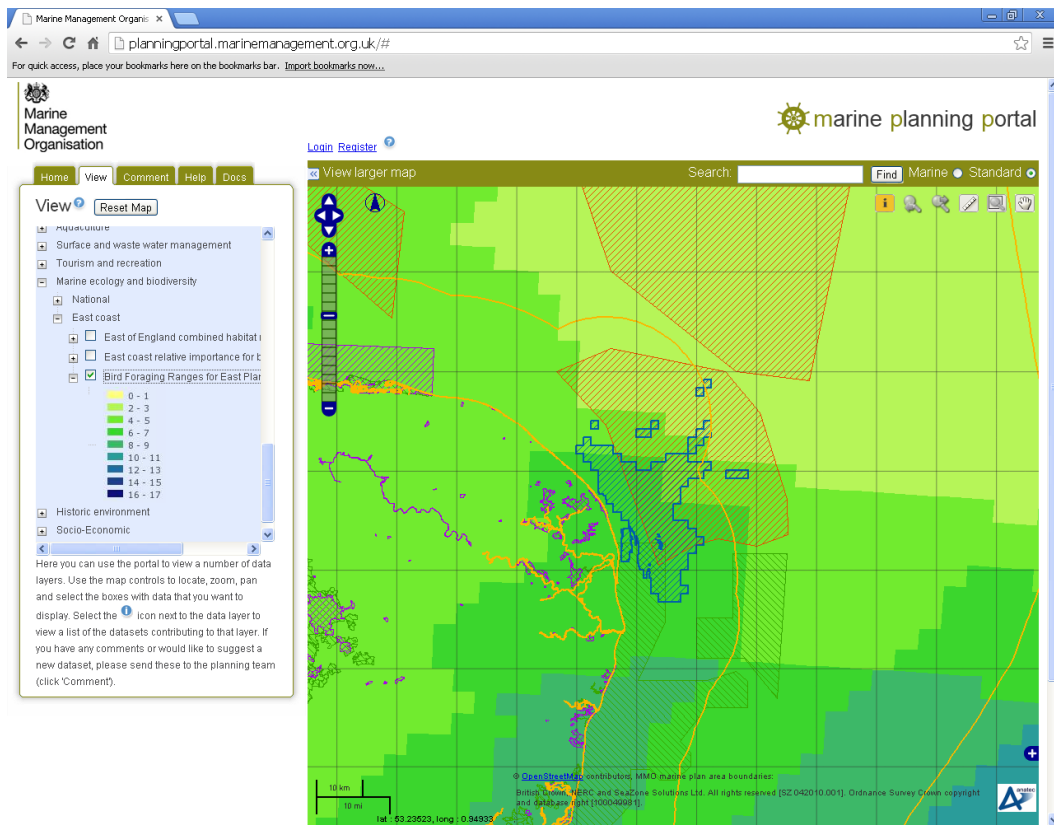
The draft plan also fails to recognise the opportunity for marine plans (and the cornerstone of ecosystem-based marine planning) to set guidance to avoid adverse environmental impacts occurring *before* they are assessed at a project level, and attempts made to mitigate them, by basing decisions on the best use of space which takes account of environmental compatibility as well as technical opportunity. We are concerned that policies setting out aspirations for future resource use (such as TIDE1 and AGG3) only consider the available resource, and state that, in the case of TIDE1, "no consideration of other users, interests and sensitivities has been undertaken. Assessment of these factors is the responsibility of the applicant" (Paragraph 270).

Even an initial examination of the marine planning portal (Figure 1) indicates that the area identified for TIDE1 falls within the Haisborough, Hammond and Winterton Site of Community Importance (SCI), designated for sand banks and *sabellaria spinulosa* reefs, and the Outer Thames Estuary SPA, which protects red-throated divers, regarded as highly sensitive to wave and tidal stream development (McCluskie et al. 2012)<sup>1</sup>. It is also used by at least 4-5 foraging seabird species, the detail of which species would indicate a relative level of vulnerability. These factors should be highlighted within the plan so that any applicant is aware of the risk of trying to develop in these areas; this is where the 'added value' of planning comes in.

The continued deferral of such considerations to project level when identifying suitable areas for development is likely to lead to further economic costs, delays and environmental decline. The MMO must set out a clear desire to move towards a more proactive consideration of environmental risks in future plans, in line with the ecosystem approach.

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<sup>1</sup> [http://www.rspb.org.uk/Images/mccluskie\\_langston\\_wilkinson\\_2012\\_tcm9-307966.pdf](http://www.rspb.org.uk/Images/mccluskie_langston_wilkinson_2012_tcm9-307966.pdf) (page



**Figure 1. Overlap of policy area TIDE1 with European protected sites and seabird foraging range information (using MMO Marine Planning Portal)**

### **The status of MPA “proposals”**

The status of Marine Protected Area (MPA) designation and management processes as ‘proposals’ is also not clear under the marine plans, and we seek clarity on this from the MMO. Paragraph 67 states that the term ‘proposal’ “encompasses... different terms, such as application, applicant, developer, application for a content, application for the development etc... It can also be taken to include development, activities and management measures unless specified otherwise”. Yet under selected sectoral policies, MPA proposals and management measures appear to be required to demonstrate their impacts on the ability of activities to use the space and make a case for proceeding (such as under Policy PS3). We suggest that in PS3 reference to MPAs is removed. The policy refers to all proposals and we don’t believe that specifically selecting MPAs in the justification is useful or warranted.

Section 3.1.8 of the MPS clearly states that “*Marine plan authorities and decision-makers should take account of the regime for MPAs and comply with obligations imposed in respect of them. This includes the obligation to ensure that the exercise of certain functions contribute to, or at least do not hinder, the achievement of the objectives of a MCZ or MPA (in Scotland). This would also include the obligations in relevant legislation relating to SSSIs and sites designated under the Wild Birds and Habitats Directives.*”



The designation of European Marine Sites is legally based on scientific criteria in order to identify and protect the most ecologically important habitats and species, and restore and maintain them to favourable conservation status. Even for nationally designated MPAs, such as MCZs, the consideration of socio-economic impacts should be at a secondary stage to determine between two sites of equal ecological importance.<sup>2</sup> These legal requirements under the Habitats and Birds Directives and the Marine and Coastal Access Act (MCAA) to create MPAs in the plan area are clear and take precedence over policy decisions relating to the plan.

The MPA network is far from complete. Special Areas of Conservation for harbour porpoises are still lacking, future marine Special Protection Areas (SPAs) have not been designated and the status of Marine Conservation Zones is very unclear. The marine plans need to acknowledge this, and ensure they can adequately deal with new MPAs as they are designated or proposed. This would avoid compromising the network and also provide more certainty to developers. NGOs have signed a joint statement with the Sea bed User and Developer Group (SUDG), calling for the urgent designation of a fully representative and ecologically coherent MPA network as soon as possible, in order to provide certainty for investment as well as environmental protection.

### **Evidence and monitoring**

We welcome the MMO's desire to fill the necessary evidence gaps, in order to allow marine planning to proactively guide the future location of activities based on environmental risks as well as technical opportunity. We also fully support the development of such interpreted evidence on sensitivity and compatibility, to allow planners to proactively ensure activities take place away from areas of higher environmental sensitivity. We will continue to ensure that the best available environmental evidence is highlighted to the MMO and support them in this work.

However, if the MMO perceive the current baseline evidence to be lacking to make such strategic decisions, the marine plans are required to apply precaution, within a risk based approach, when setting strategic policy. This is explicitly stated in the Marine Policy Statement and High Level Marine Objectives.

Evidence is also important in the context of monitoring the environmental effects of the plans. The MMO must identify, for example, how the work of the Marine Evidence Group (which was set up as part of the Habitats and Wild Birds Directives Review) will feed into the process, as well as encouraging post-construction monitoring as a requirement for granting consent for major infrastructure projects. We would also expect to see the MMO working collaboratively with these groups as many issues from the plans are also being tackled by these groups.

We welcome the inclusion of Figures 4-8 on environmental aspects, in order to provide indicative guidance on the distribution or behaviour of habitats and species. However, these maps should also include information from outside the marine plan areas, rather than stopping

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<sup>2</sup> The Ecological Network Guidance for Marine Conservation Zones for example states: “Where multiple areas are identified that equally contribute to achieving the network design principles and further ecological considerations, those features which have been less impacted (or are less likely to have been impacted) by human activities should generally be considered a higher priority for MCZ identification than more degraded examples of the same feature.”

at the plan boundaries. This is particularly relevant for mobile species, which may breed or feed in areas outside the plan areas.

We are disappointed that there is no map of broadscale habitats, given the support for marine ecosystems and biodiversity over and above habitats and species of conservation concern. Although much of this is based on predictive models (e.g. UKseamap), which are based on survey data, this still represents the best available evidence for planners and applicants, given the costs and impracticality of surveying the entire plan area. Figure 8, in particular, claims to show areas that are important for foraging grounds for seabirds, but in fact only shows the aggregated number of species that use these areas. Overall, this portrays a simplified picture and provides no indication of the importance of an area for particular species. It is not clear, for example, how the MMO has used RSPB's foraging radii data provided to the MMO from the English terrestrial SPAs in and around the plan area to underpin this map (which would lead to concentric concentrations around these colonies) or used mean maximum or maximum foraging ranges. It is clear that in certain areas, more than the stated number of seabird species use the area, such as around Bempton and Flamborough Head. Link members, such as the RSPB, would be happy to provide further guidance and support on the use of this and other data to fully take seabirds and other relevant birds into account and we recommend that this figure is corrected



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