

Marine Protected Area Management

Duties of public authorities in relation to Marine Protected Area (MPA) management

Note prepared by the MPA National Steering Group (NSG)

1. Introduction

- 1.1 The marine environment is coming under increasing pressure from human activity, which can damage and further threaten marine ecosystems. The Government is aiming to protect habitats and species in UK seas by contributing towards an ecologically coherent and well-managed network of Marine Protected Areas (MPAs).
- 1.2 Management measures may be required to protect vulnerable features within MPAs, which regulators consider, based on the type and intensity of activities taking place within, or in close proximity, to sites.
- 1.3 EU-LIFE Project funding enabled a number of European marine site management schemes to be created which facilitated discussions and management implementation (to varying degrees) between public authorities who oversaw a range of marine activities. Once EU funding ended, many of these groups continued, funded by local public authorities and Natural England (NE).
- 1.4 NE confirmed in 2012 that they were unable to continue to be the majority national funder for these local partnerships. NE, together with the Marine Management Organisation and Defra, provided interim funding to support these groups in 2014, which will cease in March 2015.
- 1.5 A National Steering Group (NSG) has been established to provide strategic steer and facilitate coordination for MPA management as a result of the MPA management project (see section 8). Based on feedback from the local MPA management project officers, the NSG agreed to provide information regarding roles and responsibilities so that public authorities understand what is legally expected of them. It will then be for the relevant authorities to decide how they perform their responsibilities.

2. Purpose

- 2.1 The purpose of this information note is to describe and provide clarity on the duties of the public authorities in relation to the management of MPAs in English waters. This note has been developed by the National Steering Group for MPA management¹.
- 2.2 This note covers key aspects of legislation but is not comprehensive or all-encompassing and does not provide legal advice. This note only covers duties in relation to MPA management and does not reflect upon other duties placed on public authorities to do with protection and improvement of the flora and fauna of the marine environment i.e. it should be recognised that there are separate responsibilities toward the protection of important species throughout their range.
- 2.3 It is the responsibility of authorities to consider if coordination with others, for example through a partnership or management scheme, is beneficial in delivery of these duties.
- 2.4 This information note should be read in conjunction with the relevant legislation.

¹ The views expressed in this document do not necessarily reflect the views or legal interpretations of the individual organisations represented within the National Steering Group.

3 Background

3.1 The English component of the UK MPA network comprises of European Marine Sites (EMS) which includes Special Protection Areas (SPAs) and Special Areas of Conservation (SACs); Marine Conservation Zones (MCZs); RAMSAR sites and Sites of Special Scientific Interest (SSSIs). Please see Box 1 for further details on these sites.

Box 1: Types of MPAs within English inshore waters and offshore waters around England, Wales and Northern Ireland.

Type of MPA		Protection Provided	Legislative Driver	
European Marine Sites (known as <i>Natura 2000</i>)	Special Protection Areas	Protect habitats of importance for rare and migratory birds as listed in Annex I of the Directive.	EU Directive on the Conservation of Wild Birds (Council Directive 2009/147/EC)	Transposed into UK law through the Conservation of Habitats and Species Regulation 2010 within 12nm and the Offshore Marine Conservation (Natural Habitats) Regulations 2007 for waters beyond 12nm.
	Special Areas of Conservation / Site of Community Importance	Protect a range and variety of habitat and (non-bird) species of European importance as listed in Annex I and II of the Directive.	EU Habitats and Species Directive (Council Directive 92/43/EEC)	
Marine Conservation Zone		Protect a range of habitats, species, geological and geomorphology features which are considered nationally important	Marine and Coastal Access Act (2009)	
RAMSAR Site		Protect wetlands considered to be internationally important	Convention of Wetlands of International Importance (1971)	
Sites of Special Scientific Interest (where these have marine components)		Protect the best examples of UKs flora, fauna, geological or physiographical features.	Wildlife and Countryside Act 1981 (as amended)	

All MPA designations are relevant under the EU Marine Strategy Framework Directive²

3.2 There are a range of public authorities that have a statutory responsibility to manage activities that fall under their remit. Table 1 highlights a number of key organisations in relation to MPA management.

3.3 The NSG has been established to address the need for national coordination and is currently working to develop a national reporting structure for MPA management. This is to ensure that management of these activities and hence management of MPAs can be monitored and MPAs can be assessed in terms of being well managed. Where multiple authorities are either involved in site management and/or there are a range of activities which may need to be managed to ensure MPAs meet their conservation objectives, there may be a need for a local or regional strategic coordinated approach.

² Transposed into UK law through the Marine Strategy Regulations 2010 - http://www.legislation.gov.uk/uksi/2010/1627/pdfs/uksi_20101627_en.pdf

Table 1. Roles and responsibilities in relation to MPA management of some key authorities³

Organisation	Roles and responsibilities (regarding MPA management)
Marine Management Organisation (MMO)	Management of activities that require a marine licence; Powers to make byelaws to control activities to protect MPAs, which do not require a marine licence (including fisheries and recreation). Note: Management of fishing activities is primarily between 6 and 12nm from the coast (but can implement measures in 0-6nm); Development of marine plans.
Inshore Fisheries Conservation Authorities (IFCAs)	Fisheries (0-6nm) including commercial fisheries and recreational fishing activities such as sea angling and bait digging.
Department for the Environment, Food and Rural Affairs (Defra)	Provide the overall MPA management policy framework; Responsible for legislative targets / commitments; Designation of MPAs.
Natural England (NE)	Public access (coastal paths) Designation and management of Sites of Special Scientific Interest (SSSIs); Statutory conservation advisor to Government for inshore areas (0-12nm); Development of and advice on conservation objectives and advice on operations/.activities (EMS and MCZs).
Joint Nature Conservation Committee (JNCC)	Statutory conservation advisor to Government and Devolved Administrations for offshore areas (12-200nm)
Local Government	Management of (non-permissible) development (down to LWM); Management of recreation activities (within area of responsibility); Planning authority (interface between marine and terrestrial); Provision of coastal defence and strategic planning; Beach management and maintenance; Waste management.
Environment Agency (EA)	Management of migratory fisheries out to 6nm; Competent authority for WFD estuarine and coastal waters to 1nm for ecological status and 12nm for chemical status; Environment Permitting Regulations activities e.g. radioactive materials/ship breaking out to 12nm and regulating land based discharges and pollution incidents out to 3nm; Responding to pollution incidents up to 3nm; Management of flood risk, including Shoreline Management Planning.
Department for Energy and Climate Change	Regulator of offshore oil and gas activities, including oil and gas activities which require a marine licence.

3.4 The following information sets out legal responsibilities for all public authorities and provides a summary for authorities on management of MPAs. This document summarises previously published guidance which should continue to be referred to for further information:

- Guidance on the duties on public authorities in relation to Marine Conservation Zones (Note 2) <http://archive.defra.gov.uk/environment/biodiversity/marine/documents/guidance-note2.pdf>

³ This is not a complete list of public authorities which have responsibilities within the marine environment.

- Guidance on competent authority coordination under the Habitats Regulations https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf
- Guidance on the application of Article 6(4) of the Habitats Directive https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82647/habitats-directive-iropi-draft-guidance-20120807.pdf

3.5 For comprehensive information on the legal responsibilities of public authorities please refer to the specific legislation:

- Marine and Coastal Access Act 2009 - http://www.legislation.gov.uk/ukpga/2009/23/pdfs/ukpga_20090023_en.pdf
- EU Habitats Directive - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN>
- EU Birds Directive - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN>
- Conservation of Habitats and Species Regulation 2010 - http://www.legislation.gov.uk/uksi/2010/490/pdfs/uksi_20100490_en.pdf
- Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 - <http://www.legislation.gov.uk/uksi/2007/1842/contents/made>
- RAMSAR - http://portal.unesco.org/en/ev.php-URL_ID=15398&URL_DO=DO_TOPIC&URL_SECTION=201.html
- SSSI - <http://www.legislation.gov.uk/ukpga/1981/69>

4 Roles and responsibilities

4.1 UK Ministers and public authorities have a variety of statutory roles and responsibilities under legislation which underpins EMS and MCZs. There are differences between the legislative drivers which are indicated in each of the relevant sections.

4.2 Authorities responsible for MPA management

- **EMS** – The term *competent authorities* includes any statutory body or public office exercising legislative powers whether on land or at sea. The term *relevant authorities* is intended to identify certain competent authorities with local powers or functions which have, or could have, an impact on the marine area within or adjacent to a EMS. Relevant authorities also have powers to establish a management scheme for a EMS. All relevant authorities are also competent authorities. Relevant authorities in England are specifically outlined in Regulation 6 of the Conservation of Species and Habitats Regulations (Habitats Regulations) 2010.
- **MCZs** – The responsibilities laid out through the Marine & Coastal Access Act 2009 (MCAA) apply to all public authorities. These are defined in Section 322 as Ministers of the crown, public bodies (including government departments, local authorities, local planning authorities and statutory undertakers - including those authorised by legislation to carry out transport, dock or harbour works) and persons holding a public office.
- **RAMSAR sites** – NE (for terrestrial and inshore marine sites out to 12 nautical miles), and JNCC (for offshore marine sites within English territorial waters) are charged with ensuring the conservation and wise use of Ramsar sites in England through management plans and other measures as appropriate.
- **SSSI sites** - NE have the responsibility to ensure the protection of SSSIs by providing advice to SSSI owners and managers, working with them to ensure active management, and advising on potential impacts of any development or other activities. NE also regulates activities which could impact on SSSIs through the provision of consents, assents and formal advice.

4.3 Statutory duties of authorities

- EMS - The Habitats Regulations⁴ state that, where authorities have functions relevant to marine conservation, all competent authorities are legally bound to exercise them to secure compliance with the requirements of the Habitats Directive. This will be the case regardless of whether those powers were originally intended for nature conservation purposes. The Habitats Regulations enable such powers to be used to meet the requirements of the Habitats Directive with reference to the established nature conservation objectives of each European Marine Site. This is especially relevant where authorities have powers to manage activities to meet the obligations set out in Article 6(2) of the Directive, for instance, activities that do not require prior consent, such as certain recreational activities. The Habitats Regulations also give all competent authorities duties to have regard to the requirements of the Habitats Directive in the exercise of *any* of their functions.

Any competent authority authorising a plan or project that may (either alone or in combination with other plans or projects), have a significant effect on the protected site, must undertake an appropriate assessment of the implications for that site in view of that site's conservation objectives (Article 6 of the Habitats Directive). Special Protection Areas classified under the Birds Directive are covered by the provisions of Article 6(2-4) of the Habitats Directive. Note that a lack of scientific certainty or data does not mean a plan or project can go ahead – it is the responsibility of the authority to prove that there will be no significant effect, not to prove that there will or may be one (i.e. a precautionary approach in favour of protecting the environment is inherent in the legislation).

- MCZs - Section 125 of the Marine and Coastal Access Act (2009) is intended to make conservation of MCZs an important consideration for all public authorities and require them to exercise their functions in a way to further (or where this is not possible least hinder) the conservation objectives for MCZs. Section 126 requires public authorities to consider the effect of proposed activities on MCZs before authorising them and imposes restrictions on the authorisation of activities that may have a significant risk of hindering the conservation objectives of an MCZ.
- Wider biodiversity duties - Note that public authorities already have certain biodiversity duties within territorial waters. For example, Section 40 of the Natural Environment and Rural Communities Act 2006 stipulates that “*every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity*”. The duties in the Marine and Coastal Access Act 2009 build on these duties. In particular it relates to the specific conservation objectives for individual MCZs; places an active duty on authorities (‘to further’ or ‘least hinder’ MCZ objectives); and requires authorities to inform either NE or the JNCC (depending on the location of activity) where achievement of an MCZ conservation objective may be significantly hindered.

5 Consideration of management at MPA site level

- 5.1 The consideration of management at a site level will utilise all the available evidence, information and data to allow well-informed decisions about management requirements to be taken.
- 5.2 Authorities should consider the level of engagement needed with other public authorities regarding management requirements for each MPA, dependent on the complexity and scale of the issues that need to be resolved. Where necessary marine management schemes may be developed or continued where there are multiple interests and/or complex management issues.

⁴ The Conservation of Habitats and Species Regulations 2010 and Offshore Marine Conservation Regulations 2007 (see Box 1)

6 Requirements for management schemes

6.1 There is no legal requirement to establish local or regional management coordination groups, although provisions are provided for EMS in relevant legislation:

- The Habitats Regulations provides for the establishment by the relevant authorities of an agreed management scheme for any site. Such management schemes will set the framework within which activities will be managed, either voluntarily or through regulation, so as to achieve the conservation objectives of the site.
Where a management scheme exists relevant authorities who are part of that scheme are obliged to exercise their functions under the scheme to secure the requirements of the Directive.

6.2 Within MCZs the MCAA does not provide a provision for the establishment of management coordination schemes, but public authorities are free to establish management or liaison groups, and to develop management schemes for MCZs with other stakeholders and regulators where they see advantage of co-operation on the management of current or future impacts on a site. The extent to which authorities need to co-operate in order to further the conservation objectives of MCZs depends on the particular circumstances in each MCZ, and the pressures it is under.

6.3 Before a management scheme is developed by a competent or public authority, it is recommended that the authority liaises with the MMO and relevant statutory nature conservation body i.e. NE or JNCC.

7 Future considerations

7.1 In cases where there is a low level of human activity, or where there is only one type of activity to be managed, the need for a management scheme through inter-authority coordination may be limited. In other cases, those MPAs which do not extend far beyond the low water mark, the seaward reach of land-based conservation measures such as underpinning SSSI management, may be sufficient to meet the nature conservation objectives of the site. However, some sites and combinations of sites together around the seas of England are complex areas with a mixture of commercial and recreational activities. They may therefore be likely to require a coordinated inter-authority approach, including where necessary the integration of land-based and marine measures across the intertidal zone or engagement with authorities in other Member States. In some cases, management schemes have already established.

7.2 On sites with many features, or sites regulated by lots of public authorities, developing management schemes has been particularly useful in coordinating management for activities that are not subject to a specific consent regime or may be managed by multiple authorities. Other benefits include facilitating co-ordinated monitoring, agreeing priorities and actions, and delivering wider benefits such as public awareness of the site⁵. Experience has indicated that management groups of public authorities are generally effective in coordinating management and giving public authorities a better shared understanding and holistic view of the site. In addition, many coastal EMS have advisory groups of stakeholders that feed information and advice into the management group.

7.3 For examples of different existing inshore management schemes and best practice see: [A review of effectiveness of management schemes for European Marine Sites \(Morris et al., 2012\)](#).

⁵ Defra provided guidance in 2012 regarding coordination of competent authorities which could be extended across the MPA network (see section 3.5 for links).

8 National governance and coordination

- 8.1 In September 2014 the MPA Network Project Board agreed that a national group of lead authorities with supporting coordinator and lead project management authority should be established to facilitate improved national reporting and co-ordination of MPA management in waters for which the Secretary of State is responsible.
- 8.2 The NSG will provide leadership on MPA management in order to champion and steer improvements. Furthermore, the group will also raise the profile of MPAs within their authorities – increasing buy-in to management responsibilities and also with wider stakeholders.
- 8.3 The MPA Network Project Board also identified that the MMO could in principal be well placed to provide national co-ordination. The MMO is currently reviewing how it can best meet this request. The NSG is currently considering helping to scope the role of a nationally appointed coordinator, which would support the assessment of a well-managed MPA network at the national level.

9 Reporting

- 9.1 There are requirements under Article 6 of the Habitats Directive and Section 124 of the Marine Act for the Government to report to the European Commission/Parliament respectively every 6 years on the achievement of objectives in relation to the MPA network. To be able to assess the effectiveness at a national level, information at both the national and local levels needs to be captured effectively and efficiently.
- 9.2 The NSG are currently considering a number of options regarding reporting on MPAs including interactive databases which capture information from all public authorities.