

**Department for Environment, Food and Rural Affairs**

# **Marine Conservation Zones Designation Explanatory Note**

**November 2013**

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## Introduction

1. This document provides an explanation of Marine Conservation Zone (MCZ) designation orders, the process for changing the general management approach for MCZs and Defra's expectations around MCZ management and monitoring.

## Designation orders: conservation objectives

2. Each MCZ is established by a legal order made by Defra under section 116(1) of the Marine and Coastal Access Act 2009 (MCAA). Each order designates an area as an MCZ and defines that area, lists the features being protected within that area and specifies the conservation objective or objectives of the MCZ. The orders are referred to as "designation orders".

3. In three instances we have designated two spatially separate areas positioned very closely together: Beachy Head West; Upper Fowey and Pont Pill; and the Tamar Estuary. In such cases we have designated both of the areas in the same designation order, for example there is one designation order dealing with the designation of both of the areas at Beachy Head West and together these areas may be referred to as "the Beachy Head West Marine Conservation Zones". The Isles of Scilly MCZs involves the designation of 11 spatially separate areas and is also dealt with in one designation order. In these cases each separate area has been assigned its own list of features.

4. Generally, each MCZ has one conservation objective. The objective applies to all of the features being protected. The objective is that each of the features being protected be in favourable condition. To achieve this objective, the general management approach required for a feature in an MCZ will either be for it to be maintained in favourable condition (if it is currently in this state), or for it to be recovered to favourable condition (if it is currently in a damaged state) and then to be maintained in favourable condition.

5. The type of general management approach (i.e. to recover to or maintain in favourable condition) required to achieve the conservation objective for each feature is being published alongside the designation orders in the MCZ site descriptions, as well as in the advice from the Statutory Nature Conservation Bodies (SNCBs). The SNCBs are Natural England for English inshore waters (out to 12 nautical miles) and the Joint Nature Conservation Committee (JNCC) for offshore waters (12 to 200 nautical miles).

## Designation orders: definition of favourable condition

6. As explained above, the conservation objective for each MCZ is that each of the features being protected be in favourable condition.

7. Generally for a habitat, favourable condition is defined as:
- i. its extent is stable or increasing; and
  - ii. its structures and functions, its quality, and the composition of its characteristic biological communities are such as to ensure that it remains in a condition which is healthy and not deteriorating.
8. The requirement set out in paragraph 7i is expressed in absolute terms: the extent of habitats being protected must be stable or increasing. The requirement set out in paragraph 7ii is that certain attributes of habitats being protected are such as to ensure that the habitats remain in a condition which is “healthy and not deteriorating”. Something is “healthy” when it is in a good physical condition, or in good health. This definition is meant to cover a range of different circumstances, the specific requirements will depend on the habitat in question and prevailing physiographical, geographical and climatic conditions.
9. The reference to “characteristic biological communities” illustrates that although the name of the habitat is often in terms of the material of the seabed (e.g. subtidal sand or subtidal mud), the habitat includes the fauna and flora which characteristically live on or in that material under the prevailing conditions.
10. Structure is considered to be the physical components of a habitat, i.e. its physical shape and make-up. This can be formed by species (both living and dead), for example corals or worms in some forms of reef, and by the grain-size of the sediment. It can also be formed by geological processes, for example carbonate structures which can protrude from the seafloor or sandwaves and sandbanks. Functions are the ecological processes the habitat performs, for example a reef can provide refuge for juvenile fish from predators.
11. For a species the definition of favourable condition is that the quality and quantity of the species’ habitat, and the composition of the species’ population in terms of number, age and sex ratio, are such as to ensure that the population is maintained in numbers which enable it to thrive. For some highly mobile species this definition will be adapted to reflect that the species is only present in the MCZ for part of its life-cycle and/or for a particular purpose (e.g. mating, egg-laying).
12. Something is “thriving” when it is developing well and vigorously, and succeeding. The requirement is not that numbers are ever increasing, but rather that the population is maintained at a level of numbers which enable it to thrive. This definition is meant to cover a range of different circumstances, the specific requirements will depend on the species in question and prevailing conditions physiographical, geographical and climatic conditions.
13. For features of geological and geomorphological interest favourable condition is defined as:
- i. its extent, component elements and integrity are maintained;
  - ii. its structure and functioning are unimpaired;

iii. its surface remains sufficiently unobscured<sup>1</sup> for the purpose of determining whether the conditions in paragraphs (i) and (ii) are satisfied.

14. Favourable condition is the condition that would be expected in the absence of significant anthropogenic pressures which have an adverse effect. The aim is to find an appropriate balance between safeguarding the marine environment and the sustainable use of marine resources. Anthropogenic impacts that do not have a significant adverse impact on the features will be allowed. For example, laying of a submarine cable across a feature where that cable covers only a small proportion of the feature and the parameters described in paragraph 7ii are not significantly affected. These will be assessed on a case-by-case basis

15. We recognise that there may be temporary deterioration in the extent or condition of habitats, or in the case of species a reduction of numbers, as a result of natural events. For example, severe storms may damage honeycomb worm reefs or cause smothering of biological communities due to re-suspension of sediment. The aim in terms of favourable condition is that the long-term trend for features should be stable or improving, and that they will be sufficiently resilient to recover from any temporary deterioration.

16. The SNCBs will provide site-specific conservation advice which expands on these generic elements to provide a description of favourable condition for each feature in each MCZ. This will take account of local conditions, including where there are spatially separate areas and/or where the feature occurs in separate locations within one MCZ.

## Changes to the general management approach following designation

17. The general management approach (i.e. either for the feature to be maintained in favourable condition, or for it to recover to favourable condition) is described in site descriptions published alongside designation orders and in the SNCB advice. The proposed general management approach was described in the consultation prior to designation allowing stakeholders an opportunity to comment.

18. After designation of an MCZ, the general management approach may need to change because:

- new scientific evidence shows the feature has attained favourable condition (resulting in a change from recover to maintain) or new scientific evidence shows the feature previously thought to be in favourable condition is in a damaged state (resulting in a change from maintain to recover),

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<sup>1</sup> excluding by plants and animals

- there is new scientific understanding of the sensitivity of a habitat or species to a particular human activity,
- new economic evidence shows the current types and levels of human activity on the site are different to previously thought, or
- new evidence shows that new or increased activity has begun to occur on the site.

19. In considering whether the general management approach may need to change after designation relevant conservation advisers and regulators will ensure that stakeholders are fully engaged and have a suitable opportunity to comment before any changes are agreed with Defra.

20. Public authorities' response to new or increased industry or recreational activity on an MCZ will depend on the sensitivity of the feature to that activity and may be the same regardless of whether the general management approach for the feature is to maintain in or to recover to favourable condition.

## Management of Marine Conservation Zones

21. A range of public authorities have responsibility for regulation of activities occurring in the sea and on the coast. These include the Marine Management Organisation (MMO), the Inshore Fisheries and Conservation Authorities (IFCAs), the Environment Agency, Local Authorities, Harbour Authorities and the Department of Energy and Climate Change.

22. Where the functions of a public authority have the potential to impact on an MCZ the MCAA created an obligation on the authority to carry out its functions in a manner that best furthers the conservation objectives of the MCZ (section 125 of the MCAA). Where this is not possible, the public authority is required to proceed in the manner that least hinders the achievement of the MCZ's conservation objectives. The MCAA specified how these principles should be applied in the case of licensing decisions (section 126) and made provision for the MMO to introduce byelaws for protection of MCZs (section 129-133). The MCAA also established that one of the main duties of IFCAs is to seek to ensure that MCZ conservation objectives are furthered (section 154).

23. The term "best furthers" means that the public authority should proceed in the manner which is most conducive to achieving the conservation objectives of the MCZ. Where there is an overriding public interest case for an activity to be permitted despite it having a negative impact on the MCZ, then the public authority should identify an approach to this which would "least hinder" the conservation objectives of the MCZ being achieved. Consideration should be given to whether there is another means for the activity to occur which may have a substantially lower impact on the MCZ. In the case of licensed activities, where these are considered essential but they are damaging to an MCZ, then measures of compensatory environmental benefits equivalent to the damage to the MCZ should be secured. The MMO has published an explanation of how they will apply these

principles in considering licensing applications<sup>2</sup> and similar material is being prepared for non-licensed activities which should be available before the end of 2013.

24. The SNCBs will provide advice including :

- specifying the detailed characteristics of favourable condition for a feature in an MCZ,
- identifying which human activities are capable of affecting features in an MCZ,
- advising how the impact of these activities may be mitigated, and
- advice on compensatory environmental benefits to be required where activities do have a negative impact (for the purposes of licensing considerations).

25. Site-specific conservation advice will be published by the relevant SNCB after designation of the MCZ. Where management measures are urgently required Defra expects public authorities will develop these drawing on information of which human activities are damaging to features, which is available in the SNCBs' advice used to inform MCZ designation decisions and by direct communication with SNCBs.

26. Public authorities have responsibility for identifying and enforcing the most effective form of management of the MCZ in relation to the activities they are responsible for, drawing on the advice and guidance provided by the SNCBs. Defra expects public authorities to make timely and pragmatic decisions to ensure the conservation objectives of MCZs are achieved while allowing sustainable use of marine resources. Sites are currently being prioritised nationally according to the potential or actual adverse impacts of activities on the features designated in relation to fishing activities. This prioritisation will be further refined at a localised level taking into account the most relevant information and will guide regulators to those sites which may need protection before others.

27. Successful management of Marine Protected Areas requires stakeholders working in partnership and cooperating with each other, conservation advisers and public authorities. Defra expects public authorities to engage with stakeholders in developing their management measures, to engage with all stakeholders equally and to follow better regulation principles<sup>3</sup>. This will help minimise economic and social impacts whilst delivering the conservation objectives. Stakeholders may be engaged through informal and formal consultation and in the development of voluntary measures, which may be a suitable approach where these can be shown to be an effective means of achieving the conservation aims. The immediate social and economic impact of MCZ management will often be at the forefront of stakeholders concerns; public authorities will need to take a

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<sup>2</sup> <http://marinemanagement.org.uk/licensing/documents/guidance/13.pdf>

<sup>3</sup> <https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business>

long-term view to safeguard the marine environment and sustainable use of marine resources.

28. Guidance on the duties of public authorities in relation to MCZs has previously been published<sup>4</sup>, as well as on statutory enforcement mechanisms (including byelaws)<sup>5</sup>.

## Monitoring of Marine Conservation Zones

29. The MCAA places an obligation on Defra to publish a report every six years with an assessment of how well MCZs are achieving their objectives individually and collectively as part of an effective network of marine protected areas that contributes to the conservation and improvement of the marine environment and is representative of the range of marine habitats, fauna and flora. Defra may direct the SNCBs to carry out the necessary monitoring. These reports should also provide information on MCZs established during that period and any further steps required. The first of these reports was published in December 2012<sup>6</sup>.

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218606/guidance-note2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218606/guidance-note2.pdf)

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218607/guidance-note3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218607/guidance-note3.pdf)

<sup>6</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69623/pb13856-marine-protected-areas.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69623/pb13856-marine-protected-areas.pdf)

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