

# Sustainable development in the Marine Management Organisation

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# Introduction to MMO decision making

As a non-departmental public body, the Marine Management Organisation (MMO) has a clear remit to deliver relevant government policy, such as the Marine Policy Statement, and to be the responsible authority for relevant legislation – the Marine and Coastal Access Act 2009 (MCAA). In carrying out these functions, the MMO has to make decisions which must be based around a clear and well described framework.

At the policy level, responsibility for decision making lies with government departments. Of particular relevance to the MMO are the decisions of our five sponsor departments:

- Department for Environment, Food and Rural Affairs (Defra)
- Department of Energy and Climate Change (DECC)
- Communities and Local Government (CLG)
- Ministry of Defence (MoD)
- Department for Transport (DfT).

Government policy provides a statement of intent in itself, but also leads to the development of legislative mechanisms. The MMO uses both policy and legislative mechanisms to deliver our regulatory functions, such as the MCAA, the Marine Works (Environmental Impact Assessment) Regulations 2007, the Habitats Regulations, and the Marine Policy Statement (MPS).

At a delivery level, all of our decision making must be in line with the principles of better regulation. That is they are proportionate, accountable, consistent, transparent and targeted. These overarching principles set out the strategic landscape within which our decision making frameworks are developed. The document on 'Better regulation in the Marine Management Organisation' sets out how we are ensuring that we are in line with these principles.

The MCAA clearly sets out how the MMO makes decisions when acting as a competent authority for marine licensing, marine planning, marine conservation zones and the management of fisheries, both inshore and offshore. The specific considerations set out in the MCAA provide the legal framework for MMO decision making, as well as anything else contained in statute or regulation that determines the decision making process (including relevant EU law such as the Birds and Habitats Directives). It is these legal instruments that set out the bases for our decisions. The MCAA contains sections specific to each of our delivery functions, for example, Section 69 within Part 4 on marine licensing, states:

## Section 69 Determination of applications

1. In determining an application for a marine licence (including the terms on which it is to be granted and what conditions, if any, are to be attached to it), the appropriate licensing authority must have regard to—
  - a. the need to protect the environment,
  - b. the need to protect human health,
  - c. the need to prevent interference with legitimate uses of the sea,and such other matters as the authority thinks relevant.

As well as the direction contained within the MCAA for specific functions of the MMO, Section 2 sets out some general objectives for the MMO:

## Section 2 General Objective

1. It is the duty of the MMO to secure that the MMO functions are so exercised that the carrying on of activities by persons in the MMO's area is managed, regulated or controlled—
  - a. with the objective of making a contribution to the achievement of sustainable development (see subsections (2) and (4) to (11)),
  - b. taking account of all relevant facts and matters (see subsection (3)), and
  - c. in a manner which is consistent and co-ordinated (see subsection (12)).Any reference in this Act to the MMO's "general objective" is a reference to the duty imposed on the MMO by this subsection.
2. In pursuit of its general objective, the MMO may take any action which it considers necessary or expedient for the purpose of furthering any social, economic or environmental purposes.
3. For the purposes of subsection (1)(b), the facts and matters that may be taken into account include each of the following—
  - a. scientific evidence, whether available to, or reasonably obtainable by, the MMO;
  - b. other evidence so available or obtainable relating to the social, economic or environmental elements of sustainable development;
  - c. such facts or matters not falling within paragraph (a) or (b) as the MMO may consider appropriate.See also section 24 (powers of MMO in relation to research)
4. The Secretary of State is to give the MMO guidance as to the manner in which the MMO is to seek to secure that the contribution to the achievement of sustainable development mentioned in subsection (1)(a) is made (and see also section 38 (guidance)).

Further to the MCAA, Defra have issued statutory guidance for the MMO<sup>1</sup> on the achievement of sustainable development which states that in making decisions:

- The MMO will draw on the high level marine objectives.
- The MMO must act in accordance with the MPS.
- The MMO should seek wherever possible to deliver integrated solutions underpinned by all five high level marine objectives, recognising that some are potentially conflicting.
- The MMO should identify and take into account potential benefits and adverse impacts (which may be economic, environmental or social) in our decision making.
- The precise nature of the impacts will depend on a number of factors including local economy, social effects.
- The MMO should ensure that such decisions meet statutory requirements under UK and EU legislation and are consistent with our obligations under international law.
- The MMO is under a duty to take account of all relevant facts and matters which are within its knowledge or which it is reasonable able to acquire, this is an objective test, and may also take into account such other material as it thinks it needs and is or appears likely to be appropriate.
- The MMO must build its capability to evaluate economic social and environmental evidence in order to take informed decisions and give appropriate advice to government and other public bodies.

Therefore it is both the MCAA and our statutory guidance that set out the priorities for our decision making:

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<sup>1</sup> Statutory guidance to the Marine Management Organisation on its contribution to the achievement of sustainable development. Defra 2010

## **MMO decision making priorities**

1. The MMO should ensure that its decisions meet statutory requirements under UK and EU legislation.
2. The MMO should ensure that its decisions are consistent with its obligations under international law.
3. The MMO should make decisions that are in accordance with the Marine Policy Statement and are in accordance with the marine plan.
4. Where the relevant legislation allows, the MMO should, wherever possible, make an integrated assessment of environmental, social and economic issues in order to contribute to the achievement of sustainable development.

## **Sustainable development in the marine area**

As discussed above, the MMO has a statutory duty to make a contribution to the achievement of sustainable development, and, where possible, to make an integrated assessment of environment, social and economic issues. Within this section the principles of sustainable development in the marine area will be clarified, before setting out the mechanisms by which the MMO will take these principles into account in its decision making.

The UK Government Sustainable Development Strategy<sup>2</sup> sets out the need for all government policy to be in line with the principles of sustainable development. The Sustainable Development Commission (SDC) was the mechanism that quality assured government decision making against these principles, using policy appraisal to measure success. The SDC was closed in March 2011 and a refreshed vision for sustainable development was set out by the Coalition Government<sup>3</sup> that builds on the principles set out in the UK Strategy. This refreshed vision focuses on mainstreaming sustainable development, which in broad terms consists of providing ministerial leadership and oversight, leading by example, embedding sustainable development into policy and transparent and independent scrutiny.

Policy decisions are subject to appraisal in the form of an impact assessment (IA) and may also, depending on their route, reflect the will of parliament. Established government policy should therefore be regarded as clear expression of government's intent with regard to sustainable development and how it is to be achieved.

It therefore follows that, assuming government policy is in line with sustainable development, and assuming the legislative mechanisms that arise from policy are similarly aligned, then the MMO decision making will, de facto, be consistent with sustainable development principles, providing we are following government policy and implementing the legislative mechanisms correctly.

The principles of sustainable development for the marine area are expressed through the five high level marine objectives which take forward the UK vision for the marine environment of "clean, healthy, safe, productive and biologically diverse oceans and seas." These high level objectives are:

1. Achieving a sustainable marine economy.
2. Ensuring a strong healthy and just society.

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<sup>2</sup> Securing the future delivering UK sustainable development strategy, HMG 2005

<sup>3</sup> Mainstreaming Sustainable Development, Defra 2011

3. Living within environmental limits.
4. Promoting good governance.
5. Using sound science responsibly.

The overarching objective behind sustainable development is to safeguard our natural resources and economy for future generations. This definition is important, because it sets out that sustainable development is not about reconciling differences between the environment and the economy. Rather, this definition focuses on the fact that sustainable use of our natural resources using an integrated approach across environmental, economic and social factors can benefit all three sectors in the long term.

It is important to focus on an integrated approach to sustainable development as there will be clear instances whereby the legislation places more emphasis on, for example, environmental principles rather than social or economic. These instances are most often when activities are proposed in an area that has been designated as being of national or international nature conservation importance, and Government policy has set out that in such instances, environmental principles will normally be uppermost. Examples of this include decisions made under the Marine Works (Environmental Impact Assessment) Regulations 2007 and the Conservation of Habitats and Species Regulations 2010.

## **MMO implementation of the principles of sustainable development**

Both government policy and MMO delivery is guided by the principles of sustainable development and quality assured by formal mechanisms. In the same way that the development of government policy is guided by the UK Government Sustainable Development Strategy and quality assured by the relevant government department taking on the duties of the SDC; decisions made by the MMO must be in line with the statutory guidance to the MMO.

In line with the principles of better regulation it is important that the MMO provides clarity on its decision making processes and demonstrates how the organisation is, where possible, undertaking an integrated assessment in determining its actions. The following sections of this document provide this clarity for our main delivery functions. Where not overtly specified, these processes have been developed with guidance from the relevant legislation, policy and guidance.

Whilst the MPS does set out issues that the MMO should consider in our decision making with regard to specific sectors, neither the MPS nor our statutory guidance on contributing to the achievement of sustainable development sets out the methodology that we should use in order to take the principles of sustainable development into account in our decision making, beyond saying that the primary driver for our decision making is the need to comply with our statutory requirements, and that we should take sustainable development into account wherever possible.

It should be noted that the work the MMO undertakes varies significantly across operational functions and in many cases is undertaken using different legislative mechanisms. As such, there cannot be one overarching decision making process for all operational areas, rather individual pieces of guidance and process have been developed for specific operational areas. Collectively, these pieces of detailed operational guidance form the basis for MMO decision making and as such they are aligned to one another. The following sections outline the approaches that the MMO will take across its operational areas

### **Marine planning**

Marine planning is a new approach to the management of our seas. The aim is to ensure a sustainable future for our coastal and offshore waters through managing and balancing the many

activities, resources and assets in our marine environment. Marine planning is following a similar approach to terrestrial planning; providing a plan led regulatory system to drive efficient and sustainable use of our marine resources.

In line with the MCAA and the MPS, marine plans will contribute to the achievement of sustainable development by integrating the social, economic and environmental aspirations and needs for the marine plan area. The evidence base used to inform the plan policy objectives encompasses the three strands of sustainable development.

Marine plans will undergo an independent sustainability appraisal (SA), a legal requirement of the MCAA that will be developed alongside the overall process of marine plan production to quality assure that the plans are in accordance with the principles of sustainable development. SA is a way of assessing how a plan contributes to the overall sustainability of the area it covers as described in Section 2. The process involves identifying what is important to the proposed plan area from the point of view of sustainable development and then using this as the basis for understanding how marine planning can best contribute.

The SA also fulfils the requirements of the Strategic Environmental Assessment Directive, specifically the environmental reporting, consultation and the impact of the environmental report (and the whole SA) on the decisions made in the final plan. The MCAA also stipulates that the requirements of the Habitats Directive are taken into account, so as a separate but linked exercise, a Habitats Regulations assessment (HRA) will take place and can be considered part of the wider work going on under the banner of SA (though clearly with different reporting and assessment requirements). The SA related activity will also include an equalities impact assessment (EqIA).

Beyond the legal requirement, the value of SA is that it can provide a different lens through which to view the planning process and can add significant value to the plan making process, for example by:

- Developing the evidence base (in conjunction with plan making).
- Helping with analysis of evidence (in conjunction with plan making).
- Extraction of key sustainability issues (these are likely to be similar to those for the plan, but not necessarily identical).
- Influencing plan making by suggesting alternatives during option generation.
- Influencing plan making by identifying impacts of the preferred marine plan option and suggesting possible improvements.
- Documenting the decisions made through plan development and providing an independent narrative.

The marine plans will have the principles of sustainable development at their core. However, the SA process will help to ensure this, as it is intended to provide an independent quality assurance to maximise the plans' contributions to sustainability.

SA will be especially important in the latter stages of planning, particularly once options start to be generated for the plan. SA can inform the development of options, particularly in relation to the development of reasonable alternatives to options developed by marine planning and providing suggestions for mitigation where necessary. The documentation of the options generation process and the development of a preferred option is a 'story' that can be told by the SA, in order to help understanding of the plan development process and the decisions that have been made during it.

## Marine licensing

The main legislative mechanisms that form the bases for MMO decision making with regards to marine licensing are the MCAA, the Marine Works (Environmental Impact Assessment) Regulations 2007 and the Conservation of Habitats and Species Regulations 2010. As mentioned, we also have a statutory objective to ensure our decision making, where the legislation allows, includes an integrated assessment of environmental, social and economic issues in order to contribute to the achievement of sustainable development.

The MMO need to ensure that, as an enabling regulator<sup>4</sup>, we are assisting applicants when we can to ensure that, as far as possible, any proposals put forward for a marine licence are consistent with the principles of sustainable development at both the strategic and the project level. Under the MCAA the new marine licensing regime allows the MMO to provide long-term licensing of activities, which in itself requires that the MMO have sufficient information to enable an integrated assessment of the lifetime of the licence should it be required.

The existing licensing regime goes a long way to providing sufficient evidence for an integrated assessment. Set out below is a description of the process put in place by the MMO to quality assure both the pre-application engagement between the MMO and the applicant, but also to provide evidence of how an applicant and the MMO have considered the principles of sustainable development in an application. This process will be integrated into the overall marine licensing framework and will differ for the different licensing tiers; however, it will entail all, or some, of the stages set out below:

- 1) **Strategic appraisal.** This strategic appraisal could be undertaken at two levels:
  - a) **Plan / Policy Appraisal:** an appraisal of whether the proposed activity is in accordance with an existing marine plan and/or is in line with relevant government policy.
  - b) **Project appraisal:** an options appraisal that clearly sets out the applicants preferred option and the rationale behind why said option is preferred.
- 2) **Detailed project appraisal:** a detailed appraisal of the preferred option, any potential impacts and mitigating actions. This will most commonly take the form of an environmental statement under the Marine Works (Environmental Impact Assessment) Regulations 2007.

It should be noted that the strategic appraisal stage is in line with the current approach for pre-application engagement and can be seen as a way of formalising how the MMO will guide applicants through the new plan-led regulatory system. For a project to have reached the detailed project appraisal stage, all major issues about the strategic suitability of a development should have been addressed at the strategic appraisal stage.

As mentioned, the scale, complexity and sensitivity of a proposal will necessitate differing levels of assessment (for example, a major port development will need a more detailed strategic appraisal than a new slipway). In order to provide clarity and to ensure that the MMO's actions are proportionate and therefore are not imposing an onerous regulatory burden, any assessment required will be in line with the tier that a project is assigned. In the same way that the tier that a project is assigned to can change during the application process, similarly should new evidence arise during this process that could change the categorisation of a project, this will be reflected in the required assessment.

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<sup>4</sup> See 'Better regulation in the Marine Management Organisation' for a definition of an enabling regulator

It is understood that the process set out in this document provides a framework for pre-application engagement, and a means of evidencing work that the applicant has carried out during the pre-application phase, particularly with regard to the principles of sustainable development, and should not be seen to pre-judge the final application decision. This process is in place so that the MMO can provide guidance to the applicant and assist them in developing an application that has all the elements within it that are required, thereby preventing delay and making the overall licensing process more efficient.

This process provides a means for the MMO to work alongside applicants to help ensure that they fully understand the implications of the forthcoming marine plans and that their proposals represent the most sustainable option. In this way, the MMO is providing a means to communicate effectively with applicants and provide guidance on how the marine licensing system operates under the framework of marine planning.

### **Tier 1 projects**

Tier 1 projects have been determined to be those fast track projects where the MMO are able to deal with applications in an accelerated manner because the activities involved are straightforward and carry limited risk. Examples of such projects are moorings; burial at sea; meteorological masts; buoys; minor ground investigations and emergency works. More information regarding Tier 1 projects can be found in [MMO Marine licensing guidance note 12](#)<sup>5</sup>.

### **Strategic appraisal**

The MMO have predetermined that Tier 1 activities will have minimal social, economic and environmental impact. This means that there will be minimal assessment needed apart from ensuring that activities are in accordance with the marine plan, the MPS and relevant national policy statements. This assessment will be undertaken by the MMO in the pre-consultation stage. To provide clarity to applicants in the absence of a relevant marine plan, the MMO will undertake assessment of Tier 1 activities and will provide guidance on how they relate to the MPS.

The MMO case management system will include the following two questions that the MMO case officer must answer before sending the application for consultation:

- i) Does the project comply with MMO guidance on Tier 1 projects and the MPS?
- ii) Is the project in accordance with the relevant marine plan? (answer to this question can be no even if a marine plan is not yet in place)

### **Detailed Project Appraisal**

No detailed project appraisal of Tier 1 projects is required.

### **Tier 2 and 3 projects**

Tier 2 is for projects that are more complex and unpredictable than Tier 1 projects but where experience has allowed the MMO to develop reasonable certainty over the work we are likely to undertake. Examples include: small jetties; coastal defence works; quay walls; renewable demonstrator projects; and maintenance dredges. More information on Tier 2 projects can be found in [MMO Marine licensing guidance Note 12](#).

Tier 3 is for complex projects where the time needed to deal with applications may itself be very variable, even between two projects relating to a comparable type and scale of activity. Examples include Round 3 offshore wind farms and large port developments. More information on Tier 3 projects can be found in [MMO Marine licensing guidance note 12](#).

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<sup>5</sup> [www.marinemangement.org.uk/licensing/documents/guidance/12.pdf](http://www.marinemangement.org.uk/licensing/documents/guidance/12.pdf)

## **Strategic appraisal**

As discussed, for Tier 2 and 3 projects, the processes set out provide a framework for pre-application engagement, and a means of evidencing work that the applicant has carried out during the pre-application phase, particularly with regard to the principles of sustainable development. The level of this engagement will differ in line with the scale and complexity of a project.

The final application will contain a section where the case officer will have to confirm that a strategic appraisal has been undertaken based on evidence provided by the applicant. The decision to undertake a strategic appraisal is not one that could result in the application being refused, however, the MMO strongly advise that this stage is completed. The work behind this appraisal will all be done in the pre-application phase through close engagement between the MMO and the applicant, and in the majority of cases will be work that is already ongoing, but is not clearly evidenced in the existing licensing process. Issues that should be considered include:

- i) Identification of any conflicts between the project and the relevant marine plan.
- ii) Identification of alignment of the project with the MPS and any relevant NPS.
- iii) Identification of the environmental, social and economic drivers for a project that have been identified through existing feasibility studies or discussions with other public bodies (such as local authorities or local economic partnerships).
- iv) Identification of any potential issues that may arise due to EU legislation (such as Water Framework Directive, Marine Strategy Framework Directive, Habitats Directive), and how these can potentially be avoided, or mitigated, at the strategic level.
- v) Identification of any priority issues that may need addressing with regard to cumulative effects.
- vi) Options appraisal undertaken by the applicant, and the social, economic and environmental reasoning behind why the preferred option has been chosen.

Providing this step in the licensing process to ensure that the above actions have been taken in the pre-application process will help both the MMO and the applicant to evidence the rationale behind a chosen project and thereby make the process more efficient. This evidence will be drawn from work that the applicant is already undertaking, and will, to a greater or lesser degree, already be presenting in the environmental statement. The MMO will request that a summary of this evidence is supplied in the application. Any further guidance on the extent of the evidence supplied in a strategic appraisal will be produced in consultation with stakeholders to ensure that the regulatory burden is kept to a minimum.

## **Detailed Project Appraisal**

It is anticipated that any detailed project appraisal with regard to the principles of sustainable development will be covered by the information provided in any supporting environmental statement (ES). The Environmental Impact Assessment (EIA) Directive sets out that an ES should include an assessment of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors. The MMO may ask for applicants to consider effects on population and material assets as well as effects on the natural environment, either in the scoping or EIA stage.

## **Benefits**

The MMO is an enabling regulator<sup>4</sup> and has developed a licensing system that invests resources in assisting the applicant from an early stage through to final deliberation. The process outlined above goes a large way toward evidencing this investment of resource and will enable both the

MMO and the applicant to demonstrate how the principles of sustainable development have been considered in the decision making process.

It should also provide greater assurance regarding the evidence required within an application for the MMO to undertake a full deliberation, and to address significant issues at an early stage. This evidence will provide a clear demonstration of where applicants have avoided, mitigated or compensated potential impacts of their proposed activity from the strategic to the detailed level.

The process will facilitate the transparency of the decision making process and enable both the MMO and the applicant to better demonstrate the evidence and rationale behind a proposed development.

The quality assurance process described above should not impose a significant extra burden on applicants over and above what they are already doing. The main difference will be that the MMO will ask to have sight of information that was not previously requested, particularly at the strategic level. Tier 2 and 3 projects will, on the whole, be already undertaking the strategic assessment as part of their business cases and feasibility studies to ensure that the project is economically viable, as well as for background information for planning permission.

### **Fisheries management and control**

The MMO is tasked through the Fisheries Management and Control Team (FMCT) with managing UK fishing fleet capacity and UK fisheries quotas on behalf of the Secretary of State and in line with the Common Fisheries Policy (CFP). Much of our decision making with this operational area is clearly set out the relevant legal instruments. However, we will take the principles of sustainable development into account where we are able to.

The CFP brings together a range of measures designed to achieve a thriving and sustainable European fishing industry. It is recognised that the policy failures of the CFP far outweigh the successes and substantial reform is therefore needed. The MMO will work closely with Defra to put sustainable development at the heart of the UK proposals for reform.

### **Marine protected area management**

The MMO may make byelaws for the protection of marine conservation zones (MCZs) under Part 5 of the MCAA and for European marine sites under Regulation 38 of the Conservation of Habitats and Species Regulations 2010.

Nature conservation byelaws must further the conservation objectives of a site. They must be framed in a way that is proportionate and focused. This ensures that activities which might hinder the achievement of the conservation objectives are clearly identified and effectively controlled in a way that minimises disruption to human activities and protects the marine environment.

In accordance with guidelines under the MCAA and produced by Defra, the process of implementing a byelaw includes the consideration of alternative management measures through evidence gathering, development of an impact assessment and public consultation.

Alternative management measures include the use of non-statutory measures which could be locally led by appropriate groups with MMO assistance. Voluntary measures can be a less burdensome alternative to regulation for sea users, so are automatically considered as part of the MMO byelaws process.

The impact assessment is prepared to accompany byelaws in accordance with the principles of better regulation and is used as a decision making tool to determine the most appropriate measure

to address the risk to a site. Impact assessments set out the anticipated economic costs and benefits of the proposed measure. This includes identified environmental, social and economic implications in order to contribute to the achievement of sustainable development.

Specific sustainable development impact tests are also considered as part of the overarching impact assessment in line with the guidance on impact assessments produced by the Department for Business, Innovation and Skills. The purpose of this test is to reflect further on the conclusion of the impact assessment in order to determine whether there are compelling sustainability related reasons to amend the measure or to otherwise alter the conclusion.

## **National Enforcement Model**

The MMO has a duty to not only license activities, but also to enforce those licences. In fulfilling our statutory duty to contribute to the achievement of sustainable development we must ensure that our enforcement activities are not only considering the effects of non-compliance on the environment but also on our society and economy.

The MMO National Enforcement Model ensures that the MMO can undertake a risk-based approach to its enforcement activities in the marine area for which the MMO has regulatory responsibilities. It covers all enforcement activity and the majority of regulatory activity that the coastal offices undertake. The model is intelligence led and risk based. The prioritisation of activities that we should be enforcing is based upon six equally weighted factors:

- Conservation of the marine ecosystem
- Social considerations on communities and other users of the sea
- Sustainable marine economy
- Level of criminal sophistication
- Cross border activities
- Undermining the regulatory regime.

The inclusion of environmental, social and economic implications of non-compliance in this model ensures that the MMO is utilising our enforcement resource in a way that is both proportionate, targeted and in line with our statutory objectives.

## **Corporate services**

There are many decisions that the MMO will make with regards to the corporate services that support frontline operations. In line with Strategic Outcome 9 of the 2011-14 MMO Corporate Plan, we will make sure that decisions made within the corporate services function of the MMO drive efficient use of resources. By March 2012 a sustainability plan and associated reporting framework will be published. The aim of the MMO is to become certified as compliant with the ISO 14001 environmental management system (EMS) standard.