



**Meeting: Harbour Committee**

**Date: 18<sup>th</sup> March 2013**

**Wards Affected: All wards in Torbay**

**Report Title: Response to Defra's Consultation on Marine Conservation Zones**

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## **1. Purpose**

- 1.1 For members of the Harbour Committee to consider a response to the public consultation on the proposals from Defra that up to 31 sites are suitable for designation as Marine Conservation Zones in 2013.
- 1.2 In particular the Harbour Committee is asked to consider a response to the proposal from Defra to set up a Torbay Marine Conservation Zone, which would occupy all of the inshore area within Tor Bay Harbour Limits (20km<sup>2</sup>).

## **2. Proposed Decision**

- 2.1 **That, the Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee and the Mayor, be asked to respond to the public consultation on behalf of Tor Bay Harbour Authority and Torbay Council.**
- 2.2 **That, in responding to the public consultation, the idea of a Marine Conservation Zone anywhere within Tor Bay Harbour limits is rejected on the grounds that the socio-economic impacts are unquantifiable.**

## **3. Action Needed**

- 3.1 The Executive Head of Tor Bay Harbour Authority, in consultation with the Chairman of the Harbour Committee and the Mayor, needs to respond to the public consultation by midnight on 31 March 2013.

## 4. Summary

- 4.1 Marine Conservation Zones (MCZs) are a type of Marine Protected Area. Powers to create them to contribute to a network of Marine Protected Areas (MPAs) were provided in Part 5 of the Marine and Coastal Access Act 2009. They will protect areas that are important to conserve the diversity of nationally rare or threatened habitats and/or species and those places containing habitats and/or species that are representative of the biodiversity in our seas. Unlike other marine protected areas, designations of MCZs are supposed to take social and economic factors into account when identifying potential sites, alongside the best available scientific evidence.
- 4.2 In a statement on 13 December 2012, the Government announced the launch of the MCZ consultation. A Marine Conservation Zone is proposed for Tor Bay. A summary of the Torbay recommended MCZ site can be found in Appendix 2. The Appendix shows maps of the area proposed for designation, as well as the site size, the feature types and feature names, along with the conservation objectives, sector impacts and associated best estimate of costs. Information is also provided on the rationale for the decision, a socio-economic statement and comments on data certainty. The summary document states that the socio-economic impact best estimate of cost is £3,000, which is clearly inaccurate.
- 4.3 The public consultation is the opportunity for all stakeholders to make their views known, and to submit any new additional evidence they feel ought to be taken into account by Ministers when making their final decisions.
- 4.4 Defra have yet to decide which sites will become MCZs but they are proposing up to 31 sites for designation in 2013. The consultation is the primary opportunity for people to have their say and influence the decisions on designation. Final decisions on which MCZs to designate in 2013 will be made following consideration of the responses to the consultation.
- 4.5 Defra's aim has been to find the right balance between the strength of the conservation advantages an MCZ offers, relative to the economic and social implications of its likely designation. Where a site's conservation advantages were considered to outweigh the economic and social costs then the MCZ was considered appropriate for designation at some point. Whether an MCZ, and all of its features, are ready for designation in the 2013 tranche depends on the levels of confidence in the scientific evidence.
- 4.6 For the Torbay recommended MCZ many local stakeholders and "sea users" do not accept that the conservation advantages outweigh the economic and social costs of designation. These stakeholders include the Harbour Liaison Forums, Brixham Trawler Agents, the Torquay Fishermen's Association, the yacht clubs, the Mayor, the Chairman of the Harbour Committee and the Executive Head of Tor Bay Harbour Authority.
- 4.7 Opinions are currently being sought from the English Riviera Tourism Company, the Torbay Economic Development Company and the Business Forum and it is expected that these organisations will raise similar concerns regarding the economic and social costs of this rMCZ.

- 4.8 Defra has stated that any new data and analysis will be considered following the consultation, which will also be an opportunity for stakeholders to present any new evidence where this was not previously available. Final decisions on which sites are designated in 2013 will be based on available evidence including any new evidence submitted through this consultation.
- 4.9 Defra has also made it clear that they want to make sound decisions on sites to take forward for designation. They indicate that the science and socio-economic evidence underpinning the choices to be made is key to having sites that are effective and well-managed. It is therefore important that their evidence is reliable and accurate. The Executive Head of Tor Bay Harbour Authority is of the opinion that the socio-economic evidence is not reliable or accurate and it therefore cannot support a sound decision by Defra.
- 4.10 The management measures noted in the Impact Assessment are for illustrative purposes and they are supposed to allow for the calculation of a range of potential cost implications for each site. The sectors identified as being subject to management measures are as set out below :-
- Commercial fishing
  - Aquaculture
  - Tourism & Leisure – anchoring
  - Tourism & Leisure – vessel movement
  - Coastal Defence & Development

The management measures have yet to be determined but are expected to include Byelaws, Voluntary Codes, Marine Licences, licence conditions and also prohibition.

- 4.11 However, because the management measures have yet to be determined they are not being consulted on at this stage. The impact assessment accompanying the consultation is meant to indicate the costs and benefits of possible management measures for the site and Defra believe that it provides a good indication of what might be expected. Actual management measures will be drawn up separately and put in place by the relevant 'public authorities' after designation. Defra and their delivery partners are working together to ensure that the management measures that are to be put in place will provide effective protection for designated sites.
- 4.12 The term 'public authority' is defined in section 322 of the Act, and it includes :-
- a) Ministers of the Crown;
  - b) 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) ;
  - c) persons holding a public office.

- 4.13 Once a site has been designated by Government, a 'public authority' is under a general duty to exercise any function which may affect an MCZ in a manner which furthers the conservation objectives stated for the MCZ, and to not undertake or give consent to any activity that would have an adverse effect on achieving the conservation objectives stated for any MCZ. It can therefore be seen that the Council is a 'public authority', under the Act, in more ways than one and this will bring resource challenges in terms of time and cost. (See section 5.15)
- 4.14 When an MCZ is designated it does not automatically mean that economic or recreational activities in that site will be restricted. Restrictions on an activity will depend on the sensitivity of species, habitats and geological/geomorphological features (for which a site is designated) to the activities taking place in that area and on the conservation objectives for those features. Once the site has been designated it will be the duty of the appropriate public authority to determine what management measures if any will be required to protect the features within the MCZ.
- 4.15 Only those activities that are identified by the appropriate authority as having a negative impact on the conservation objectives for the features within the site will be managed. Once the appropriate authority has identified the correct management measures for a site, they will inform the general public of the measures being put in place, where necessary this may involve a public consultation.
- 4.16 The nature of the features that Defra are seeking to protect in Tor Bay Harbour are in many cases located immediately adjacent to our enclosed harbours. Therefore, any development plans beyond the existing footprint of those harbours will clearly impact on those sites and their associated conservation objectives. Furthermore it is unlikely that any meaningful mitigation measures can be put forward to offset the impact and in any event Defra's own consultation document accepts that **'Unknown potentially significant costs of mitigation could arise'**.
- 4.17 Another unknown factor relates to the new Marine Plans. The South Coast Marine Plan process is now underway and this strategic planning document, which applies to the south coast of England, will include any existing and proposed Marine Protected Areas (MPAs) as part of its baseline. Defra have indicated that the planning process may indicate the need for amendment of Marine Conservation Zone boundaries or management measures, or identify possible new Marine Protected Area sites.
- 4.18 In order to balance the Government's obligations to create MCZs and its obligations in respect of renewable energy and the growth agenda, Defra believe they have acted in accordance with the Marine and Coastal Access Act 2009, by including consideration of social and economic factors when designating MCZs. Defra's advice states that implications for developments aimed at meeting the renewable energy and growth objectives can be taken into account in making decisions on sites. Defra will not have been aware of the emerging Tor Bay Harbour Port Masterplan when they made the proposal for an MCZ in Tor Bay.

- 4.19 Defra has also indicated that there won't be any opportunity to appeal any sites that Ministers choose to designate. The public consultation is the only opportunity for stakeholders to review, comment and provide feedback to Government on the proposed MCZ designation decisions before they are finalised, and they are encouraging all interested parties to make their views heard at this stage.

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## Supporting Information

### 5. Position

- 5.1 The Government's policy is to implement an ecologically coherent network of Marine Protected Areas (MPAs) whilst minimising adverse socio-economic impacts of the network and its management. The existence of socio-economic interests will not prevent the consideration of an area for designation as an MCZ, nor compromise the achievement of an ecologically coherent MPA network, but will be considered as part of the process.
- 5.2 In taking decisions, Ministers have indicated that they will want to be clear about the choices they have and the impact of the decisions they are being asked to take. The approach to the selection and designation of MCZs therefore was supposed to ensure that environmental and socio-economic information is integrated to provide the best available evidence base for decisions.
- 5.3 The weight to be attached to socio-economic interests will depend on a number of factors and will need to be considered in the light of the particular circumstances that apply in each area. Where areas contain features which are rare, threatened or declining and come with limited options for their location, ecological considerations are likely to carry greater weight in considering the area's suitability for designation as an MCZ. However, where there is a choice of alternative (and comparably-suitable) areas (which could be the case for many representative habitats, including those in the Bay); socio-economic factors are likely to carry increased weight (within the constraints imposed by the network design principles and the conservation objectives for the site).
- 5.4 The Marine and Coastal Access Act 2009 is a piece of legislation that aims to improve the way the UK uses its marine resources and maximises the benefits it gets from them. One of the reasons it was developed is to provide enhanced protection of the marine environment and biodiversity. In particular, Part 5 of the Act provides powers for Ministers to designate Marine Conservation Zones (MCZs) alongside a duty to exercise this power to contribute to the creation of a network of Marine Protected Areas.
- 5.5 With a coastline of over 12,000km the UK has a large marine area, rich in marine life and natural resource. It is important to recognise that our seas are not just places of important biological diversity, they also provide us with a variety of goods and services including, food, carbon capture, climate regulations, pollution control, energy, building materials, recreation and transport. This makes the marine environment key to England's social, economic and environmental well-being and provides significant opportunities for the future that should be protected.

- 5.6 At present the marine environment, in certain areas, is coming under increasing pressure from unsustainable human activity, which is damaging and further threatening marine ecosystems. However, many local stakeholders believe that the current level of human activity in the Bay is sustainable and can certainly be managed using existing designations and regulatory powers.
- 5.7 In comparison to terrestrial conservation, Defra believe that marine conservation is significantly behind and they think it is important that appropriate conservation is introduced in order to protect our marine resources before it is too late. However, the Bay already benefits from a number of significant marine conservation designations. In fact a range of legislative measures are already in place to protect important marine species and habitats. Types of marine protected areas currently established include:
- Sites of special scientific interest (SSSI) – Wildlife and Countryside Act 1981
  - Special Protection Areas (SPAs) – Wild Birds Directive 1979
  - Special Areas of Conservation (SACs) – Habitats Directive 1992
  - National Nature Reserve (NNR)
  - Local Nature Reserve (LNR)
- 5.8 The Statutory Nature Conservation Bodies (SNCBs – Natural England and the Joint Nature Conservation Committee (JNCC)) – are Defra’s delivery partners for MCZs and they set up four regional projects covering the South-West (Finding Sanctuary), Irish Sea, North Sea and Eastern Channel to deliver recommendations on potential MCZ sites. Each project was meant to work closely with sea users and interest groups to recommend sites within their regions. However, many local stakeholders do not believe that this was achieved in a balanced way by Finding Sanctuary, our regional project, who provided the MCZ recommendation for the Torbay area.
- 5.9 The regional projects had access to evidence from a range of resources to develop their recommendations. They used evidence from the scientific literature, extracted relevant information from databases, and brought together some stakeholders with knowledge of the areas who provided data and expert opinion. Through a number of workshops, their members had the opportunity to check the information, highlight problems, and identify the most appropriate set of evidence. That process provided some reassurance about the data and how they were used. The Science Advisory Panel’s review, however, indicated that there were evidence gaps for many of the site recommendations either because information was lacking or because it was not cited by the regional projects. An in depth review of the evidence base for each site recommendation was commissioned to ensure that Government had a good understanding of the evidence base for each one.
- 5.10 On 8 September 2011, Finding Sanctuary (the South west regional project) submitted its final recommendations to the SNCBs and the Science Advisory Panel for independent review. At this stage the Executive Head of Tor Bay Harbour Authority had already raised an objection to the proposed MCZ for the Torbay area. The final recommendations were reviewed by the Marine Protected Areas Science Advisory Panel, who submitted their formal advice to Government on 30 October 2011.

- 5.11 In his statement of 15 November 2011, the Minister referred to the need for further work to be undertaken by Defra to strengthen the evidence base for some of the recommendations put forward by the regional projects. Natural England and the JNCC submitted their formal advice, including the Impact Assessment, to Defra on 18 July 2012.
- 5.12 Ministers examined all the advice and evidence and have consequently proposed that up to 31 sites as being suitable for designation in the first tranche in 2013.
- 5.13 Once a site has been designated by Government, a 'public authority' is under a general duty to exercise any function which may affect an MCZ in a manner which furthers the conservation objectives stated for the MCZ, and to not undertake or give consent to any activity that would have an adverse effect on achieving the conservation objectives stated for any MCZ.
- 5.14 There are two main duties under the Marine and Coastal Access Act 2009 that affect licensing decisions with regard to MCZs. Section 125 requires public authorities to exercise their functions in a manner to best further (or, if not possible, least hinder) the conservation objectives for MCZs. Section 126 requires public authorities to consider the effect of proposed activities on MCZs before granting authorisation to them and imposes restrictions on authorisations.
- 5.15 To fulfil the duty public authorities will have to consider and implement changes in the way they carry out their functions or activities. This is aimed to ensure that they deliver conservation benefits for and minimise adverse effects on, MCZs. The duty applies to a wide range of functions which include:
- the development of new infrastructure;
  - developing and implementing strategies, plans and policies,
  - ownership and management of coastal land (for example coastal defence);
  - management of shipping channels;
  - provision of public information; and
  - administration of consent, regulatory and enforcement regimes.
- 5.16 The four features for designation in the Torbay rMCZ in 2013 are :-
- Subtidal mud
  - Intertidal underboulder communities
  - Seagrass beds
  - Long snouted seahorse (*Hippocampus guttulatus*)
- 5.17 There are a number of regulatory and non-regulatory methods by which sites could be managed to achieve their conservation objectives. In identifying and implementing management measures, it is expected that the following principles should be applied :-
1. Both regulatory and non-regulatory methods should be investigated and assessed
  2. Measures with the least social and economic impact should be implemented where effective in meeting MCZ conservation objectives
  3. Management should be proportionate to the conservation objectives of the feature

5.18 However, Defra have recognised that in some sites they will need to prohibit all extraction, deposition and activities that cause significant disturbance to support the achievement of conservation objectives. This issue is of particular concern in Torbay where such could severely hinder our ambitions for growth.

5.19 A number of beneficial impacts arising from the proposed Torbay MCZ have been identified by Defra and these include the following :-

- Fish for human consumption – may improve
- Angling – may increase
- Diving – may increase
- Wildlife watching – may increase but might just be displaced
- Research & Education – high confidence but still only a maybe
- Regulatory services – low confidence, may increase biodiversity

A number of the above are given low confidence by Defra and given that the benefits are probably attributable to the existing conservation measures this is entirely understandable.

5.20 Information and comments submitted through the consultation will be used by Defra to inform the Ministers' final decision on which sites will be designated in the first tranche in 2013. Information gathered at this stage will also be used as part of the decision making process for determining the designation of sites in later tranches.

## **6. Possibilities and Options**

6.1 The Council and Tor Bay Harbour Authority are duty bound to respond to this consultation especially as they are a 'public authority' under the controlling legislation.

6.2 Any response to the consultation should provide a clear indication of the Council's view on the proposed designation and it should also include any additional socio-economic or environmental data.

## **7. Preferred Solution/Option**

7.1 The idea of a Marine Conservation Zone anywhere within Tor Bay Harbour limits should be rejected because the socio-economic impact will be significant and unquantifiable.

## **8. Consultation**

8.1 The two Harbour Liaison Forums have been kept informed on the development of the MCZ designation process and throughout this period they have consistently raised significant concerns over the likely damaging socio-economic impacts. Similarly, many of the stakeholders who are 'sea users' that sit on the Forums have questioned the benefits of an MCZ designation and have challenged the concept that human activity is currently having an unsustainable impact.

## **9. Risks**

- 9.1 There is a significant risk that human activity in the Bay will be restricted by the management measures introduced with an MCZ.
- 9.2 There is a significant risk that the socio-economic impact of these measures has not been adequately assessed by the Regional Project or by Defra.
- 9.3 There is a very real risk that options within the emerging Port Masterplan will become undeliverable because it will be impossible to produce compensatory measures that are of 'equivalent environmental benefit'. If mitigation is possible then Defra's own reports states that – 'Unknown potentially significant costs of mitigation could arise'.

## **Appendices**

Appendix 1 Defra MCZ Consultation Response Form

Appendix 2 Consultation Site Summary: Torbay rMCZ

## **Additional Information**

The consultation document and annexes can be viewed at <http://www.defra.gov.uk/consult/open/>.