



The one-hundred-and-twelfth meeting of the
Joint Nature Conservation Committee to be held at 08.45 on
14th September 2017, at JNCC, Monkstone House,
City Road, Peterborough, PE1 1JY

This paper was provided to the Joint Committee for decision/discussion
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Joint Nature Conservation Committee

Simplification of approval process for advice on offshore Marine Protected Areas

Paper by John Goad

1. Background

- 1.1. For the past decade JNCC has had an active programme of offshore Marine Protected Area (MPA) identification. This initiated with the identification of offshore sites of European Community Importance to broaden the Natura 2000 network. With the advent of the Marine and Coastal Access Act this was expanded to encompass sites of national importance in offshore marine waters around the UK (Marine Conservation Zones and Nature Conservation MPAs in Scottish waters). In this context, offshore means UK marine waters beyond 12 nautical miles from the coast, namely those waters beyond territorial seas limits but within the UK economic exclusion zone (EEZ).
- 1.2. The identification and designation phase of JNCC's MPA work involves the collation and interpretation of scientific evidence and the formulation of recommendations (advice) to government (Defra and/or devolved administrations). It is then for ministers to decide whether to act on those recommendations and if approved a public consultation is held. The results of the consultation are reported back to ministers, along with any revisions to the recommendations as may be appropriate. Finally, the decision is taken by ministers on whether to proceed to designate the sites.
- 1.3. JNCC is involved in all stages of the above work, either undertaking public consultations directly or supporting governments with their own consultations. This constitutes the MPA designation phase which is relevant to this paper. However, it is worth noting that designation is just the beginning of the story and gives rise to JNCC activity in conservation advice, support with fisheries measures development, advice to regulators on marine industry applications (casework), monitoring and site condition assessment, and in an adaptive management approach assessment of management efficacy.
- 1.4. For the first few years new European offshore marine site recommendations were brought to Joint Committee meetings for sign-off prior to submission to government. This was primarily to meet the notification requirements of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007¹ (as amended)², specifically regulations 8 and 13 on the notification of proposed Sites of Community Importance and the notification of proposed Special Protection Areas. The Joint Committee is explicitly named in these and other parts of the regulations. The advent of the Marine and Coastal Access Act in 2009 conferred further duties on the Joint Committee, namely advisory duties with respect to Marine Conservation Zones.

¹ <http://www.legislation.gov.uk/ukxi/2007/1842/contents>

² <http://www.legislation.gov.uk/all?title=The%20Offshore%20Marine%20Conservation%20%28Natural%20Habitats%2C%20%26c.%29%20Regulations>

- 1.5. Under the JNCC's schedule of delegations, advice to government on designation of offshore MPAs is reserved for the Committee. Other more routine advice is discharged at an executive level, for example advice in fulfilment of regulation 18 requiring the establishment of conservation objectives and advice to competent authorities on operations which may adversely affect the integrity of sites, and responsibilities defined in section 127 of the Marine and Coastal Access Act³.
- 1.6. The major policy intervention point (recommendation of a new marine protected area) is therefore approved by the Joint Committee whereas all other functions (mostly routine operational matters) are handled at an officer level. JNCC's evidence quality assurance policy ensures there are appropriate sign-off processes in place for the more routine aspects of the work. There are legal and potentially financial consequences for sea users and those public authorities responsible for the regulation of human activities from the designation of MPAs. Stakeholders and public authorities will have close regard for the conservation advice from JNCC.
- 1.7. In 2010 the Marine Protected Areas Sub-Group of the Joint Committee was established to deal with the growing demands of the MPA programme, recognising that the Joint Committee was not best placed to provide the detailed scrutiny that was being requested. The MPA Sub-Group has processed a huge amount of work on new site recommendations during the past seven years. For practical purposes the MPA Sub-Group provides all the scrutiny that is needed of proposals coming from the JNCC executive. However, under the Sub-Group terms of reference the Joint Committee retains the final approval role for new sites. JNCC is now a little unusual in having its top-level non-executive board sign off these types of proposals. Dedicated committees and expert panels are more the norm in other organisations.

2. Options and recommendation for offshore sites

- 2.1. In recent times and in the interests of agility, Joint Committee has tended to delegate final approval of new site recommendations to the JNCC Chair. These arrangements have been a little ad hoc so it is now proposed to regularise the delegation arrangement.
- 2.2. There are three options:
 - Option A:** Joint Committee retains full oversight and approval of new site recommendations
 - Option B:** Joint Committee delegates full oversight and approval to the JNCC Chair (with the Chair retaining the right consult the full Committee if appropriate)
 - Option C:** Joint Committee delegates full oversight and approval to the executive.
- 2.3. In the interests of agility and consistency with current practice, option B is recommended.

³ <http://www.legislation.gov.uk/ukpga/2009/23/contents>

3. Shared sites (sites that straddle inshore and offshore waters)

- 3.1. Defra obtained a legal view in 2015 on sites that straddle different administrative areas. It concluded that all Statutory Nature Conservation Bodies (SNCBs) in whose jurisdiction a site lies must be able to demonstrate clear involvement in any formal advice. Noting the legal duties vested in the SNCBs post designation, the following two key points should be understood:
- i. Each SNCB must have a role in all actions that involve formal advice on a proposed shared MPA in their jurisdiction to ensure they fulfil their legal responsibilities.
 - ii. All SNCBs should be sighted on any work on a proposed shared MPA in their jurisdiction that could expose the organisation to moderate/high corporate risk (legal/reputational).
- 3.2. In practical terms, the first bullet above would require any SNCB issuing formal material (typically 'advice' to government or public authority) to have had formal endorsement of the material from the other SNCB(s). For the second bullet, a SNCB planning engagement with stakeholders or offering non-statutory advice on possible management would liaise with the other SNCB(s) in cases where there could be adverse reaction by stakeholders or developers.
- 3.3. For new site recommendations (pre-designation work), whilst using a proportion of site area within each jurisdiction is a simple, logical way to operate, experience has shown that the nature of the features, the type of human activity and/or the economic consequences of potential management action are the main factors that create issues with designation advice. Considering post-designation site implementation, decisions on the working practices adopted pre-designation to meet the two key points will be based on features/activity/management rather than the area of site lying in respective jurisdictions. How a SNCB makes and then communicates its formal decisions to others is a matter for its governance process.
- 3.4. All SNCBs with a formal interest in a proposed MPA should agree who will provide formal pre-designation advice to the government(s), and how the other SNCB(s) will provide their formal endorsement ahead of its submission.
- 3.5. For JNCC, the Joint Committee holds formal responsibility for advice on MPA designation although the proposed procedures allow delegation to others on its behalf, normally the Chair. Recognising the need for efficiency and expediency of operation in dealing with other bodies for multi-jurisdictional sites, it is recommended that the Joint Committee delegates further by adopting the triage approach set out in the table below for sites that straddle inshore and offshore waters.

Type of site	Characteristics	Responsibility
Simple	<ul style="list-style-type: none"> • Holds mainly inshore feature(s) • Published evidence • Low level of human activity, basic management 	JNCC Programme Leader

	<ul style="list-style-type: none"> • Little stakeholder interest 	
Moderate	<ul style="list-style-type: none"> • Unpublished evidence of required standard • Sensitive features but established management processes • Limited stakeholder interest 	Responsible Director in JNCC
Complex	<ul style="list-style-type: none"> • Unpublished and/or controversial evidence • Holding sensitive features requiring careful and/or novel management • Significant stakeholder interest 	Joint Committee Chair [MPA Sub-Group advice]

3.6. In practice, the process would operate as follows

- i. JNCC Programme Leader considers each site proposal to determine the most appropriate level of corporate endorsement.
- ii. Programme Leader communicates the decision to the other SNCB(s), agreeing what material requires endorsement and the time required by JNCC for such endorsement.
- iii. JNCC reviews the material and provides its formal response. The responsible party can seek advice further up the scale if required.
- iv. For all tiers the decisions and responses are logged.