



Marine Management Organisation



Marine conservation zones and marine licensing

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MMO duties in relation to marine conservation zones and marine licensing

Section 126 of the Marine and Coastal Access Act (MCAA) (2009) places specific duties on the MMO relating to marine conservation zones (MCZs) and marine licence decision making. This is because s.126 applies where;

- (a) a public authority has the function of determining an application (whenever made) for authorisation of the doing of an act, and
- (b) the act is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

In determining how to apply s.126 in undertaking its marine licensing function, the MMO is introducing a new MCZ assessment process that will be integrated into existing marine licence decision making procedures. This will apply to all new marine licence applications with immediate effect and is relevant to MCZs proposed by Defra (together with their proposed features and proposed conservation objectives) until the point of designation. From the point of designation it is the designated MCZs (together with features and conservation objectives) which will be relevant.

MCZ sites and features identified as possible candidates for designation in future tranches will be NOT be subject to the MCZ assessment process. However, the MMO will consider the evidence base associated with those sites in its decision making.

The assessment process also addresses the general duties placed on the MMO in s.125 of the MCAA with respect to furthering the conservation objectives of MCZs.

Principles of approach

The MMO is committed to the principles of Better Regulation. In designing and implementing an MCZ assessment process we will ensure compliance with those principles by taking an approach that is proportionate, accountable, consistent, transparent and targeted.

Proposed MCZ assessment process for marine licensing

The process has three sequential stages; screening, stage 1 assessment and stage 2 assessment (see figure 1). Although the MCAA does not stipulate that a staged process is required, the approach is designed to ensure that the MMO will have available to it the necessary information by which it can fulfil its duties in relation to marine licensing in accordance with s.126 of the MCAA. This approach will maintain proportionality for applicants by helping guide them to supply the correct information to accompany their marine licence application.

In making determinations with respect to MCZs at each stage in the process, the MMO will always consider the feature(s) for which the MCZ(s) has been designated, the current status of those features and the conservation objectives against each feature.

The assessment process runs alongside other relevant legislative regimes, including those set out in Part 4 of the MCAA and other requirements such as those under the Habitats Directive or the EIA Directive, but is not a substitute for those.

The MCZ assessment will be carried out during the application determination window (our target is 13 weeks). It is anticipated that, in line with the approach taken by the MMO across all licensing decisions, much of the work to support this assessment for complex projects would be done in pre-application. This allows for the iterative process of developing an application to be applied. At times, it may be appropriate for information used in the MCZ assessment to be included in consultation with other bodies, for example, during EIA scoping.

The process

The MCZ assessment process is summarised in figure 1. More detail is provided in the sections below.

Screening

All marine licence applications will be screened to determine whether s.126 should apply to the application. It will apply if it is determined through the course of screening that;

- the licensable activity is taking place within or near an area being put forward or already designated as an MCZ; and
- the activity is capable of affecting (other than insignificantly) either (i) the protected features of an MCZ; or (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependant

The MMO will use a risk based approach when determining the 'nearness' of an activity with respect to MCZs. This will include applying an appropriate buffer zone to the MCZ features under consideration as well as a consideration of risks which lie in activities further removed from features.

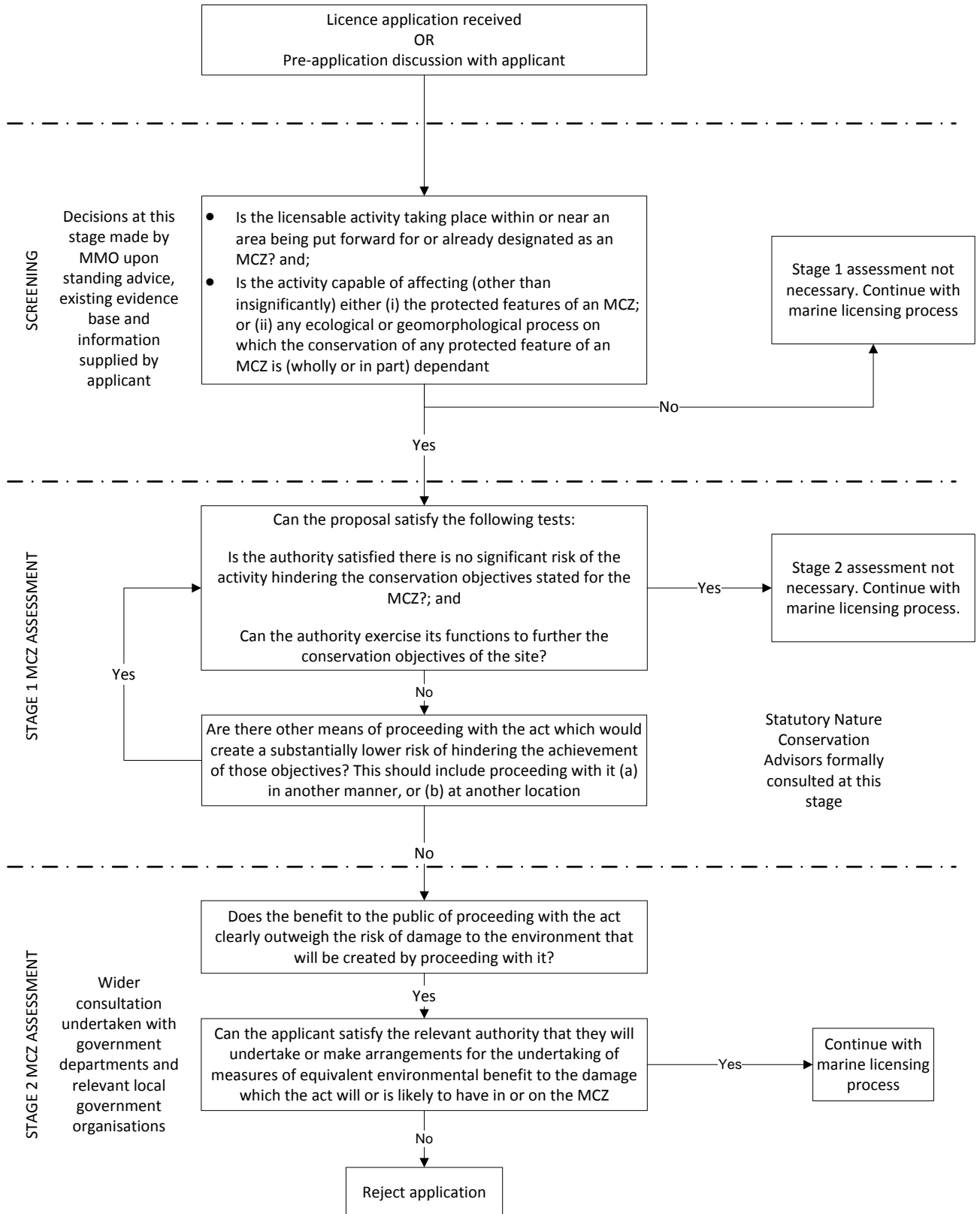
In determining 'insignificance' the MMO will consider the likelihood of an activity causing an effect, the magnitude of the effect should it occur, and the potential risk any such effect may cause on either the protected features of an MCZ or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependant.

The MMO will not routinely consult SNCBs at this stage in the process although they will be notified of our screening determination and will have the opportunity to comment on that determination (and supply further information or advice as necessary) when we consult them either when the application is considered under the relevant legislative regime or when a stage 1 assessment is made.

Where it has been determined through screening that s.126 should apply to the licence application, the MMO will assess the application further to determine which subsections of s.126 should apply to the application. This will be done in two stages; stage 1 assessment and stage 2 assessment.

Figure 1 – a summary of the MCZ assessment process to be used by the MMO in marine licence decision making

N.B. This process will be integrated into the marine licensing process



Stage 1 assessment

The stage 1 assessment will consider whether the conditions in s.126(6) can be met. In doing so the MMO will use information supplied by the applicant with the licence application, advice from the SNCBs and any other relevant information to determine whether;

- there is no significant risk of the activity hindering the achievement of the conservation objectives stated for the MCZ; and
- the MMO can exercise its functions to further the conservation objectives stated for the MCZ (in accordance with s.125(2)(a))

If the condition in s.126(6) cannot be met the stage 1 assessment will also consider whether the condition in s.127(7)(a) can be met. In doing so the MMO will determine whether;

- there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of the conservation objectives stated for the MCZ. This should include proceeding with it (a) in another manner, or (b) at another location

In undertaking a stage 1 assessment the MMO will formally consult with SNCBs for a period of 28 days unless the SNCB notifies the MMO that it need not wait or MMO determine that there is an urgent need to grant authorisation (in accordance with s.126(2)).

Within this stage of assessment ‘hinder’ will be considered as any act that could, either alone or in combination:

- in the case of a conservation objective of “maintain”, increase the likelihood that the current status of a feature would go downwards (e.g. from favourable to degraded) either immediately or in the future (i.e. they would be placed on a downward trend); or
- in the case of a conservation objective of “recover”, decrease the likelihood that the current status of a feature could move upwards (e.g. from degraded to favourable) either immediately or in the future (i.e. they would be placed on a flat or downward trend).

Similarly ‘further’ will be considered as any act that could:

- in the case of a conservation objective of “maintain”, increase the likelihood that the current status of a feature would be maintained either immediately or in the future; or
- in the case of a conservation objective of “recover”, increase the likelihood that the current status of a feature could move upwards (e.g. from degraded to favourable) either immediately or in the future.

When considering whether an activity can further or hinder the conservation objectives of a site, the MMO will consider the direct impact of an activity upon a feature as well as any applicable indirect impacts. Such an indirect impact could include the changing the effectiveness of a management measure put in place to further the conservation objectives.

The applicant should be able to demonstrate that 'other means' reduces the risk such that the act no longer has a significant risk of hindering the conservation objectives of the site.

Stage 2 MCZ assessment

The stage 2 assessment will consider whether the conditions in s.126(7)(b) and (c) can be met. In doing so the MMO will use information supplied by the applicant with the licence application, advice from the SNCBs and any other relevant information to determine whether;

- the benefit to the public of proceeding with the act clearly outweigh the risk of damage to the environment that will be created by proceeding with it; and, if so, then whether
- the applicant can satisfy the MMO that they will undertake or make arrangements for the undertaking of measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

The above determinations will be addressed in sequence, that is, if the public benefit test is not 'passed' then a consideration of measures of equivalent benefit would not be made as the application would be rejected.

As well as consulting with the SNCBs a wider consultation with other advisors may also be undertaken at this stage, in particular to provide additional and specific advice on socio-economic matters. For example, consultees could include Local Authorities, Local Enterprise Partnerships and central Government departments (such as the Department for Business Innovation and Skills, Department for Communities and Local Government, Department for Energy and Climate Change or Department for Transport) that may have relevant expertise to offer. All advice received by the MMO will be considered in the decision making process in the normal manner.

In determining 'public benefit' the MMO will consider benefits at a national, regional or local level. Applications for activities that are of solely private benefit would not be considered to deliver a benefit to the public.

In determining 'measures of equivalent environmental benefit' the types of compensatory measures that might be considered under the Habitats Directive would also be appropriate to put forward here, although consideration will not be confined to those.

The Defra MCZ consultation document states that;

There is a strong scientific case for an assessment of a marine protected area network to be based on biogeographic regions, rather than administrative regions. Defra considers that this should provide the basis for future designation of MCZs. As the network continues to develop, effective management will also remain a key factor in assessing an ecologically coherent marine protected area network, and further links to international commitments under OSPAR.

Given this policy position, and recognising that MCZs will be designated in tranches, the MMO will consider 'measures of equivalent environmental benefit' that are of relevance to

any of the commitments the UK has made on marine protected areas at a national and international level. The reasons why an affected MCZ was designated (in addition to the features it was designated for) is relevant in this context as this may offer a broader ecosystems context for the consideration of measures.

The MMO will work closely with applicants and the SNCBs in determining suitable measures. We may also seek additional policy advice from Defra during this stage in the process. The MMO will require commitment from an applicant 'measures of equivalent environmental benefit' can be secured and functioning before they can be 'satisfied' (in accordance with s126(9)).

Duties placed on applicants

The onus will be placed on the applicant to supply the relevant information to the MMO and its SNCBs in order to progress an application through the assessment process.

Potential overlap with other processes

Where another marine protected area or other spatial management measure overlaps an MCZ the MCZ assessment process will not be a replacement for other necessary tests (e.g. HRA) - it will sit alongside those. Where there are overlaps with other processes, a case by case approach will be taken. From September 2012, applicants of Nationally Significant Infrastructure Projects (NSIPs) located in England, or both England and Wales, are able to agree evidence plans with relevant SNCBs. The requirements with respect to assessing possible impacts on MCZs will be included in this process.

Cumulative Impact Assessment

The MCAA does not provide any legislative requirement for explicit consideration of in combination or cumulative impact assessment to be undertaken when assessing the impacts of licensable activities upon an MCZ. However, the MMO considers that in order to fully discharge its duties under section 69 (1) of the MCAA, in combination and cumulative effects must be considered.

Review of consents

The MCAA does not provide any legislative requirement for a review of consents when MCZs are designated.

Statutory nature conservation bodies (SNCBs)

The duties placed on SNCBs under Section 127 of the MCAA are a critical component in the MMO's ability to fulfill its duties in relation to Sections 125 and 126. The MMO must notify the relevant SNCB (such as NE or if the MCZ is outside the seaward limits of the territorial sea, the JNCC), wait 28 days until considering the application and have regard to any advice given. There is no need to wait 28 days if (i) the SNCB so notifies, or (ii) the situation is urgent.

In exercising its functions, the MMO must take account of any guidance that will be produced by the SNCB (under Section 127 of the MCAA).

Sites for consideration in future tranches

As set out in the Defra MCZ consultation document there are a number of sites and features that are not proposed for designation in the first tranche but which may be the subject of a further evidence gathering exercise such that they may be considered in future tranches. Neither these sites, nor the features will be subject to an MCZ assessment process. However, the enhanced evidence base associated with any such area will be relevant and material to any licensing decision by the MMO.

Moreover, any licensable activity will be subject to the licensing provisions of the Marine and Coastal Access Act and any relevant legislation, which could include the Marine Works (EIA) Regulations. Both of these pieces of legislation have provision within them to assess any impact on the environment, and in areas where there is an enhanced evidence base (e.g. where evidence either has been, or currently is being, gathered to support a future designation), this will be taken into account in the MMO's normal decision making processes. In recognising the ongoing evidence gathering process the MMO will take a judgement on the level of precaution it applies to such decisions by considering;

- the level of uncertainty associated with any supporting evidence;
- the risk associated with any proposed activity; and
- the likelihood for future designation.

The onus will be placed on the SNCBs to highlight to the MMO where a proposed licensable activity might affect a site that is subject to further evidence gathering, and provide specific advice which addresses the points above. As mentioned it is also imperative that the SNCBs provide up to date information regarding the evolving evidence base in a timely manner.