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BY EMAIL

24 April 2017

Dear Simone

Guidance on MCZ assessment for Nationally Significant Infrastructure Projects

The Wildlife Trusts (TWT) are involved in a number of Nationally Significant Infrastructure Projects (NSIPs) at the pre-application stage¹. A number of the NSIPs are proposed to take place within a Marine Conservation Zone (MCZ) and will therefore require an MCZ assessment. However, we have concerns that there is a lack of guidance in place on MCZ assessments for NSIPs.

As part of the DCO applications, developers need to present appropriate and sufficient information for the Competent Authority to undertake an MCZ assessment. This process is to ensure that there is no significant risk from the development in hindering the achievement of the conservation objectives for MCZs. However, there is currently a lack of clarity on the MCZ assessment process for NSIPs. Our main concern is that without clear guidance, we do not believe that a thorough MCZ assessment can take place to ensure that site conservation objectives are met.

I have annexed what we see as the current issues associated with the MCZ assessment process for NSIPs and possible resolution options. TWT has also raised these concerns with Defra and BEIS. I would be grateful if you could consider the issues raised and respond at your earliest convenience.

Yours sincerely

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¹ NuGen Moorside nuclear development, Hornsea 3 offshore wind farm and possibly Norfolk Vanguard offshore wind farm.

Annex: Issues and information required on the current guidance on MCZ assessment for Nationally Significant Infrastructure Projects

1. Current issues

1.1. Lack of clarity on the assessment process the Department for Business, Energy & Industrial Strategy (BEIS) will follow as the Competent Authority

As the decision maker for NSIPs, the Secretary of State for BEIS needs to be happy that he has met and discharged sections 125 and 126 of the Marine and Coastal Access Act when consenting a development within an MCZ.

It is our understanding that for NSIPs, it is for BEIS to outline the procedure it will follow in deciding on the MCZ assessment. In turn this will influence the process the Planning Inspectorate will follow in order to make a recommendation to BEIS. The current guidance available is the Marine Management Organisation (MMO) 'Marine Conservation Zone and Licensing guidance (2013)'² and the Defra 'Guidance on the duties on public authorities in relation to Marine Conservation Zones (2010)'³, and we are unclear which process the Planning Inspectorate and BEIS intends to follow. Regardless of which guidance is followed, more detailed information is required on the assessment process.

Throughout the evidence plan process, developers work to resolve issues and complete assessments before the DCO application is entered. In the absence of guidance from BEIS or the Planning Inspectorate, there is risk that the MCZ assessment information presented during examination will be inadequate, which could delay the process. This is ideal neither for developers or for the Government in ensuring that the conservation objectives for MCZs are being met.

1.2. Determining significance

To determine the significance of an impact arising from a development, conservation objectives and advice is required for MCZ sites. Of greatest concern, currently, is the potential impact of offshore cabling routes upon Cromer Shoal Chalk Beds MCZ. Whilst we appreciate that Natural England is working to develop objectives and guidance for this site (we expect a draft by May), we are concerned that any delay in providing this advice could cause major problems in the assessment process. Without the advice, the determination of 'significance' becomes open to debate, which hinders the assessment process and more importantly understanding the impact on MCZ protected features.

1.3. Advice on Benefit to Public & Measures of Equivalent Environmental Benefit (MEEB) (stage 2 MMO MCZ assessment guidance)

There is currently no detailed MCZ guidance available on 'Benefit to the Public' and 'MEEB', Section 126 (7) of the Marine and Coastal Access Act 2009. This test is necessary in cases where it

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410273/Marine_conservation_zones_and_marine_licensing.pdf

³ <http://peninsulapartnership.org.uk/abd/wp-content/uploads/2011/07/Defra-Guidance-Note-2-MCZs-and-LAs1.pdf>

is determined, even with mitigation and alternatives, that a project will have a significant impact on an MCZ.

TWT is very concerned that without clear guidance, the determination of Benefit to the Public and MEEB could be open to very broad interpretation, and we would have serious concerns that any recommended measures would not meet the conservation objectives for MCZs. The absence of clear guidance could also cause conflict between organisations, delay the planning process and open the process to legal challenge.

1.4. Consistency of assessments across sectors

As noted, there are several NSIPs that will enter DCO applications within the next year or so. Most projects that require MCZ assessments are offshore wind farm projects. However, it is important that standard guidance for MCZ assessment is in place for NSIPs to ensure consistency in the approach to the assessment.

2. Request for further information

2.1. Explanation from BEIS on the process which will be followed when undertaking the MCZ assessment

Transparency on the MCZ assessment process is required by all parties involved to understand the relevant parameters, limits and milestones. Whilst we appreciate that BEIS does not engage with individual NSIP projects, to ensure neutrality, it is necessary for BEIS to outline what MCZ assessment process they intend to follow for all NSIPs as soon as possible to ensure that impacts on MCZs are adequately assessed and protected.

2.2. Production of MCZ assessment guidance for NSIPs

The Planning Inspectorate has some very useful guidance on its website in relation to assessing environmental impacts. To ensure transparency and consistency across all NSIPs, we would welcome an advice note from the Planning Inspectorate on the MCZ assessment process for NSIPs.

2.3. Confirmation from Defra on when guidance will be in place

TWT feels more detailed guidance on the MCZ assessment process in general is required. However, guidance on MEEB is urgently required in light of a number of NSIPs coming forward which may require this assessment. We have been informed that the Defra 'Guidance on the duties on public authorities in relation to Marine Conservation Zones (2010)' is being updated, which provides some information in this area. We have also been informed that Natural England have had some internal workshops to discuss MEEB guidance. Clarity on who will be developing guidance and when this will be available would be welcomed. We would welcome consultation on the draft content of any updated guidance.