

**WILDLIFE AND COUNTRYSIDE LINK AND WALES ENVIRONMENT LINK
RESPONSE TO THE DRAFT GUIDANCE NOTES FOR
MARINE CONSERVATION ZONES**

SEPTEMBER 2008

Introduction

The Wildlife and Countryside Link (Link) Marine Task Force¹ and Wales Environment Link (WEL) Marine Working Group² are coalitions of environmental voluntary organisations, united by their common interest in the conservation and enjoyment of wildlife, the countryside and the marine environment.

Link and WEL welcome the publication of the three draft guidance notes for Marine Conservation Zones (MCZs) by DEFRA and the Welsh Assembly Government (WAG). Since they were published quite far into the consultation period for the draft Marine Bill, we were unable to take full account of their content in our response to the draft Bill consultation. We would therefore like to take this opportunity to comment in more detail on the published guidance³.

We were pleased to see many positive principles included in these guidance notes, including firm commitment to an ecologically coherent network of Marine Protected Areas (MPAs), including European Marine Sites (EMSs) and MCZs; and also the inclusion of highly protected sites within the network, and good principles for network design. It was also encouraging to see recognition of the concept of managing in the face of uncertainty, and the precautionary principle. However, we were concerned by the lack of ambition for protection of MCZs implied by the language used in places throughout these guidance notes. In particular, repetition of the intention to avoid placing a burden on public authorities raises concerns about the strength of the imperative to protect MCZs.

We believe that detailed guidance on the implementation of Part 4 of the Marine Bill is essential to fill in gaps and answer questions raised by the Bill itself. It is vital that the processes of selection, designation and management of sites are explained clearly, leaving no confusion about what is required. We feel that, at present, the guidance notes do not go far enough towards providing this detailed guidance, and that much more information must be included before they can fulfil their role of guiding the implementation of Part 4 of the forthcoming Marine Act. We hope that it is Defra/WAG's

¹ This response is supported by the following members of the Wildlife and Countryside Link Marine Task Force: Buglife – The Invertebrate Conservation Trust, Marine Conservation Society, RSPB, The Wildlife Trusts, Whale and Dolphin Conservation Society and WWF – UK.

² Wales Environment Link Marine Working Group includes the following member organisations: Marine Conservation Society, RSPB–Cymru, The National Trust, Wildlife Trusts Wales and WWF–Cymru.

³ In addition, we would like to suggest that guidance notes would be particularly useful for some other areas of the Bill such as Part 2 on the development of Marine Plans.

intention to work on these guidance notes to provide that further detail before it becomes necessary, and would welcome any further information about the plans for the future development and use of these documents.

Comments relating to amendments to the draft Marine Bill

Some of our comments on the guidance reflect the changes that we would like to see made to the Bill itself, as amendment to the Bill would require redrafting of these guidance notes. Key points are as follows:

- Site selection and designation – we would like the Bill to include a duty to designate sites in line with a clear statutory purpose for the overall network of sites. We believe that sites should be identified on the basis of scientific evidence only, and that socio-economic factors should not be considered at the identification stage of the process;
- Public authority duties - We would like to see the role of the statutory nature conservation bodies (SNCBs) increased so that the public authorities are required to consult SNCBs when making decisions about their own activities' effects on MCZs, or the effects of any decision they might make;
- Conservation orders – we believe that it should be possible to use conservation orders to protect any MCZ, not just those within 12nm of the shore. We would also like breach of a conservation order to be an automatic offence, rather than this having to be stipulated in each order. We also believe there should be a general offence of damaging a MCZ.
- We believe that there should be a statutory duty on the SNCBs to monitor and report on site condition, achievement of site conservation objectives (including the site's contribution to the coherence of the overall network) and, on a wider scale, fulfilment of the purposes of the network.
- We believe that clause 143 of the Bill should apply to Wales and therefore the guidance provided should also apply to Wales.

Please see our response to the draft Bill consultation for any further detail on these points and others.

It is essential that appropriate revisions are made to the guidance notes following any changes which are addressed in the Marine Bill as adopted by Parliament, such as recommendations from the Joint Committee or representations from consultees.

Comments relating to the need for additional guidance/information

The guidance documents themselves mention several other guidance documents and research reports that we are told will become available to the public. It would be useful to see a summary of further documents that Defra/WAG expect, and when these products might be available. We feel that it would be helpful to ensure that all related guidance is collated, so that public authorities and individuals find it easier to access and use. Specific examples include:

- Note 1 suggests that Defra and WAG will arrange for relevant physical, biological, and socio-economic data to be collated and made available to the regional MPA selection projects and the Welsh national Highly Protected Marine Reserve (HPMR) project (via the SNCBs – 5.7). We would be interested to know

how Defra/WAG plan to deliver this work, and what datasets will be used in the compilation of this information.

- The guidance goes on to say that “appropriate criteria and measures of success” will be defined for the MPA network, so that it will be possible to assess whether or not Government is succeeding in working towards the overarching vision. This is welcome news, but we would like confirmation of when these criteria and measures of success will be defined, and by whom.
- It is stated that the SNCBs are expected to issue further guidance to the individual regional projects on how to determine which sites might justify being highly protected sites (Note 1, 5.15). This is welcome, and particularly important in Wales where the initial focus will be on identifying HPMRs. We would recommend including this information in an amended version of the present guidance note so as to reduce confusion.
- Note 1 also refers to separate draft guidance on overlap between MCZs and terrestrial sites. To the best of our knowledge this is not yet available, and we would welcome information on its current status and intended publication details.
- Note 2 does not deal with the duty of IFCA to further the conservation objectives of MCZs (clause 143) – with the implication being that the application of this duty would be covered in specific guidance for the IFCA (2.3). However, we feel that it would be more useful to refer to the duty in this guidance note, to provide full and coherent guidance on how duties affecting public bodies will contribute to the protection of MCZs.
- Note 2 also suggests that further guidance will be issued by the SNCBs on the general duty (clause 109) on public bodies and circumstances in which they might be required to notify the SNCB of potential damage to an MCZ (4.5). We would again argue that it would be useful to collect all this guidance in one place so that authorities do not have to refer to a plethora of different documents in order to carry out their duties towards MCZs.
- One general point that applies across the three guidance documents is the level of detail provided, and the proposed future development of these documents. We would query what the lifetime of these documents is planned to be. If they are going to exist beyond the consultation on the draft Marine Bill to form the guidance for future years for implementation of the network, then they need much more detail than they offer at the moment. They do not yet contain enough detail to allow them to be used in conjunction with the new legislation, to work as guidance for the whole MCZ designation and implementation process.

Detailed comments on the draft guidance notes

Note 1 – points of support

- We are pleased to see the reference to a vision of a “strong, ecologically coherent and well managed” UK MPA network (2.1-2.2) comprising both EMSs and MCZs. We believe that the vision should be “a strong, representative, ecologically coherent and well managed” UK MPA network. We recognise that representativity is included as a principle for the design of a MPA network. However, if the intention is to provide some level of protection for the full range of biodiversity in UK waters, as we believe it should be, then it is important to include “representative” in the description of the network as “ecologically coherent” does not automatically cover protection of the full range of biodiversity.

- We welcome the principles for network design set out in section 4, and the outline of ecological considerations in the identification and selection of individual MCZs (5.3 – 5.7). However, we would argue that there needs to be much more detailed treatment of these principles and considerations before this guidance is useful in the implementation of MCZs.
- We also welcome the principle of progressing with site designation even in the absence of scientific certainty and comprehensive knowledge of the marine environment. We agree that broadscale habitat representativity is an important basis for setting up a viable network in the absence of large amounts of detailed data. Research has shown that broad habitat types can be surrogates for wider biodiversity, and can be used in MPA planning. This does not preclude the inclusion of specific habitats, species or sites where the data is available to justify their inclusion in the network. Note 1 acknowledges that more data than is currently available will be necessary in order to identify the full network and set appropriate conservation objectives for each site (5.5, 5.6) and that further survey work might be necessary to deliver these data. It is also noted that such survey work “may not always be practicable within the timescales of the regional projects”, and that best available evidence should be used in the absence of full knowledge. Whilst we believe that the UK government and devolved administrations must dedicate significantly more resources to collecting new marine data, we support the approach put forward here as we would not like to see the designation of sites held up by a lack of data.
- We welcome the recognition of the need for regional approaches to the identification of MCZs and the development of the MPA network (3.4 – 3.6). Inevitably a number of MCZs will span administrative boundaries and particular care should be taken to ensure a seamless approach.
- In relation to the development of detailed guidance on what is meant by an ecologically coherent network (3.3) and further development of the principles for the design of the MPA network (section 4), it would be advisable to review the BALANCE Project being undertaken in the Baltic Sea (funded by EU Interreg III). In particular, Interim Report No. 25 “Towards an Assessment of Ecological Coherence of the Marine Protected Areas Network in the Baltic Sea Region. Piekainen, H, and Korpinen, S. (eds), 2008. We note that OSPAR has also done some work towards identifying how to assess network coherence.
- We particularly welcome the recognition of the need to develop a resilient network (4.3) respecting the need of the ecosystem to be able to respond to climate change and other stresses and to optimise the management of carbon in the marine environment.
- The principles set out in section 5 for the identification and selection of MCZs are fundamental to the delivery of international commitments as well as to the development of an ecologically representative network.
- We welcome the mention in 5.4 of the OSPAR, BAP, NERC, Wildlife and Countryside Act and NIMF lists, and further welcome the fact that “important species and habitats” will not be limited to these lists only (as, for example, the NIMF list does not represent seabirds). We would welcome further information on the role these lists will play in informing design of the network, and assessing when it is “comprehensive”.
- We welcome the recognition (5.5) that lay knowledge is of value alongside best available science and expert advice.

- We are encouraged to see the many references made in Note 1 to highly protected sites (or HPMRs – 5.12 – 5.15). We believe that it is essential that any MPA network contains some highly protected sites where marine biodiversity can recover. We agree with the statement (7.12) that highly protected sites will be useful in providing a benchmark of what habitat/feature condition might be in the absence of damaging human activity, and will therefore act as “critical reference areas” that will help judge whether or not Government policy delivers true sustainable development.
- We are pleased that WAG has committed to a network of HPMRs in Wales. Although 32% of Welsh Territorial Seas are protected, many of these sites are deteriorating and the management is focused on qualifying features, thus excluding much nationally important biodiversity. We believe that HPMRs are an important first step to securing benefits for marine biodiversity in Wales but that other management tools will be required. Therefore, we welcome the statement (5.14) that the initial focus on HPMRs in Wales will not preclude the selection of MCZs with other levels of protection. We consider it essential that the MCZ mechanism is used as comprehensively as necessary to protect Wales' nationally important biodiversity.
- We are pleased to see the recognition given to the need to draw boundaries wide enough to encompass future changes in features, allowing the migration of mobile features / habitats, and the recognition that boundaries might need to be revised in future years (5.30).
- We strongly welcome the reference to the identification of management implications for MCZs (7.13).
- We welcome the recognition in 7.22 that monitoring of sites will be necessary to assess the overall condition of the site and the network and ensure that conservation objectives are appropriate.

Note 1 – points of concern

- In the Vision for the UK MPA network (paragraph 2.1), care should be taken to ensure that the guidance does not imply that the recovery and protection of the richness of our marine wildlife and environment will be delivered solely through the MPA network. While this is an absolutely fundamental component of recovery and protection, other conservation measures will still be needed beyond the MPA network.
- Paragraph 2.2 refers to the need to “improve” biodiversity. We would suggest that reference should instead be made to the “recovery” of biodiversity.
- As mentioned above, we are pleased with the commitment to achieve an ecologically coherent network across the UK and that Defra and the Devolved Administrations are working with SNCBs to produce guidance on this (3.3). However, it would seem illogical to produce regional guidance on MCZs when the consultation recognises that the detailed guidance on what is meant by a UK ecologically coherent network has yet to be developed. We believe that Defra and the Devolved Administrations should publish guidance on this as soon as possible to direct the guidance of regional and national MPA projects.
- Paragraphs 3.4 and 3.5 explain that regional projects to identify potential MCZs are and will be taken forward for English and adjacent offshore waters, and separately in Welsh territorial waters. We urge WAG and CCW to work closely with the other agencies to ensure Welsh territorial waters are not considered in

complete isolation from adjacent waters, which could jeopardise wider coherence.

- While we appreciate the importance of the stakeholder-focused regional projects, we are concerned that these paragraphs say very little about leadership and quality control. We believe that scientific input to initial site selection, assessment of stakeholder proposals against network principles, and a clear indication of how matters will be resolved where consensus cannot be achieved are essential elements of guidance that appear to be lacking at present.
- While we recognise the value of meeting the aims laid out in section 3, it is essential that it is recognised that the identification of potential MCZs within the MPA network is based on scientific criteria. The primary consideration in the selection of sites for designation should be their role in supporting ecosystem function and protecting biodiversity and establishing the coherence and connectivity of the ecologically representative network or contributing to wider ecological coherence. It is vital that the overall coherence of the network is not compromised.
- We urge caution over the commitment to a consensus approach (3.7) as this approach has had mixed success in the past. In some cases it has led to stalling of initiatives, failure to complete the network originally envisaged and failure to meet the objectives of the network. On occasion tough decisions will need to be made and designation without consensus will be necessary.
- The language used throughout Note 1 offers some cause for concern, in particular the repetition of the statement that MCZs must be selected without causing unnecessary economic or social impacts (e.g. 5.18). Similarly, we cannot agree with the suggestion that conservation objectives should be set, and site boundaries drawn, so as to reduce conflicts and avoid incompatibility with ongoing activities (5.20). It is our opinion that the emphasis should be on drafting ambitious and relevant conservation objectives, and designating sites that contribute to the achievement of an ecologically coherent network, rather than minimising inconvenience for developers. We are concerned that there is no reference in the guidance note to the provision of buffer zones to protect MCZ features from impacts.
- We are concerned about the way that “wider benefits for society” are referred to (e.g. 5.21). Defra/WAG seem to be using the phrase to mean that socio-economic costs resulting from the designation of MCZs must be minimised. Any decisions that are made regarding MCZs must not be short term, short sighted and biased towards economic gain for the few rather than enjoyment of, and benefit from, the marine environment for the many.
- We believe that in addition to the designating orders for MCZs including a description of the feature(s) of interest and conservation objectives / desired outcome, mention should be made of the role of the site within the wider MPA network (paragraph 7.2).
- In paragraph 7.11, it could also be recognised that the future state of a site might change (improve) due to changes elsewhere in the network e.g. improved recruitment of adults because spawning and nursery areas beyond the site are better protected.
- We believe that there should be a clear statement at the beginning of Section 7 that the SNCBs will develop the conservation objectives for MCZs.
- It is helpful that Note 1 provides examples of possible conservation objectives (7.14), both for highly protected sites and for sites where compatible activities

can continue subject to management. The suggested objective for the highly protected site begins "*achieve recovery of habitats...*", recognising that the desired outcome entails an improvement on the site's initial condition, but also that it is not possible to predict the end-point of this improvement. This seems sensible. However, we are concerned that the suggested objective for a non-highly protected site begins "*Achieve sustainable use...*" - a term that is likely to be subject to wide interpretation. Further, the objective here appears to be to achieve a certain level of human activity, rather than achieving the desired nature conservation outcome. We suggest that the conservation objective itself should simply state "*the communities representative of the [subtidal sandbank] are maintained (or recovered)...*". The management component could then indicate that some level of use was likely to be appropriate at the site, but we would caution against assuming that the level of activity occurring at the time of designation is necessarily, or will be in the future, compatible with the conservation objective.

- We are concerned that while paragraph 7.14 states that "*the SNCBs will identify proposed conservation objectives for the MCZs*" which we strongly support, it goes on to say "*...based on the outcomes of the regional MPA projects*". Link has concerns that this could result in the MPA projects determining the conservation objectives, whereas we believe this should be solely the responsibility of the SNCBs.
- We would like to see further examples of conservation objectives for different types of MCZs (7.14 – 7.21) included in the guidance.
- It is not clear if once sites are identified as potential MCZs, they will be treated as protected areas even if designation might take a year or more to follow (Section 8). While the timetable for completing the network is clearly ambitious and very welcome, to prevent further degradation to sites identified through the regional seas project over the coming 4 years, particularly if sites are already degraded or actively being degraded, there would be value in encouraging protection of sites as soon as they are identified by the regional projects.

Note 2 – points of support

- We are pleased to see reference to the need to base decisions on the best available evidence, and to the application of the precautionary principle where uncertainty cannot be resolved (7.1-7.2).
- We welcome the clarification (5.9) that, in order to allow an activity to proceed on the grounds of public benefit even when it might damage an MCZ, the public benefit must clearly outweigh any environmental damage caused, and must accrue to the public and not just to a small number of private individuals. This is welcome clarification, as we are particularly concerned that weaknesses in the drafting of the duty in clause 110 might lead to damaging activities being consented within/around MCZs, thus compromising individual sites and, potentially, the coherence and protection of the network as a whole.
- We are also pleased to see explicit mention of the fact that an activity does not have to be located within an MCZ for it to have significant effect on that site – and that such effects may occur even if the activity is some distance from the MCZ (8.2).

Note 2 – points of concern

- A general concern across all three guidance notes but of particular relevance to Note 2, is the minimal recognition of the potential threat to the whole network of MPAs. The focus is currently on the potential for damage to individual MCZs and, while this is obviously very important, it should be recognised throughout that each MCZ will form an intrinsically important component of a network (i.e. coherence) and damage to one MCZ might also have implications for a) other MCZs which are linked in some way e.g. protecting different stages of a life-cycle, and/or b) the network as a whole.
- As currently drafted, Note 2 does not provide adequate guidance for public authorities on the application of their duties – particularly the duty under clause 110 of the draft Marine Bill. For example, 5.15 states that “equivalent environmental benefit” must be applied in a reasonable and proportionate way, but gives no guidance on how to apply it or who should make the decision.
- We also note the apologetic tone of the language used throughout Note 2. We feel that there is excessive emphasis of the fact that MCZ protection must be “proportionate”, and must not disproportionately impact on or place too much of a burden on public authorities, or prevent necessary development (e.g. 2.3, 6.2). MCZs require adequate protection, and in some cases this will place an additional burden on certain public authorities as they have to fulfil their role in protecting the marine environment, and stopping damaging activities where necessary. The current wording suggests that the duty on “authorising-authorities” has been designed specifically to be weak enough that they hardly notice it.
- Specifically, we are interested to know how the guidance on disproportionate or unreasonable burdens on public authorities (4.3) gels with international commitments to protect biodiversity. We would like clarification of how conflicts of interest will be resolved.
- We are concerned that the guidance for a public authority when undertaking actions which hinder achievement of the conservation objectives of an MCZ is not sufficiently strong. Paragraph 4.4 refers to the need to inform the appropriate SNCB, but we believe that the onus should be on consulting the SNCB with the aim of identifying a solution and avoiding compromising the conservation objectives of a MCZ.
- We are also concerned that the guidance on when the SNCB should be informed of small adverse effects is not sufficiently detailed. We recognise that the system must not be overly onerous, but it will be essential for the SNCB to know and foresee the full extent of impact on a MCZ, group of MCZs or the MPA network. This will mean that the SNCB needs to have a good understanding of the impact of an activity and the cumulative and synergistic impacts of a range of activities, which might all be having a relatively minor impact, but which together constitute a major threat. We believe more emphasis should be placed on the need for SNCBs to be informed *before* activities commence – it will be impossible for SNCBs to take a proactive role in ensuring conservation objectives are delivered, if they are only informed of impacts after the event. Clearly there needs to be some level of ongoing coordination. In addition, not only will the SNCB require this oversight of impact, so will the MMO /WAG, which have a responsibility to deliver the network of MPAs and ensure the delivery of marine plans.

- We would caution against use of the term "small" or "minor adverse effect" (paragraphs 4.5 and 9.2), which is not used in the draft legislation (which refers to actions that "significantly hinder" achievement of objectives - but see our comment on this term below). Experience with Natura 2000 sites has highlighted that terms such as "significant" and "adverse" can be open to differing interpretations and the utmost care should be taken to alleviate, rather than potentially exacerbating, such confusion through guidance.
- We believe that public authorities should have a responsibility to inform the conservation body where achievement of the conservation objectives will be hindered, not just significantly hindered (4.6, 3rd bullet). The SNCBs should advise on whether the impact is likely to be significant.
- We suspect that the IMO and management of international shipping should also be included in paragraph 4.7. This is a vitally important paragraph, particularly for MCZs beyond 12nm, and it is essential that the requirement on the UK Government is as strong as possible, within the limitations of the system. While the UK does not have competency, there is much that can be done by working collaboratively with others in the appropriate international arenas. Indeed, some of the international non-governmental organisations may be allies in achieving action in these arenas.
- While the Bill does not specifically refer to the potential for effects on multiple MCZs or the MPA network (resulting from effects on a single or number of MCZs), it will be important to recognise this in the guidance (see 5.1, 5.2 and many other places throughout Note 2).
- We believe that public authorities should be required to seek advice from SNCBs as to whether an activity is likely to pose a significant risk of hindering the achievement of conservation objectives (we made this point, suggesting an amendment to s110 in our response to the draft Marine Bill).
- We believe that the applicant for consent should be required (or at least guided) to seek the advice and guidance of the SNCB (paragraph 5.4).
- In considering mitigation measures to reduce or remove the potential for adverse impact, consultation should be undertaken with the SNCB and also the MMO/WAG since mitigation measures could have implications beyond the MCZ or the MPA network e.g. for marine plans being developed and delivered by the MMO/WAG (5.7).
- In considering the economic benefit to the public, the direct use of the resource must not be the only consideration. Indirect use values, option values and non-use values must also be included in the consideration (5.9 and 5.11). We welcome the guidance that public benefit must accrue to the public and not simply a small number of individuals. When considering whether the benefit to the public outweighs the damage to the environment, we welcome the recognition that the impact could be on the wider objectives and vision for the MPA network at a regional and / or national level (5.12). However, consideration should also be given to the fact that the damage might also compromise the wider marine plan's ability to deliver sustainable development of the marine environment.
- In relation to compensatory measures, judgements on what measures might be appropriate and equivalent in value should be based on the extent and ways in which the conservation objective of the MCZ will be hindered (5.16). Guidance should also include consideration of the conservation objectives of a group of

MCZs, the MPA network and sustainable development of the marine environment.

- We believe that the presumption “*must be*” for like for like measures (5.16), rather than merely “*should be*”. In addition, while monitoring is essential, time consuming and costly, it should not be accepted, on its own, as a suitable compensatory measure.
- The guidance offered to authorising authorities by paragraph 5.18 in relation to overall cumulative effects should be applied to individual MCZs, the wider MPA network and the sustainable development of the marine environment.
- We believe that it will be essential for SNCBs to agree a protocol setting out procedures with public authorities for notification of minor adverse effects (9.2), particularly since it will not only be cumulative effects that will be of concern but also the cumulative and synergistic impact of multiple activities – some of which public authorities may not be aware or have responsibility for managing. Further, the MMO / WAG may need to be aware of cumulative / synergistic impacts as part of the responsibility for delivering a MPA network and marine plans for sustainable development. Again we would caution against using terms (such as adverse) which are not used in the legislation and could lead to confusion.
- In relation to paragraph 9.4, we believe that the SNCB should be required to provide advice or guidance to assist public authorities in interpreting and understanding the conservation objectives and possible impact of activities on them (and not simply “*usually*” provide such advice). In addition, the SNCB should be able to provide advice or guidance on the implications of activities on the MPA network as a whole as well as on individual MCZs.
- Section 10 introduces a new range of guidance in relation to ongoing management of MCZs. As stated in our response to the draft Bill, we feel that it will be necessary for MCZs to have well developed management schemes. At the least, we would like to see this advised here as the favoured approach to site management (10.1). We also believe that further guidance on who should lead such initiatives must be provided.
- We believe that public authorities should be required to provide activity monitoring reports at the same time interval as the SNCBs provide reports on the nature conservation status of the sites, in order to inform SNCBs of any potential cumulative impacts of activities in each site (10.6).

Note 3 – points of support

- We welcome the guidance on incidental activities and future users or uses (6.3). However, Section 6 would benefit from recognition of the need for (and further guidance on) coordination between the respective bodies, particularly between harbour authorities and the MMO/WAG (6.5) and between the MMO, WAG, IFCAs, and the EA (6.5 – 6.8). In both cases, guidance on the relationship of responsibilities in relation to marine plans would be useful.
- We are happy to see mention of the need to take a more precautionary approach when considering impacts (7.1 – 7.6) and particularly for highly protected sites. Further guidance will be necessary on what is acceptable, and presumably this will be done on a case by case basis by the appropriate SNCB.
- The recognition of cumulative impacts (7.3 - 7.4) is very welcome, however the guidance should refer to the “*likely*” need for suitable controls rather than the “*possible*” need since the guidance is referring to significant cumulative impacts

which are or may become likely. Clarification is also needed in respect to 7.5, in which it is proposed that controls be introduced in a pilot area where it is not clear if an activity will or is likely to hinder a site's conservation objectives. While we understand the intention of this guidance, care should be taken to ensure that action remains precautionary – this might mean that a pilot area covers the larger part of the site to ensure protection until it is clear whether or not such action is beneficial in terms of the activities being undertaken.

- We are pleased to see that although regulators are advised to consider the possible role of voluntary measures in controlling unregulated activities, there is no suggestion that the regulator must show that use of voluntary measures has failed before conservation orders can be used (7.7). This is welcome as there will be cases where damage is occurring to a site and action must be taken swiftly – trialling voluntary controls could just delay the introduction of effective management of the damaging activity, and therefore allow further damage to the site that could otherwise have been prevented.
- We welcome the recognition that the area to which a Conservation Order applies may need to extend beyond the MCZ to control a potentially damaging activity (9.4).
- We are encouraged to see other positive and proactive measures, such as a firm commitment to the principle that the existence of objections to a proposed conservation or interim order will not preclude that order being made or submitted to the Minister for consideration (10.2). This is essential if conservation orders are to be a useful and practical tool for protecting MCZs. If single objections could halt the progress of these management measures then they would be far less likely to be used in any sites.

Note 3 – need for further information

- Guidance Note 3 on conservation orders provides information on certain aspects for England and offshore waters only. We would welcome further information on how conservation orders will be delivered in Wales, for instance:
 - We would welcome information on the types of circumstances in which Welsh Ministers will hold hearings on conservation orders (11.4)
 - It would be helpful to understand whether an urgent Welsh conservation order will have to be subject to consultation at any stage, or whether it may simply be continued indefinitely (13.6).
 - We would also welcome clarity as to whether WAG intends that it will be possible to extend a Welsh interim order indefinitely, or whether Welsh Ministers would expect to take a decision within a standardised timeframe as to whether the area subject to the interim order should be designated as a MCZ (13.12).