

23 September 2022

The Rt Hon Lord Benyon
Minister for Rural Affairs, Access to Nature and Biosecurity
Department for Environment, Food and Rural Affairs
2 Marsham Street
London, SW1P 4DF

By email only

Response to the Consultation on Highly Protected Marine Areas

Dear Lord Benyon,

Further to my letter of 26 August regarding your proposals to introduce Marine Net Gain, I am pleased to provide our views in connection with the Government's consultation on sites proposed for designation as Highly Protected Marine Areas (HPMAs) in English waters.

At the outset, I wish to express our support for Defra's efforts to begin implementing recommendations from your 2019 review. Whilst we note that the introduction of HPMAs into the existing Marine Protected Area (MPA) network is long overdue, we recognise that this consultation reflects several years of effort and welcome the fact that your earlier work is beginning to bear fruit.

As with Marine Net Gain, this pilot is being consulted on against a backdrop of risks of species extinction, ongoing degradation to the marine environment and failure to achieve Government targets. To improve this outlook, our recent report on the 25 Year Environment Plan identifies both overfishing and seafloor destruction as significant environmental pressures in need of urgent government action.

We regard HPMAs as an essential cornerstone of responsible ocean stewardship. Understanding the value of marine habitats and species in the sequestration and long-term storage of carbon is improving. Subtidal carbon-rich ecosystems are vulnerable to activities that disturb the seafloor such as bottom trawling and dredging. These activities could damage or destroy subtidal carbon stores.¹

If implemented effectively, the 'whole site approach' taken to HPMAs should support the recovery of habitats and species to a more natural state. It should also provide a better understanding of the scope for recovery in the wider marine environment, and a more solid basis from which to assess sustainability and climate change mitigation.

¹ Dan Laffoley, John M. Baxter, 'Blue Carbon in Marine Protected Areas – Progress Review' (JNCC Report No. 709, Review Report, Joint Nature Conservation Committee, 2022)- <data.jncc.gov.uk/data/e75010a5-4c1e-4953-a785-48e4d56ef98b/jncc-report-709.pdf> accessed 22 September 2022.

In our view, HPMA's must be based on a rigorous scientific design to be sufficiently effective. This should have a strong emphasis on representation of all marine ecosystems, replication of sites to mitigate risk, a clear ecological focus and strong governance mechanisms.

To realise their full potential, HPMA's will need to be part of a coherent plan to support marine recovery which reflects the drive, ambition and timetable set out in the 25 Year Environment Plan. In this letter, I set out recommendations that we hope will assist and make the future HPMA programme more likely to make a meaningful contribution to Government's stated objectives.

HPMA's should be supported by an ambitious, timebound implementation plan

We note and support your review's recommendation to introduce and manage HPMA's using quick and pragmatic legislative approaches. At the same time, we encourage Government to take steps to provide greater assurance that the introduction of HPMA's through such means will reflect the urgency and ambition needed to both firmly secure and then deliver the objectives in the 25 Year Environment Plan.

The consultation documents provide little detail on the scientific basis for the pilot or its proposed length, or when Defra is proposing to undertake interim reviews or subsequent follow-up action. Greater clarity in these areas would be helpful, not least so that we and others can provide helpful advice. As it is, we encourage Defra to develop and set out a clearer timeline and objectives for monitoring, reviewing, and reporting on the implementation of the pilot HPMA's.

The case for greater ambition

We welcome the increased commitment to nature's recovery at sea, but regrettably the pilot proposes to cover just 0.53% of English waters across a maximum of five sites. With such limited coverage, the degree of added protection during the pilot stage will be minimal. It may also be difficult to draw meaningful conclusions on the possible wider ecological outcomes of higher levels of protection due to a lack of representation and site replication.

We also advocate the development of a more ambitious plan and timescale to implement HPMA's more widely beyond the pilot. This should provide for increasing the scale of protection needed to deliver the Government's vision of securing clean, healthy, productive and biologically diverse seas and oceans on a larger scale once the pilot has concluded.

This needs to happen quickly, given the urgency of the situation and the need to use HPMA's to halt biodiversity declines and achieve restoration and recovery. Given the lag between taking protection actions and actual recovery of marine ecosystems, early emphasis on widespread application of HPMA's would lay strong foundations to be on target to deliver the Government's vision in the necessary timescale.

HPMA's should be supported by well-developed governance and sufficient long-term resourcing of public authorities

Successful implementation of HPMA's, both during the pilot and beyond, will of course require more than the plan that we suggest above. It will also depend on the availability of sufficient resources for public authorities to discharge the governance

functions required for HPMA to be effective. We have also stressed this point in our recent work on Defra's Biodiversity Net Gain and Marine Net Gain proposals.²

For HPMA, this will require sustained investment in the bodies responsible for discharging these functions. This will include the provision of sufficient technical capacity, alongside formulating byelaws and updating guidance to support implementation, developing survey programmes to monitor and review success over time, and ensuring effective compliance and enforcement.

We note existing concerns relating to the pace with which effective management has been introduced to the rest of the MPA network, particularly in the offshore region. We strongly encourage Government to ensure resources are front-loaded and made available for the future HPMA programme to be delivered at the pace required.

We would further add that any legal framework underpinning this governance structure will need to be capable of delivering the higher levels of protection required for HPMA.³ We note that an objective of the consultation is to assess the suitability of the Marine and Coastal Access Act 2009 (MaCAA) for this purpose.

The MaCAA allows activities that may hinder the achievement of conservation objectives for a site if the benefit to the public clearly outweighs the risk of damage. To support future HPMA designations at the necessary scale, therefore, we suggest that assessment of the suitability of the MaCAA should include consideration of the extent to which it gives appropriate weighting to environmental factors against social or economic ones. The primary purpose of HPMA is a conservation priority to secure protection and deliver restoration and recovery to marine biodiversity.

We also note that offshore non-fisheries activities will be regulated through MMO guidance on determining marine licence applications. The current guidance makes no reference to imposing strict prohibitions on activities within Marine Conservation Zones (MCZs). We therefore highlight that the guidance will need to be updated to ensure strict protection for HPMA. We further suggest that the effectiveness of guidance as a regulatory tool for sites that have been selected to provide full protection and recovery should form part of the monitoring and review of the pilot.

HPMA should be informed by evidence on the value of marine protection and recovery

An appropriately resourced implementation plan will also need to target the right areas for delivering sustained environmental recovery. To achieve this, an effective HPMA programme should be built on an evidence base that recognises the 25 Year Environment Plan's commitment to an approach which puts the environment first.

It appears that this consultation will primarily provide evidence on the socio-economic impacts that may be associated with the candidate sites. There appears to be little provision to gather information on their environmental and ecological value,

² OEP, 'OEP advice in response to Biodiversity Net Gain consultation' (18 May 2022) <www.theoep.org.uk/report/oep-advice-response-biodiversity-net-gain-consultation> accessed 20 September 2022; OEP, 'OEP advice in response to Marine Net Gain consultation' (05 September 2022) <<https://www.theoep.org.uk/report/oep-response-principles-marine-net-gain-consultation>> accessed 20 September 2022.

³ For a global meta-analysis examining how different forms of protection of marine areas can provide socio-economic benefits whilst protecting biodiversity, Mirta Zupan and others, 'Marine partially protected areas: drivers of ecological effectiveness' 16(07) *Frontiers in Ecology* 381-387. The authors note that the most striking finding of their analysis is that regulations are the key measure determining the effectiveness of protected areas, with no ecological benefits found in weakly regulated areas.

other than via the final question for each pilot site which asks for further general feedback. This seems to be a missed opportunity and at odds with the primary objective of HPMA as part of a suite of marine biodiversity management measures.

We recognise, of course, the need to gather evidence on the socio-economic opportunities and trade-offs that may be associated with designating HPMA. However, as we advised in response to the Nature Recovery Green Paper, providing for nature protection and driving its recovery should be primary considerations in decisions on site designation and protection.⁴

Those decisions must take account of the whole environment, including beyond the site, to ensure there is a coherent plan for recovery across the marine environment. For example, understanding the ecological displacement impacts of HPMA on fisheries is essential to ensure marine plans can address competing demands for space without simply relocating damaging activities to other sensitive sites.

We also note that your review stated that economic assessment should not be a deciding factor in HPMA site allocation, and that the focus of HPMA pilot sites is to show how seas can recover when damaging human impacts are removed. We agree. It is therefore essential that environmental considerations be given sufficient weight to achieve this outcome. We strongly encourage the Government to ensure evidence gathering is targeted to allow for that.

In conclusion

We welcome the proposed pilot introduction of HPMA as an important step towards nature recovery at sea. We encourage the Government to work with ambition and pace now, in view of its commitments to improve the state of the marine environment and the pressing need for action in this area.

We hope you find our letter helpful. We would welcome any future opportunity to see additional detail and provide advice as you further develop the policy following this consultation. We would be pleased to discuss with you or your officials how any further assistance can be of most value.

Yours sincerely,



Dame Glenys Stacey
Chair, Office for Environmental Protection

⁴ OEP, 'OEP response to Government on Nature Recovery Green Paper and advice on proposals to reform the Habitats Regulations Assessment' (18 May 2022) <<https://www.theoep.org.uk/report/oep-response-government-nature-recovery-green-paper-and-advice-proposals-reform-habitats>> accessed 20 September 2022.