

# Response to the Highly Protected Marine Areas: Call for Evidence

31 October 2019

## About Energy UK

Energy UK is the trade association for the energy industry with over 100 members spanning every aspect of the energy sector – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

We represent the diverse nature of the UK's energy industry with our members delivering almost all (90%) of both the UK's power generation and energy supply for over 27 million UK homes as well as businesses.

The energy industry invests over £13.1bn annually, delivers around £85.6bn in economic activity through its supply chain and interaction with other sectors, and supports over 764,000 jobs in every corner of the country.

## Executive Summary

Energy UK welcomes the opportunity to respond to this call for evidence on the potential to introduce Highly Protected Marine Areas (HPMAs), and whether or how this should be done. Energy UK strongly supports Government's vision for a sustainably-managed marine environment and commitment to leave the environment in a better state than we found it. We consider the existing network of Marine Protected Areas (MPAs) and other designations, such as fisheries byelaws, Common Fisheries Policy (CFP) and voluntary closures which exclude activities, to already play an important role in achieving this vision and to have the potential to deliver the required environmental outcomes. Consequently, Energy UK maintains that a further designation (not currently supported by legislation) with an additional level of protection is not required in light of the raft of mechanisms which are already in place. In our view, the focus should instead be on the existing network of designated sites (supported by legislation) and on gaining a better understanding of the current condition of these. Carrying out management measures and undertaking regular monitoring to better understand the effectiveness of those management measures is key and should include support from ecological and socio-economic studies.

If HPMAs were to be enshrined in law, Energy UK would then support smaller HPMAs within other designated areas to deliver conservation objectives consistent with existing objectives, provided that they allowed co-existence of activities and infrastructure with small spatial footprints such as offshore wind, cables and pipelines. Adoption of such designations, however, would have to be underpinned by robust scientific evidence which would require UK bodies applying sufficient funding and monitoring to existing sites and mechanisms so as to appropriately evaluate the requirement for HPMAs. Energy UK would also recommend that these be consulted on extensively before being implemented, with a full impact assessment carried out both on the potential for loss of development opportunities and the effect on climate change (arguably the biggest threat to relevant species) should such designations lead to areas being undevelopable for offshore renewables. Co-existence with industry to help deliver net zero emissions will be crucial.

There is also the risk that implementation of HPMAs without fully understanding the impacts these will have, could lead to unintended consequences and detrimental effects.

It should also be recognised that the Environmental Impact Assessment (EIA) legislative framework manages co-existence.

## Response to Consultation Questions

### Part 1: HPMAs aims, opportunities and challenges

#### **Question 7: To what extent do you agree with the following reasons for introducing HPMAs?**

- **to provide marine areas a chance to return to as natural a state as possible**  
Disagree
- **to provide a reliable measure of what recovery could look like if all damaging human activities were removed**  
Disagree
- **to act as no take zones, allowing commercially fished species to recover and for these benefits to spill outside of the protected area**  
Neither agree nor disagree
- **to better protect sensitive and/ or ecologically important species and habitats**  
Disagree
- **to look after our seas as part of our duty as stewards of the natural environment**  
Disagree
- **to better prevent or lessen the effects of climate change, for example to protect habitats that can capture carbon or protect species that are vulnerable to a warming ocean**  
Disagree
- **to preserve and increase opportunities for nature-based tourism**  
Disagree
- **to support or improve opportunities for cultural, spiritual, educational and/or recreational activities**  
Disagree
- **other – please specify**

Energy UK reiterates that while we support measures to protect the natural environment and works to minimise environmental impacts of our members' offshore wind farms, the answers above directly relate to the reasons for introducing HMPAs which we do not believe can be fully proven at this stage.

#### **Question 8: Do you have any experience or examples relevant to the UK where you believe HPMAs or similar have been effective or ineffective? Please provide any relevant evidence.**

Energy UK is of the view that HPMAs are already being delivered in some form or another through existing designations and mechanisms, including SPA, SACs and MCZs. The effectiveness, or otherwise, of these designations is undertaken by the Statutory Nature Conservation Bodies (SNCBs), although in some of our members' experience, many sites lack comprehensive monitoring of their designated features and habitats, leading to a precautionary approach to development being employed. Similarly, monitoring of the effectiveness of byelaws and other management measures such as CFPs in existing designated sites could be increased.

Improved management and monitoring of these existing designations, which are supported by legislation, could deliver the desired level of environmental protection in the marine environment without the need to adopt HPMAs as an additional designation through new legislation. We would therefore welcome a review of the MPA process to better understand existing sites and how they can achieve their conservation objectives before the introduction of HPMAs through a new regime. There are

examples of mechanisms in place which could achieve the intent of a HPMA via the existing UK MPA network such as Scottish deep-water sites closed to demersal fishing, CFP and North East Atlantic Fisheries Commission (NEAFC) closures. There are also potential lessons to be learnt from New South Wales and from areas of Stony Reef off the coast of Scotland, plus in relation to the use of byelaws in Sabellaria Reef areas off the coast of Norfolk which we would advise assessment of.

There is sufficient evidence from other countries that HPMA's and other protected areas are generally only effectual when there is an effective and robustly-enforced management plan accompanying them, involving adequate ecological and socio-economic monitoring. Additional funding would be required for the enforcement aspect of the work.

**Question 9: Do you see any challenges to the introduction of HPMA's? If so, how could these challenges be addressed? Please provide any relevant evidence.**

Energy UK questions the need for HPMA's to protect the marine environment from development and licensable activities when these protections are already covered by existing designations and legislation. The introduction of HPMA's without appropriate data and evidence would risk unintended consequences and risks over-complicating the consenting framework without having achieved this solid evidence.

A further challenge to HPMA introduction is obtaining stakeholder buy-in, especially considering that there are a number of users of the marine environment who could be impacted by HPMA's. Stakeholder buy-in will be crucial to minimise opposition and can be encouraged by early and meaningful engagement, allowing for the needs of all users to be considered when selecting sites within the context of sustainable development. We would support particular effort being expended on ensuring buy-in from the fishing industry if HPMA's are to be successful in delivering conservation benefit.

Finally, there is a challenge of ensuring that adequate and effective monitoring and enforcement is carried out for HPMA's. This will be vital in ascertaining if the HPMA is achieving the required level of protection and also ensuring that the site is policed to effectively stop restricted activities from being undertaken.

Energy UK would strongly recommend giving priority to funding Regulators and SNCBs to undertake monitoring (including sufficient data collection, analysis, reporting) and provision of resource for enforcement of activities within the existing MPA network.

**Question 10: What is your opinion of the evidence for HPMA's? Where is more evidence required?**

Energy UK would welcome further evidence of the need for HPMA's and consideration of how existing mechanisms could be better used to deliver the desired conservation outcomes. We recognised that it is not easy to identify the sort of evidence required to justify the designation of HPMA's without a firm understanding of the definition of HPMA. With this in mind, it would be valuable from our perspective to be presented with the evidence that shows how existing MPA designations and the application of existing mechanisms (such as implementation of byelaws) would not deliver enough protection to meet conservation objectives, that the establishing of HPMA's would. We would also expect evidence about the adaptability of key species and habitats to climate change to be considered in view of setting up a HPMA network.

**Question 11: The UK already has a network of MPAs that includes Marine Conservation Zones (MCZs). How could HPMA's complement and enhance the current designations in English inshore and offshore waters and Northern Irish offshore waters?**

As per our responses to earlier questions, we consider the addition of HPMA's to be surplus to requirements in view of the existing mechanisms in place designed to achieve environmental protection. We would therefore support the improved management and monitoring of the existing MPA network, including MCZs, as opposed to the introduction of a new strata of designation in the marine environment.

If HPMA were to be implemented, Energy UK would support smaller HPMA within existing MPAs that allow co-existence of activities and infrastructure with small spatial footprints such as offshore wind projects and associated cables or pipelines, provided, again, that evidence around the need for this was available. Given that the biggest threat to biodiversity is climate change, co-existence with industry which contributes to the delivery of net zero emissions will be crucial. It should also be recognised that the EIA legislative framework manages co-existence with many sectors except fishing.

## **Part 2: HPMA site selection**

### **Question 12: What evidence and factors should be considered when selecting sites for HPMA and who should be engaged in the process?**

When selecting sites for HPMA consideration, it is important to understand the existing status of the proposed site and the activities that are impacting, or could impact, it. Consideration should be given to whether potential HPMA sites are already existing designations and availability of evidence regarding a site's existing condition. Developers need to understand whether HPMA are going to be completely new areas or, for example, core areas covering existing SACs. There should be consideration of national and international commitments such as to renewable energy deployment which may result in conflicts if further designated sites are introduced. As a point of principle, full consultation with interested parties (including sea and seabed users, SNCBs, regulators and the public and public organisations) should be undertaken before any designation.

In terms of evidence which should be considered, the Marine Conservation Advice packages of the current MPA network provide information about current designations. These packages serve as an evidence base to support MPAs as well as a measure of progress toward the achievement of conservation objectives. We would be interested to know whether this will be used to determine which existing MPAs (if any) should receive higher protection. Evidence from the Crown Estate Marine Data exchange and existing monitoring programmes led by academia, government and industry should also be taken into account. In addition, industry EIAs and Habitat Regulations Assessments (HRAs) can be used to inform what management measures might be appropriate for certain receptors when monitoring may not have been conducted (i.e. in identifying what activities do not have an impact).

Factors that we believe should be considered when selecting sites for HPMA are:

- Is the feature rare and at risk?
- Are the conservation objectives not being met / feature experiencing drastic decline?
- How important is the feature to the wider ecosystem?
- Is the feature likely to be subject to increased pressure in future e.g. due to climate change?
- Does the feature exhibit low recoverability?
- Does baseline data exist which can be used to support the designation and the monitoring of progress?
- How can the effectiveness of the designation be monitored and against what criteria?
- Will the designation have a negative impact on the sustainable use of the marine environment and if so, will the designation bring a net benefit?

We would also expect the following factors relevant to the offshore wind industry specifically, to be reflected when selecting HPMA sites:

- Will the designation of HPMA reduce the ability of achieving government offshore wind targets (e.g. prevent access to suitable site, prevent access to certain landfall sites)?
- How will HPMA impact existing windfarms?
- Are there opportunities for any HPMA to coexist?

**Question 13: Are there any locations where it would be particularly beneficial: (i) for a location to become an HPMA or (ii) an existing or part of an existing MPA to become an HPMA? Please could you state these in the box below and provide any relevant evidence.**

None known to Energy UK.

### **Part 3: Future implementation and management of HPMA's**

#### **Question 14: What would be the most appropriate way of managing and monitoring HPMA's? How do you think this could fit alongside existing marine management?**

If HPMA's are designated, we would expect them to have clear objectives and a pre-established management and monitoring plan with transparent reporting of results. This plan would need to outline clear regulatory responsibilities, ring-fenced funding and robust monitoring by way of carrying out regular condition and activity surveys. Enforcement should be carried out as required and, where not possible on a constant basis, condition surveys should be undertaken to ascertain what may have occurred when surveillance was not being carried out.

Management measures should be clear on whether or not some human activities would be able to co-locate with HPMA's, depending on the designated features. We support the idea that non-damaging activities should be allowed to continue within a HPMA site. Consideration would also be required of how non-UK vessels undertaking potentially damaging activities would be dealt with.

Whichever body is to undertake this management, monitoring of HPMA's would require significant budget, personnel and expertise. Lack of funding for the likes of regulators and SNCBs is already a key concern for the offshore wind industry. Working with developers and industry groups to carry out strategic monitoring rather than site specific studies could be considered as a potential funding approach.

### **Part 4: Your past experience of the Marine Protected Areas (MPA) identification, designation, and management process**

#### **Question 15: Have you been involved in the identification, designation or management of MPAs in the UK previously?**

Yes – individual member organisations have.

#### **Question 15a: If yes, we would like to learn from your experience of being involved in MPA identification, designation and management. Please could you provide information on:**

- the name of the MPA(s) and your role and involvement
- what worked well?
- what could be improved?

From one of our member's experience of the designation process for the West of Walney MCZ, the key issue for industry is clarity on management measures for all MPAs and we would welcome industry engagement in the process to define these.

#### **Question 16: How has stakeholder and local knowledge been included in previous processes to introduce MPAs (inshore or offshore)? Please can you comment on whether and how this knowledge can better be integrated in future processes associated with HPMA's?**

Energy UK has responded to previous consultations to identify or amend MPAs and would welcome the opportunity to engage on the potential designation of HPMA's in future. Offshore industries hold large volumes of data which can contribute to the identification of sites.

### **Part 5. Any other comments**

#### **Question 17: Are there any other comments you would like to make in regard to HPMA's?**

Energy UK would request that Government priorities include additional funding to the Regulators and SNCBs to monitor and manage the existing MPA network. It is critical to obtain best scientific evidence to adequately manage the network and allow the network to adapt to be resilient. MPA boundary reviews may be necessary where shifts of species are occurring due to climate change.

For further information, please contact:

**India Redrup**

Policy Manager, Power

Energy UK

26 Finsbury Square

London, EC2A 1DS

Tel: +44 20 7024 7635

[india.redrup@energy-uk.org.uk](mailto:india.redrup@energy-uk.org.uk)