The Impact of Marine Designations on Port Operations

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Maritime Infrastructure

ARUP
Future of Ports

Setting the scene

Future of Ports

ENVIRONMENTAL
RESTRICTIONS

Ports are under greater pressure than ever from increasingly tight statutory controls on operations

British Ports Association Futures Programme

INVEST IN ARUP
Introduction

• **Aims:**
  - Provide some clarity on marine designation processes, stakeholders and opportunities for engagement
  - Draw some foresight from port experience

• **Contents:**
  - Recap on legislation and stakeholders
  - Port interviews
  - Some thoughts
  - Summary and next steps
Legislation and Stakeholders
Creation of coherent and representative networks of marine protected areas

**International and EU legislation**
  - good environmental status in the marine environment by 2020

**Domestic / UK legislation**
- Marine and Coastal Access Act (MCAA) 2009
- Wildlife and Countryside Act 1981

**Why conservation?**
- The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations)
- Ramsar convention
  - Ramsar Sites (Internationally Important Wetlands)
  - protection of species of European importance and the habitats which support them
“Environment is a devolved matter” – the example of MCZs in England

Scientific Advice
- SAP (Science Advisory Panel)

Statutory
- DEFRA (Department of the Environment, Fisheries and Rural Affairs)
- JNCC (Joint Nature Conservation Committee)
- Natural England

Stakeholders
- DEFRA economists
- Stakeholders list

Top-down approach
- Marine Conservation Zone Regional Project

Bottom-up approach
- MCZs regional project teams
  - Balanced Seas; Finding Sanctuary; Irish Seas Conservation Zones; Net Gain
Port interviews
Interviews with BPA port members

➢ We interviewed representatives of five ports members of BPA
➢ Three English, one Scottish and one Welsh
➢ Managing 10 ports in total

15 questions related to:

- Designated areas the port is within or in close proximity
- Involvement of the port in the designation process
- Changes induced to port operations by the management measures
- Additional costs associated to those changes
- New developments were not initially included in the questionnaire
Interviews with BPA ports

4 ports confirmed their participation in the designation process up to different extents

- 2 declared they were not initially informed by Defra/Scottish Minister
- Protection area boundaries were challenged by the ports in all cases
- When the designation corresponded to MCZs, the allegations were accepted and brought changes to the areas
- SACs and SPAs – allegations responded and no changes were proposed

The main operation activities that have changed are related to dredging and disposal in all 5 cases

The second most mentioned activities are related to construction and repair works
Interviews with BPA ports

All representative expressed the difficulty to quantify costs associated to management measures

- The only direct costs are fees associated to HRA production, surveys and monitoring campaigns. Those were estimated to be less than £20k per year
- One port incurred in much higher costs related to a capital project

Other costs mentioned are staff time, delays in activities, loss of opportunity
Common perspectives in interviews

- Burden of proof on the ports
- Precautionary principle
- Overriding public interest vs local economies
- Setting sound science evidence requirements – what is quality data and sound science?
Common perspectives in interviews

- **05** Capturing and sharing data around environmental impact - applicability
- **06** People changing on the regulators side – induces changes in management measures
- **07** Role of the port in our communities – better communication needed with Regulators
- **08** Lack of consistency on policy – ongoing activities vs new plans and projects
Some thoughts
Advice from our experienced environmental consultants

Areas for improvement:

1. **Check out the economic impact assessments on ports**
2. Check out how the designations are implemented – their practical application

Some thoughts
Economic impact assessments – SACs and SPAs

Currently 108 marine SACs in UK waters covering approximately 67,000km²
No room to consider socio economic impact on setting designated zones

European ruling that applies to SACs and SPAs
*Article 4 and Annex III of the Habitats Directive*

Selection of sites in purely scientific (environmental) basis
No room to consider socio economic impact

Academia play key role

European Commission Intention: Socio economic impact should be a fundamental consideration for how Sites are protected and managed

Marine Management Organisation role comes into play

Challenge 1: Scientists admit uncertainty around benthic habitats and marine species – where are they exactly? How are these gaps being bridged?

Challenge 2: Over-riding public interest imperative reasons, no feasible alternatives, and compensation forms only basis for challenge

Challenge 3: On protection and management: MMO looks at industry to prove NO likely significant impact on Habitat

Some thoughts
Some thoughts

Regional MCZ project teams identify areas suitable for MCZ

The regional MCZ project teams will complete Impact Assessments (IA) to identify the key features and pressures of their recommended MCZ area.

The regional MCZ project teams will provide their list of recommended MCZ and the associated IA to the SNCBs.

The SNCBs will review these recommendations and forward them to the Ministers with their advice on whether they consider the MCZ to meet the set policies.

Ministers will then review the recommendations and consider how well they meet with statutory considerations, national policy objectives, advice from the independent Science Advisory Panel, other Government Policy and international commitments.

Once ministers have selected sites they believe should be designated, they will carry out formal public consultation. 12 months.

Hearings will only take place in exceptional circumstances.

MCZ are formally designated by the Secretary of State. Orders will identify the boundaries of the MCZs, list the protected feature(s) and set out the conservation objectives.

BPA and individual ports

Ports through early stakeholder groups
Critical stage for data gathering
Critical BPA’s role as industry body
Seems to have been more effective in Wales

Role of DfT?

Economic impact assessment - MCZs
Advice from our experienced environmental consultants

- Check out the impact assessment on ports when maritime designations are being set

- Check out how the designations are implemented – their practical application
Challenge 3:

On protection and management: 
MMO looks at industry to prove 
NO likely significant impact on Habitat

Precautionary Principle Origins

World Charter for Nature was adopted by United Nations member nations on October 28, 1982. It proclaims five "principles of conservation by which all human conduct affecting nature is to be guided and judged."

"Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist."

From an engineering perspective:

The definition of significant is something we dwell on.
Tideway – Impact on flood defences

- Environment Agency:
  - *Likely significant impact* from ground movement of construction activities on flood defences including shafts and tunnels
  - Structural integrity and stability
  - Factors of Safety

![Diagram showing various types of failure modes: Toe kickout, Sliding, Overturning, Joint failure, Strength failure]
We ask our environmental consultants… same question?
Marine designations – impact on habitat

• What does likely significant impact mean?
  - EU Case Law
  - Extent of impact on habitat – 50% or 5% ??
  - Impetus on mitigation measures instead followed by negotiation
    - Sometimes can revert to what is considered best practice e.g. noise levels guidance or need for ornithologist presence monitoring impact on Birds
    - Others we are starting a negotiation from scratch with no evidence basis

Challenge 4:
Void of guidance around what is acceptable before we embark on costly research, monitoring, testing…

Our own experience
Summary and next steps ...
Challenges to continue pondering…

- **Challenge 1:** Scientists admit uncertainty around benthic habitats and marine species – where are they exactly? How are these gaps being bridged? Who invests in capturing this data and how is data shared

- **Challenge 2:** How to demonstrate over-riding public interest to challenge EU sites.

Some examples where Ports actively engage in data capture has strengthened relationships with Regulators
- DEFRA and MMO evidence teams stretched – under resourced
- MMO sharing evidence gaps with Academia

- Industry bodies play a critical role in other sectors
- National Transport Strategy and more robust economic impact models
- Better integration of policy – DEFRA - DfT
Challenges to continue pondering…

• **Challenge 3:** Proving the non impact

• **Challenge 4:**
  Void of guidance around what is acceptable before we embark on costly research, monitoring, testing…

- We will consider MCZs in more detail
- Data gathering around significance – e.g. some have been able to challenge construction impacts
- Clearer Policy at least for MCZs and MPAs
- Opportunity with BREXIT to reconsider approach to SPAs and SACs – EU Case law??

Challenges and opportunities
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