

Marine Net Gain

Consultation on the principles of marine net gain

Response by the National Infrastructure Planning Association

Introduction

The National Infrastructure Planning Association (“NIPA”) was established in November 2010 with the aim of bringing together individuals and organisations involved in the planning and authorisation of major infrastructure projects. Our principal focus is the planning and authorisation regime for nationally significant infrastructure projects (“NSIPs”) introduced by the Planning Act 2008. We provide a forum for those with an interest in the planning and authorisation of national infrastructure projects in the UK, particularly those brought forward within the framework of the Planning Act 2008.

Support for Marine Net Gain initiatives

NIPA members are generally supportive of the principle of Marine Net Gain particularly given the potential for marine ecosystem recovery. However, the consultation proposals lack strategic focus and are likely to give rise to considerable uncertainty and potential inequitable outcomes for both the marine environment and for people, whilst being unlikely to significantly contribute towards desired objectives and outcomes.

Contrary to assertions made in the consultation paper we do not believe that there is a demand for urgent action on MNG from the developers of relevant nationally significant infrastructure projects (NSIPs). Rather, NIPA believes that a robust and comprehensive MNG policy should be developed through a wide ranging and iterative evidence informed process, which needs to move at the right pace to ensure that critical considerations and decisions are well informed and developed.

The need for certainty

The successful delivery of infrastructure projects and their environmental requirements relies upon a stable, clear and enforced regulatory regime. A large part of the UK's attractiveness to infrastructure investors has come from its clear regulatory processes and certainty of outcomes. This strong foundation has enabled developers of marine infrastructure projects such as offshore wind farms, carbon capture and storage and green hydrogen initiatives to become trusted operators in a global market for their technology, know-how and capital.

The Marine Net Gain (MNG) consultation proposals introduce a high level of uncertainty into the infrastructure consenting process at a time when the regulatory regime is already undergoing significant change. As currently formulated, the approach to MNG is likely to increase regulatory burden without materially addressing the main threats facing the marine environment or delivering in situ and environment benefits.

The proposed MNG principles introduce an additional parallel regulatory framework to the already challenging environmental impact assessment (EIA), Habitats Regulation Assessment (HRA) and Marine Protected Area Assessment processes at a time when those processes are themselves likely to be evolving due to proposed changes such as Environmental Outcomes Reports¹ and reforms to the legal regime for protected sites and species².

NSIPs already face a high risk of legal challenge. The implementation of a poorly developed MNG scheme would increase this risk further and lead to inconsistencies between developers as to how they approach and seek to achieve MNG. Such inconsistencies would undermine the integrity of MNG and the role it could play in marine ecosystem recovery.

The need for equitable outcomes

We believe that the proposals as currently formulated would give rise to inequitable outcomes, contrary to the polluter pays principle, and would not significantly address the challenges faced by marine ecosystems around our coasts.

Given the extremely small footprints of marine developments, in comparison to the size of the United Kingdom Continental Shelf (UKCS), these MNG proposals simply will not deliver a significant contribution towards the wider objective of Marine Ecosystem Recovery³.

In their current form, the proposals introduce some form of capacity based "tariff" (pages 14-15) which amount to little more than an environmental tax on industries which are already well-regulated and have a relatively low ecological footprint. These proposals are being made at a time when the most significant and long-lasting adverse impacts on the marine environment are arising from poorly or lightly regulated industries outside of the scope of this consultation, including fisheries and shipping, or from pollution from terrestrial activities, including intensive agriculture. Policy makers should address the greatest and most immediate threats to our coastal waters, rather than securing funding from the easiest targets which, in the context of the UKCS area, give rise to low levels of environmental impact. While NSIPs absolutely have a role to play in marine ecosystem recovery and the principle of MNG for NSIPs is supported, such MNG has to be set in the full context of all threats to the marine environment.

Marine Ecosystem Recovery should either be funded in accordance with the polluter pays principle or from general taxation, not from narrowly focussed and potentially indiscriminate levies.

Many of the industries that would be affected by these proposals are already delivering Environmental Net Gain by promoting or enabling low carbon generation, for example offshore renewables, carbon capture and green hydrogen industries. It seems perverse to be seeking additional ecological gains from those industries without addressing the more

¹ as proposed in the Levelling Up and Regeneration Bill

² Nature Recovery Green Paper - <https://consult.defra.gov.uk/nature-recovery-green-paper/nature-recovery-green-paper/>

³ The consultation paper uses the terms "ecosystem recovery", "marine ecosystem recovery", "marine recovery", "marine nature recovery" and "ocean recovery" interchangeably.

significant harm to the marine environment arising from other sources. The risk is that MNG funds from industry are raised in isolation with limited conservation value. By contrast a joined-up approach whereby MNG is part of a wider and fully comprehensive strategy for marine ecosystem recovery has much greater potential for real and long-lasting conservation benefit.

The need for a strategic approach

Addressing biodiversity loss in the marine environment, and enabling Marine Ecosystem Recovery, will require a strategic approach which is currently not evident in the consultation proposals. We are not opposed to the principle of Marine Net Gain if it sits within a comprehensive framework for recovery, but as currently presented the proposals appear to be responding to requests from a narrow group of stakeholders (page 14) rather than an identified need for the policy forming part of a coherent suite of measures. The paper refers to "*significant interest among... marine industries... in establishing a marine net gain regime as soon as possible*", however neither this interest or urgent need is evident among the membership of NIPA, where the clear preference is for a considered and comprehensive approach to develop and implement MNG within a wider conservation strategy. This will provide the necessary foundation for MNG to play its part in marine ecosystem recovery in the long-term.

Crucially, the consultation document is unclear about what the aims of Marine Net Gain should be. The paper skirts around complex and important topics, including the relationship between BNG and wider environmental outcomes, such as Environmental Net Gain (ENG) and Marine Ecosystem Recovery. These terms are not defined in the paper. No reference is made to wider marine initiatives or the advice of statutory advisors, including the Government's infrastructure advisor, the National Infrastructure Commission (NIC), which in its paper "Natural capital and environmental net gain" favours an ENG approach over narrower BNG⁴. The lack of clarity in the consultation paper about what MNG is for, and the absence of wider context, gives rise to significant weaknesses in the formulation of the concepts and principles.

There are significant practical challenges in transposing terrestrial approaches to BNG into the marine environment. These include relative paucity of data, low levels of scientific understanding of species and habitats and how marine ecosystems function, high levels of variation in the temporal and spatial distribution of habitats and species, and in the type and magnitude of impacts on those receptors, and the absence of private property rights through which net gain initiatives could be secured. In this context the ability to meaningfully measure and deliver net gain in the marine environment on a development-by-development basis is questionable.

In addition to a strategic approach to policy development, a strategic approach to delivery is also required. This must be aligned with a clear and coordinated plan for nature recovery, such as the Nature Recovery Networks being developed in the terrestrial environment. Tools are available to develop this strategic approach to delivery, including marine spatial planning (MSP) and cross-industry initiatives including those coordinated by the Crown

⁴ <https://nic.org.uk/studies-reports/natural-capital-environmental-net-gain/>

Estate and Marine Management Organisation (MMO). In addition, there must be a clear, coordinated and thoroughly worked-through strategy of how MNG links with the existing environmental assessment process for offshore developments. Without this, there is an inherent risk of conflict between the two approaches, as well as confusion amongst developers and regulators about how the two fit together. There is also a missed opportunity to align (and thereby streamline) MNG with the existing environmental assessment process.

The absence of a strategic approach is also evident in the lack of discussion in the paper on the interaction with the devolved administrations and the adjoining waters of other countries in the North and Irish Seas. The Irish and Celtic Seas, important areas for marine renewable energy, are administered by six⁵ administrations with English waters forming only a small part of a dynamic and under-pressure ecosystem.

The absence of a strategic approach is also apparent in the lack of alignment between the principle of measurable net gain and the proposal for a flat tariff, which would be charged regardless of a project's environmental impact. The "interim" approach, although capable of being implemented relatively quickly, has little, if any, connection to the fundamental Marine Net Gain characteristics proposed in principles 1-5.

The need for time

The consultation paper suggests that the British Energy Security Strategy (BESS) requires prompt action in the area of MNG (page 14). We agree that urgency of action is required in respect of climate change and in securing reliable supplies of energy. However, this does not necessarily mean that MNG needs to be hastily introduced. Indeed, the objectives of the BESS are arguably most easily delivered by reducing, rather than increasing, regulatory burden on industries such as offshore wind, carbon capture and storage and the production and distribution of green hydrogen.

If MNG is to be introduced without significantly increasing regulatory burden or legal challenge risk then the concepts need to be developed thoroughly and deliberately. The example of terrestrial BNG is a good one. The consultation on BNG which took place in December 2018 built on a framework which took many years to develop. By the time mandatory BNG is implemented for NSIP development in 2025 nearly a decade of careful and iterative policy development will have taken place. Although we do not necessarily have the luxury of another ten year development period time and focus should be on the specifics of the marine environment in bringing proposals forward on an informed basis.

MNG deserves a similar approach. The necessary building blocks need to be in place before the next steps towards implementation take place. The principles suggested in the paper do not currently have a firm enough grounding in wider environmental policy and the regulatory context to provide that strong foundation. In addition, there is a complete lack of learning from the BNG approach especially on what has worked, what has not worked so well and the lessons for MNG. The proposals for interim measures (for example to use a tariff-based approach to "inform" the later development of a metric - bottom of page 15)

⁵ Republic of Ireland. Northern Ireland, Wales, Scotland, Isle of Man, England

appear to be motivated by a desire to be seen to act quickly, rather than representing a coherent response to a complex issue across the marine environment and activities within it.

Our key recommendations

In summary, following our review of the MNG consultation, we highlight the critical need for:

- certainty
- equitable outcomes
- a strategic approach
- time to properly inform and develop the policy whilst moving at-pace and maintaining the urgency and focus

Our key recommendations for evolving MNG policy are that it should:

- Set out lessons learnt from BNG (from consultations with BNG policy makers and practitioners) and what they mean for MNG in policy and practice.
- Establish a clear definition of MNG and its aims and desired outcomes.
- Develop through consultation and then publish a unique set of good practice principles for MNG to guide decisions about MNG policy and how it will work. Once agreed, these principles should be embedded and integral to the implementation of MNG.
- Undertake the work to align MNG with the existing environmental assessment process for offshore development.
- Set MNG policy and practice within the full context of threats to the marine environment, (including challenges around species being an indicator of ecosystem health and difficulties of assessing impacts and efficacy of mitigation) and within a coordinated overarching strategy for marine ecosystem recovery. This should include a clear approach (based on the polluter pays principle) for the financial contributions from offshore development under MNG to contribute towards Marine Ecosystem Recovery.

We would welcome the opportunity to discuss our recommendations further.

National Infrastructure Planning Association

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