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Submitted to Environmental Outcomes Reports: A new approach to environmental assessment
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Respondent details

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What is your organisation?

Organisation:
Joint Nautical Archaeology Policy Committee

What type of organisation are you representing?

Interest group or voluntary organisation

If you answered "other" please provide further details:

About this consultation

Would you like anything in your response to be kept confidential?

No

If yes, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality. If no, please state none in the box. :

None

An outcomes-based approach

1 Do you support the principles that will guide the development of outcomes?

Yes

2 Do you support the principles that indicators will have to meet?

Yes

3 Are there any other criteria we should consider?

Please specify:

Question 1

- Drive the achievement of statutory environmental targets and the Environment Improvement Plan.
- Be measurable using indicators at the correct scale, but how?
- Be designed using the knowledge and experience of sector groups and environmental experts.
- Have an organisation responsible for monitoring overall progress of specific outcomes i.e. a responsible 'owner'.
- Be reviewed on a regular basis to ensure they remain relevant.
- Do not duplicate matters more effectively addressed through policy.

Question 2

Generally OK, but i) outcomes should be equitable across sectors such that there is not inconsistency in the depth and granularity of detail between (for example) heritage and air quality suggesting need for a guiding mind on these, and ii) outcomes should accommodate different scales of application, such that a national outcome is supported sequentially by regional or local outcomes (as per 4.15) etc.

Question 3

It seems that socio-economic, population and health impacts are also being proposed to come out of the assessment process. These should remain. Clearer definition required (at least for the active criteria) of what these terms mean: 'proportionate' (to what?); 'replicable' (where and how?).

4 Would you welcome proportionate reporting against all outcomes as the default position?

Yes

5 Would proportionate reporting be effective in reducing bureaucratic process, or could this simply result in more documentation?

Please specify:

It should be effective in reducing the bureaucratic process. However, there would need to be mechanisms to ensure that relevant data can be reviewed as part of the process.

Proportionate reporting is fundamental to improved assessment practice. That we now rarely see it is not the fault of Regulation, but of errant practice driven by several factors, but unhelped by clearer guidance and models for achieving it.

Proportionate shouldn't necessarily be viewed as less but commensurate with the importance of the issue. Is bureaucratic process really the issue? This suggests that regulation is at fault, which our research and experience would dispute. There is certainly inefficient and diffident process, but bureaucracy suggests that this is mandated - it is not. For a large proportion of the audience of 'assessment products' proportionate reporting would make decision making easier. Proportionality can be delivered both through process and product. The former requires several conditions including bolder scoping, but also more confident (trained, experienced and resourced) stakeholders.

6 Given the issues set out above, and our desire to consider issues where they are most effectively addressed, how can government ensure that EORs support our efforts to adapt to the effects of climate change across all regimes?

Please specify:

It could be argued that determining how plans/projects accommodate climate change is not the job of EORs. Adaptation to climate change is not an environmental outcome, but a plan/project outcome. It is right that assessment of environmental outcomes accommodates a changing climate, and right also that assessment considers how plans/projects exacerbate or ameliorate the impacts of climate change. But adaptation of a plan or project to climate change is arguably something that can be addressed through another regime or process which more directly affects the remit of engineers, architects and so on. However, not sure if such exists (e.g. CDM Regs). Advocate against using EORs to this end; seek better legislation elsewhere.

What an Environmental Outcomes Report will cover

7 Do you consider there is value in clarifying requirements regarding the consideration of reasonable alternatives?

Please set out the reasons for your answer:

Yes - this can lead to a lot of uncertainty as for example, best-performing environmental options don't have to be taken forward. The requirement to provide a comparison of environmental effects should be retained but clarification should be provided on the presentation of results.

8 How can the Government ensure that the consideration of alternatives is built into the early design stages of the development and design process?

Please set out the reasons for your answer:

Recommendation to ensure that the EOR process is a requirement at an early project/design stage. All projects should have to start an impact assessment database at the earliest possible stage, recording the list of receptors and applicable impacts/indicators. This would enable the reasoning for developing alternatives and design changes to be recorded in one location, which is further developed at the subsequent stages of the scheme.

When an Environmental Outcomes Report is required

9 Do you support the principle of strengthening the screening process to minimise ambiguity?

Please set out the reasons for your answer:

It appears that category 1 will be similar to the current regime. The change to an impact pathway screening approach could be useful in order to embed proper consideration of receptors and pathways at an early stage, and would realistically reflect the approach taken in the majority of circumstances currently, where thresholds are exceeded but no significant effect is anticipated. If standard proximities of projects to a receptor are determined to screen in or out impacts this would be good, perhaps based on standard zones of influence.

10 Do you consider that proximity or impact pathway to a sensitive area or a protected species could be a better starting point for determining whether a plan or project might require an environmental assessment under Category 2 than simple size thresholds?

Yes

11 If yes, how could this work in practice? What sort of initial information would be required?

Please set out the reasons for your answer:

However, Schedule 2 and 3 of the EIA Regs are considered sufficient, and we are unaware of any wide industry perception of current EIA screening practice to be considered unfit for purpose, despite the inference to the contrary.

The same information that is required at scoping/constraints assessment under EIA. As stated above a lot of survey and modelling information could be required in advance which may make the process unworkable. A practical example may be having to gain access to adjacent land for surveying or sampling at a very early stage in the project. There could potentially be seasonal constraints / timing issues also which may inhibit project progress.

There are issues for offshore cultural heritage and archaeology receptors in that so few have received protection. Additionally, there are a lot of unknowns, and some locations have considerable potential for new discoveries to be made.

Information is required for offshore cultural heritage, archaeology and protected sites, but also review of data limitations (i.e: many known marine archaeological sites at present are of equal or higher value than protected sites, but have not yet undergone assessment for protection). Additionally, some locations/areas of the seabed have a high potential for the discovery of previously unknown sites and features.

Strengthening mitigation

12 How can we address issues of ineffective mitigation?

Please set out the reasons for your answer:

The recommended mitigation for offshore cultural heritage and archaeology is supported by robust guidance:

- For aggregates:

- o Marine Aggregate Dredging and the Historic Environment: Assessing, evaluating, mitigating and monitoring the archaeological effects of marine aggregate dredging: Guidance Note (British Marine Aggregate Producers Association and English Heritage 2003)

- o Protocol for reporting finds of archaeological interest (British Marine Aggregate Producers Association and English Heritage 2005)

- For offshore wind:

- o Historic Environment Guidance for the Offshore Renewable Energy Sector (Wessex Archaeology 2007 for COWRIE)

- o Archaeological Written Schemes of Investigation for Offshore Wind Farm Projects (The Crown Estate 2021)

- For ports and harbours:

- o The Assessment and Management of Marine Archaeology in Port and Harbour Development (Historic England and Wessex Archaeology 2016)

The available guidance has a similar mitigation hierarchy, with avoidance as the preferred means of mitigation, with other mitigation recommended to lessen the magnitude of potentially significant adverse effects. However, in order for avoidance to be effective, the offshore archaeology and cultural heritage of a development area needs to be understood, so known sites can be avoided and features/sites of archaeological potential investigated further, and protocols implemented as a safety net for unexpected discoveries.

Ineffective mitigation can be addressed by having advisors to regulators and regulators being properly staffed and equipped to monitor and report on effectiveness. Ineffective mitigation can occur where there is blurring of the justification for it. For example there is often debate relating to mitigation v compensation/offsetting and where there are grey areas this can lead to issues and uncertainty leading into planning applications and any public inquiries.

13 Is an adaptive approach a good way of dealing with uncertainty?

Yes

14 Could it work in practice? What would be the challenges in implementation?

Please set out the reasons for your answer:

Question 13

An adaptive approach would be a good way to deal with uncertainty, and indeed, is already captured in available guidance for offshore cultural heritage and archaeology, for example further investigation of potential archaeological features means that they can be ruled out as archaeological or confirmed as archaeological and further mitigation (for example excavation) applied. Similarly, the implementation of archaeological protocols for unexpected discoveries ensures that if sites of archaeological significance are discovered during the development process (ie: during pre-construction surveys or during construction), they can be managed appropriately

It would need to be appropriate to the time to ensure desired outcome is achieved. It would need to consider how all those potentially affected by such an approach e.g. LPAs, Statutory Bodies are engaged with and what role they may have e.g. consenting different elements of an already consented scheme.

Question 14

Yes, it could work in practice for offshore cultural heritage and archaeology. The challenges in implementation include ensuring a robust system is in place to enable mitigation to be adjusted in response to greater certainty on effects following the implementation of initial mitigation.

Many of the challenges to effective mitigation hinge on the effectiveness of feedback on its implementation and efficacy, much of which is covered under monitoring (below).

Mainstreaming monitoring

15 Would you support a more formal and robust approach to monitoring?

Yes

16 How can the Government use monitoring to incentivise better assessment practice?

Please set out the reasons for your answer:

Yes, we would support improved monitoring. This is one of the most obvious failures of the environmental assessment regimes. Main thoughts:

- A new regime should provide strengthened requirements on plans/projects to monitor mitigations and provide remedy where necessary.
- Monitoring of mitigation implementation and its effectiveness should be a standard requirement of any consent (or its supporting planning conditions).
- Monitoring should be carried out by an independent third party.
- Enforcement should be used in cases of failure and should be a genuine deterrent to non-compliance

Regulators should be equipped with the right level of expertise. Monitoring results should be publicised with their actual performance against predicted clearly stated. There should be a mechanism to make sure that monitoring can cease when no longer relevant / outcomes are achieved so that monitoring for monitoring's sake doesn't occur.

17 How can the Government best ensure the ongoing costs of monitoring are met?

Please set out the reasons for your answer:

As it is increasingly the case that government bodies are not resourced properly, this will probably have to fall to developers. Developers/applicants should contribute funds to planning/ competent authorities to administer and report on independent monitoring of environmental performance and potential non-compliance. This should be a condition of any consent.

LPAs should have strengthened powers to condition and approve mechanisms for monitoring (including remedy clauses) and enforcement where not satisfied.

18 How should the Government address issues such as post-decision costs and liabilities?

Please set out the reasons for your answer:

As in 17 above

Unlocking data

19 Do you support the principle of environmental data being made publicly available for future use?

Please set out the reasons for your answer:

Yes, except where this poses a risk to the environment or it could be exploited.

However, there could be copyright issues. For example, assessments for offshore cultural heritage and archaeology utilise data from the UKHO, National Maritime Heritage Record, and various local Historic Environment Records. Each of these datasets is continually being updated, so the technical reports capture a point in time.

20 What are the current barriers to sharing data more easily?

Please set out the reasons for your answer:

Data come in different/inconsistent formats, some datasets can be very large, and in some cases have copyright restrictions.

There are also issues of (a) client confidentiality, and the risk of harm if the information is misused (b) knowing where to find it and (c) third parties making it available.

21 What data would you prioritise for the creation of standards to support environmental assessment?

Please set out the reasons for your answer:

This question is too vague and wide-ranging for us to answer. Depends on discipline. Make standardised data pro-formas a requirement for data collection (e.g. survey data). Ensure a standardised pro-forma for the receptor database so once uploaded to the planning portal, it can be stored and used across all projects.

Reporting against performance

22 Would you support reporting on the performance of a plan or project against the achievement of outcomes?

Yes

23 What are the opportunities and challenges in reporting on the achievement of outcomes?

Please set out the reasons for your answer:

Question 22

Yes we support this and they are already in SEA. Regulation 17 requires that the significant environmental effects that arise from implementing a plan that has been subject to sustainability appraisal should be monitored, "with the purpose of identifying unforeseen adverse effects at an early stage and being able to undertake appropriate remedial action". The monitoring results should be reported in the local planning authority's monitoring report. That it rarely happens is not the fault of the Regs, but (once again) their implementation. Some regimes have been more successful. The Marine and Coastal Access Act 2009 (MACAA) requires the MMO to periodically (three yearly) monitor the implementation of marine plans, allowing for recommendations for change, which are submitted to Defra for approval. We believe this is an effective mechanism.

Question 23

Opportunities:

- 1 Developers' would be incentivised to ensure positive outcomes.
- 2 It would provide feedback to communities regarding the effectiveness of the process/mitigation.

Challenges:

- 1 These could be open-ended. They will provide a financial burden on developers post-completion. There is no requirement under EOR for consultants to be competent (as stated in current regs).
- 2 Many large-scale projects take many years to reach completion. At what stages would they be included in an annual reporting process?

Transition

24 Once regulations are laid, what length of transition do you consider is appropriate for your regime?

iii) 2 years

Please state regime:

Offshore cultural heritage and archaeological consultancy:

It is expected that the transition could be easier for new projects, and a transition of 1 - 2 years could be possible. However, it will be slower for projects already being undertaken, where frameworks have already been established. Suggest 2 years or longer.

Supporting the capacity and capability across regimes

25 What new skills or additional support would be required to support the implementation of Environmental Outcomes Reports?

Please provide an answer:

Regulators and their advisors need to be properly staffed and equipped with the necessary expertise and capacity to ensure compliance is effective. Local planning authorities (planning officers, etc.), statutory advisors and regulators (national heritage bodies, environmental protection agencies, etc.), are stretched in terms of capacity, resource and skills, having neither sufficient staff time to allocate to the amount of casework, or sufficient experience and expertise in environmental assessment regimes and processes or subject matter.

Public Sector Equality Duty

26 The Government would be grateful for your comments on any impacts of the proposals in this document and how they might impact on eliminating discrimination, advancing equality and fostering good relations.

Please provide your comments:

There would likely be no bearing on discrimination, equality or good relations.

The Joint Nautical Archaeology Policy Committee (JNAPC) would like to use this section in the consultation to make some general comments as there

appears to be no other opportunity to do so.

General comments from numbered sections of the Consultation text

1.3 - a move away from document-based system towards interactive information – could there be issues with data copyright? (for example from HERs, NMHR, etc?)

3.6 – the reforms will make sure assessment activity is carried out early within the development of a plan or project.

4.10 – Good to see cultural heritage and archaeology on the list of common and significant elements of assessment that arise in current practice.

4.12 – offshore cultural heritage and archaeological receptors are not covered under the Listed Buildings and Conservation Areas Act 1990, or NPPF, so may still need to be considered. NPPF and NSIPs provide frameworks for assessment, rather than assessment itself.

4.16 - indicators will predominantly be data sets based on underlying technical work and analysis

5.2 - offshore cultural heritage and archaeology is not covered by local plans, and therefore would still require assessment. Additionally, the 'known' resource, captured in available data sets covers only a small proportion of the potential marine archaeological sites.

5.3 - we would welcome changes to the process for assessing cumulative impacts, as the current process is not particularly applicable to offshore cultural heritage and archaeology.

5.5 - 'we have committed to reducing the size and complexity of the assessment reports produced and will ensure the core report is an accessible and navigable document for all parties' – whilst we agree with the reduction in size and complexity of assessment in principle, the document still needs to be fit for purpose and contain sufficient detail to ensure a robust and fair assessment. We worry that the 'for all parties' may cause difficulties for technical appendices that require detailed, specialist assessment.

5.9 - Agree with technical reports remaining separate standalone documents

7.1 - Agree that the environment is a complex system and we do not have full knowledge about it.

7.4 – the mitigation hierarchy is similar to what is already recommended as guidance for offshore cultural heritage and archaeology: Avoidance, Mitigation and Compensation.

7.6 – we agree that to be effective, the hierarchy will need to be considered as part of the assessment of alternatives early in the development of the plan or project.