



Net Gain response to Science Advisory Panel feedback on the 3rd iteration

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Introduction

This document provides Net Gains response to SAP feedback on the 3rd iteration. It aims to:

- Distil key points of guidance from the SAP feedback.
- Set out the project team's reaction to the key messages.
- Describe how we have addressed the SAP feedback into our process for the draft final recommendations
- Look at points that need to be addressed in future, and points we cannot address.

The document serves as a record of how we are seeking to fulfil our responsibility to incorporate SAP feedback into our process.

We have quoted specific paragraphs of the SAP feedback, followed by the project team's reaction (in italics). We have grouped together quotations from different sections of the original SAP document, where they address similar points, and tried to put them in a logical, thematic order. Not all paragraphs from the original SAP feedback document are included, as not all of them require comment or action.

This document is not a replacement of the full SAP feedback document (which can be downloaded from our website).

Section 1 SAP feedback specific to Net Gain

1. Overview of progress

SAP feedback paragraphs 1.1 – 1.5 In these paragraphs the SAP outline the progress made by Net Gain and the Regional Stakeholder Group, noting in particular the well written, comprehensive report. The SAP comment that a number of ENG design principles are met and welcome the decision taken by the team to locate reference areas within existing MPAs.

Project team reaction: Net Gain welcomes the positive comments received from the SAP and the recognition of the hard work and commitment of the project team and Regional Stakeholder Group.

2. Use of ecological data to inform decisions

SAP feedback paragraphs 2.1 – 2.6: The SAP comment that good progress has been made but note that despite undoubted commitment and the recorded efforts of Net Gain and others to carry out a prioritisation based on ecological considerations, they remain concerned that socio-economic issues are having a strong influence on the choice of individual sites. The SAP ask for clarification of the rationale for dropping the BAI from further consideration and whether this was due mainly to socio-economic and contentious issues. The SAP suggests it is disappointing that the role of AA EI in the selection and designation of MCZs is still uncertain. Net Gain demonstrated the correct use of these data in prioritising MCZ choice in their 2nd iteration, and were commended for it. The SAP also regret that efforts have not been made to accommodate regional biogeography in the Net Gain region. Ecological communities differ from north to south in this region and we recommend that examples of the different broadscale habitats are included to the south and north of the Flamborough-Helgoland Front. For this purpose we recommend that Net Gain liaise with Balanced Seas to ensure, as far as possible at this late stage, that examples of the different broadscale habitats are protected in the southern part of the region, as well as the northern part.

Project team reaction: The Regional Stakeholder Group welcomed the positive comments on the general progress made in the 3rd iteration but again request that the SAP should only provide comments on the ecological basis of sites rather than any commentary on socioeconomics. Broad Areas of Interest were dropped from discussions following the 2nd iteration as prioritisation work had been undertaken at that stage based purely on ecological factors (the 'league table'), and as the adequacy targets were met by those sites the RSG chose not to progress others which were deemed of lower ecological value; that is, the decision was not a socioeconomic one alone. In relation to the use of AA EI in the selection of sites, the SAP is correct in that this information played an important role in prioritising between sites in the 2nd iteration. As it is these sites which were largely carried forward into the 3rd iteration report the project team feel that AA EI have been used in site identification. Clearly it proved more difficult to plan using datasets received later on in the process as many of our sites were broadly agreed before receiving some of the AA EI datasets. While it may be aspirational to incorporate regional biogeographical differences, the ENG is clear in that the principles should be addressed across the project area as a whole. Notwithstanding that, the project team aimed to facilitate inclusion of biogeographical differences by dividing the BSH targets up across the hubs, to provide multiple examples of each. This approach had varying success, due

mainly to factors such as the limited spatial distribution of some ENG features, and differences in the representation of BSH in the southern and northern parts of the project area.

3. Representation and Replication

SAP feedback paragraph 2.8: We encourage Net Gain to consider whether FOCI habitats including the horse mussel beds and deep sea mud areas should be included if they are not south-western North Sea communities. It should be sufficient to add caveats. *Modiolus* beds, sea pen areas and deep sea muds will be more common in the northern North Sea. There is also a question of the adequacy of the modelled data (also raised by stakeholders) and whether these are sufficient on which to base the designations; our view is that they need to be supported by verifiable data, such as survey or photographic evidence, for this purpose. For representativity and replication of species FOCI, the inclusion of single records of FOCI species adds unnecessary complication; these are not really North Sea species and to all intents and purposes do not exist (and it would be impossible to design a management scheme to cover them). Many tables consider the influence of the sites for common eel and smelt. Given that it is the estuaries which are of most obvious importance for these, then the species need not be considered specifically for offshore and coastal sites. Similarly, the presence of native oyster at NG16/17 seems to be an isolated example. Net Gain need to question the data regarding whether this constitutes a reef (probably associated with a man-made structure?).

Project team reaction: Following this advice from the SAP a number of changes have been made to the features recommended for designation within our dMCZs and Reference Areas, including the removal of the RA for horse mussel beds at Flamborough Head, and the limitation of mobile species only to estuarine or coastal sites. The RSG have also not progressed any species for which we have only single records, or indeed where the data available is of low confidence. The point raised about the quality of evidence required for designation is welcomed, as is the latest SNCB advice on this matter. Although for some stakeholders it will be reassuring to learn that additional evidence will be gathered before designation of many sites, it may also be disappointing for them to realise that the 'best available evidence' we have been using may well be superseded which could undermine the excellent collaborative work put in to date.

4. Responses to queries addressed to the SAP on specific sites

SAP feedback paragraph 2.9: A number of specific comments are made about dMCZs in the Net Gain area.

Project team reaction: The SAPs advice has been considered and some changes made based on advice provided. However, this is a stakeholder led process, and with the time available it was not possible to address all of the SAPs detailed comments moving forward.

5. Actions required by Net Gain

SAP feedback paragraph 3.3: It is understood that the vulnerability assessment is (or was when the 3rd iteration report was prepared) at an early stage....Net Gain also needs do more to develop specific insights that go beyond assessing whether an activity has the potential to affect a feature but whether 'this activity in this area will affect this feature'.

Project team reaction: This vulnerability assessment has been completed for every feature of each site in order to develop the draft conservation objectives for the dMCZs.

SAP feedback paragraph 3.4: The SAP expects all of the guidelines of the ENG to be fulfilled completely by the draft final recommendations. Where specific requirements cannot be met, for example because of a lack of replicates in the region, this will need to be explained.

Project team reaction: It was the project team's intention to fulfil the ENG criteria fully, or where not possible to provide adequate narrative as to why the criteria have not been met. The late arrival of a revised gap analysis and REC data has had implications on meeting some of the ENG targets as described in the body of the draft final recommendation report.

Section 2. General comments relevant to all the Regional MCZ Projects

1. Additional Areas of Ecological Importance

SAP feedback in Annex 1 and paragraphs 2.9.8., 2.9.14. 2.9.16: The SAP has consistently advocated early application of Guidelines 20 and 21 in the selection of Marine Conservation Zones (MCZs) within a network of MPAs as described in section 5.2, amplified by Annex 2, of the ENG. As required by that guidance, AAEI are to be used to rank or prioritise MCZs required to 'protect'¹ an appropriate area, number and distribution of replicates of identified Broad Scale Habitats (BSH) and Features of Conservation Importance (FOCI), in line with the seven design principles in the ENG. Note that paragraph 5.2.4 explicitly precludes the designation of MCZs simply on the basis of AAEI. The ENG states '*Where there are options for the location of MCZs that fulfil the seven design principles of the ENG for BSH or FOCI, priority should be given to those that are located in areas of additional ecological importance. MCZs chosen in this way should be designated for the relevant BSH or FOCI and should have conservation objectives to maintain the designated feature in a way that supports the AAEI.*' The process described (in the ENG) is attempting to protect important ecosystem functions that lead to high productivity, biodiversity and sustainable populations solely by protecting benthic features. The efficacy of such protection is difficult to assess, except where the benthos is closely involved in the function, as when it supports spawning and nurseries. Here the conservation objective could be to maintain the substrata in a form which makes them suitable for these functions. Where the guidelines for the design principles are met in full by other MCZs in the network, the conservation objective should be to protect the relevant habitat at least during key seasons (connected to spawning and nursery activities). If a confounding activity/ pressure can have a lasting effect on the habitat the management measures necessary to achieve the conservation objective should apply at all times.

Sustained high productivity in an area suggests that ecosystem processes are working well there even if the details are obscure. In this case, by way of an example, the conservation objective for an area of subtidal sand supporting a rich and diverse fishery might be to maintain the population of prey such as

¹ As defined in section 4.7 of the ENG

sandeels..... It is important to recognise that the identification of AAEI on the grounds that they are used preferentially by predators such as seabirds and basking sharks², are useful as a means of identifying areas of high prey density³, and hence ecological productivity, but they do not justify protection of the predator species there. Designation of a site for cetaceans⁴ or birds by MCZs is not advised because they are protected by other means.

And specifically for Net Gain:

In assessing the case for and extent of NG12, the Flamborough-Helgoland front should be regarded as an AAEI for high productivity, and associated ecological vigour. A site including the front's mean position would be designated for its BSH and given priority accordingly in meeting targets for adequacy and representativity. Some conflict with fishing is inevitable because of the associated productivity. This should be resolved through the conservation objectives/management measures and in the Impact Assessment.The discussion of NG14 suffers from misunderstanding of the significance and interpretation of AAEI.It seems to us that conservation objectives for the site would be to maintain the BSH and FOCI for which it is designated and the ecological function which makes it an AAEI.

Project team reaction: The advice from the SAP and SNCBs on the inclusion of AAEI, and more specifically designation for birds and other predators was welcomed by the project team as it helped facilitate discussions in our regional hubs.

As described in section 2 of this comment paper, much of the prioritisation of BAIs completed by the RSG was done at the 2nd iteration when AAEI were one of the factors used in our league tables of sites. The project team and RSG found it more difficult to work adequately with further AAEI data received after October, after which time only relatively minor amendments to site boundaries were made, as by that stage and the RSG were content that the suite of sites under discussion were meeting the ENG. Particular difficulties were experienced in incorporating dMCZs for processes (e.g. fronts or high pelagic productivity in dMCZs NG12 and 14) as this would require conservation objectives for the habitat feature, and we were unable to reach consensus or gain a good level of support for doing so. For NG14 this would have meant the inclusion of a very important nephrops fishery, and for NG12 the YH hub found it difficult to pinpoint a better place for the site as the front data was difficult to interpret.

2. Reference Areas

SAP feedback in Annex 2: It is important that Reference Areas are chosen to be representative of the different broadscale habitats and FOCI present within each region. They should not be poor examples that are selected because they are places that nobody values. We ask Regional Projects to keep in mind the following points in coming to decisions about the size and location of Reference Areas.

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See also the 'Supplementary Advice to the Ecological Network Guidance on Cetaceans' provided by the SNCBs which makes relevant but more general points about the (non) use of MCZs for the protection of cetaceans.

³ The SAP's advice in the response to the 1st iteration proposals to use fishing effort data in an analogous manner was ruled in admissible under the terms by which such data were provided by the industry

⁴ "Natural England & JNCC supplementary advice to regional MCZ projects on cetaceans" – February 2011

- 1) Reference Areas should conform to the Viability criterion for MPAs in the Ecological Network Guidance so as to be large enough to sustain viable examples of their component habitats or FOCI over the long term. This means that Reference Areas chosen to represent a broad-scale habitat should generally have a minimum diameter of 5km, and the average size should be between 10 and 20 km in diameter, to match that of MCZs receiving lower levels of protection. Reference Areas smaller than this, with a minimum dimension of 1 to 5 km, may still be valuable in a network but such choices should be exceptional and based on a robust scientific case.
- 2) Reference Areas chosen primarily for FOCI should conform to the guidance in Table 7 of the ENG. Where the FOCI to be protected are quite small in area (perhaps as small as 100m across) and do not occur or only occur as poor examples elsewhere in a Region, and where they do not occur with other more extensive examples of habitats and FOCI, a protected area may be small, provided that area can still be easily identified by users of the sea, and where edge effects are likely to be minimal. In these cases, broad-scale habitats overlapping with FOCI and occurring within the reference area will require a conservation objective to meet reference condition even if the size of the reference area will fall below the minimum viability criteria. However, a viable reference area (i.e. > 5km in minimum dimension) for each such broad-scale habitat will need to be identified elsewhere. Examples of where smaller reference areas may be appropriate include offshore reefs or islets, or intertidal features. The ENG provides general guidance on the selection of MCZ buffer zones/safety margins (section 6.3 and Annex 11). However we believe that precautionary principle should be applied to small Reference Areas that are likely to have limited resilience. Accordingly we suggest that boundaries should be preferably 500m away from the feature and never less than 100m, except for those parts of a protected area bounded by land.
- 3) In view of their particular role in furthering scientific understanding of human effects on marine habitats and species, places with existing survey and monitoring data might be favoured over places with little data.
- 4) Following from Point 3, such places might well lie within existing marine protected areas, such as Special Areas of Conservation. Given that extensive areas of certain habitats lie within SACs, Regional Projects should look closely at options for siting Reference Areas within them.
- 5) Regional projects might also consider accessibility of sites in reaching decisions. Reference Areas need to be sufficiently accessible for scientific research and monitoring. However, it may be impossible for places that are too easily accessed and intensively used to recover to an unimpacted state. Such places would therefore fail to fulfil the core function of Reference Areas.
- 6) Ideally the quality of the features within Reference Areas at designation should be broadly comparable to the quality in other Marine Conservation Zones. However, attention is drawn to section 6.2 of the ENG and the particular role of Reference Areas as benchmarks, suffering minimal disturbance, against which ecosystem change in other locations can be assessed through scientific study. The SAP therefore suggests that, where possible, Reference Areas should be areas where disturbance of the relevant broad-scale habitat or FOCI together with the 'other features' for protection is believed to have been minimal in the past or where recovery is likely if damaging activities are prohibited.
- 7) Reference Areas should, apart from being typical of the habitat being protected and, where possible, hosting FOCI species, include species that may provide an indication of quality or of change in the biotopes present. Such species are likely to be those that are known or likely to be sensitive to particular pressures/activities or are ecological engineers.

- 8) While areas with wrecks may have gained some de facto protection from exploitation in the past, if Reference Areas are to be established around wrecks they should be sufficiently large to include areas of habitat that are representative of conditions outside the wreck.

SAP feedback paragraph 2.7: A Reference Area at Spurn Point has been rejected as the feature (the Binks) was deemed to be highly mobile (although it is not, as it is a terminal moraine) whereas wreck areas are considered as possible sites. These decisions should be reviewed noting our advice in Annex 2.

Project team reaction: Where possible the RSG have aimed at the minimum viable patch size for Reference areas in their recommendations, with the exception of intertidal features where the broadscale habitats are present in narrow strips along the coast, or discreet features e.g. lagoons for the starlet sea anemone. For some features it was not possible to agree the viable patch size, but the reference area has still being recommended based on the notion that it is preferable to recommend a small reference area with a higher degree of stakeholder support than no reference area at all. Given the SAPs advice on a minimum buffer of 100m, it is our intention to include such a buffer in the final recommendations once approval has been sought from the RSG to do so.

Following the SAPs advice on the use of reference areas around wrecks/manmade structures and also that the chosen sites should be representative of that feature a number of changes were made by the RSG to reference areas in this draft final recommendation report. For example, the RAs previously identified for horse mussels around wrecks in the Flamborough Head SAC have been removed from our recommendations as they are not believed to be true horse mussel beds. Also the RA in NG17 sited around the Fulmar platform has also been removed due to the association with the manmade structure.

With regards to the Binks as a possible reference area, further discussions were held yet no firm agreement was reached. There is little contention for this site in socio-economic terms but the YH hub failed to agree the importance of this feature for inclusion. As such, both the Binks and an alternative option of a RA within the Dogger Bank pSAC were suggested for subtidal coarse (mixed) sediment. It is the project teams feeling that in fact the Binks would achieve better support had more time been available for discussion.