

NATURAL  
ENGLAND



Environment  
Agency



Marine  
Management  
Organisation

# Memorandum of Understanding for the Teesmouth and Cleveland Coast Special Protection Area and proposed extension

Date 31<sup>st</sup> October 2017

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# 1. Foreword

In July 2015, Natural England announced a review of the Teesmouth and Cleveland Coast Special Protection Area (the SPA) to stakeholders in the estuary. For a variety of reasons, this announcement initially created concern among some industry stakeholders, with potentially significant challenges to the proposed extension being identified. To address the concerns and to seek beneficial change a group, the Tees Estuary Partnership (TEP), representing all stakeholders, was formed in January 2016.

Our shared vision for the Tees Estuary is to create an estuary that is an exemplar for nature conservation, with thriving habitats and populations of birds and animals, and which drives sustainable economic growth and business investment in the area.

All users of the estuary will have a common understanding of the environmental and socio-economic value of the Tees and the needs of other stakeholders. This promotes integrated planning and sustainable development of the estuary alongside improvement of the habitats and infrastructure.

The commitment of DEFRA to the process in agreeing to extend the informal dialogue stage by a year to the end of December 2016 has been very important in ensuring that the TEP process had time to identify the appropriate solutions.

This Memorandum of Understanding is a key document arising from the partnership and is endorsed by the Partnership on behalf of the stakeholders. It is intended to provide clarity to businesses about operations in the Tees Valley and improve and simplify guidance from the signatories.

To deliver against the vision the Partnership will support an associated piece of work, the Habitat Framework, which is intended to facilitate and simplify the delivery of strategic habitat creation and enhancement projects.

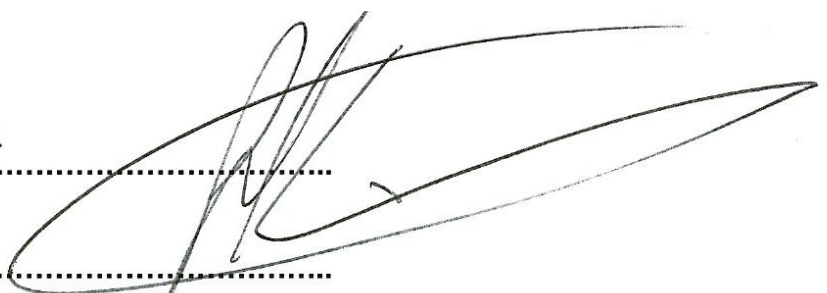
It is intended that the Memorandum of Understanding and Habitat Framework will together form a common basis for collaboration between Businesses, Regulators, Local Authorities and Nature Conservation NGOs which we hope will enable improvements for all.

This is an ambitious approach but the Chair and all members of the TEP Steering Group wholeheartedly endorse the approach, its outcomes in the belief that it will be successful in meeting the needs of all stakeholders.

**Signed on behalf of  
Tees Estuary Partnership (TEP):**

**Print Name:** ..... P.L. CORNES .....

**Date:** ..... 31/10/17 .....



## 2. Introduction

### 2.1 Background

Work to review the Teesmouth and Cleveland Coast Special Protection Area ('the SPA') identified a desire amongst business and industry for regulators to document how the uncertainties and risks of regulation associated with operations near or within the proposed extension of the SPA/SPA can be clarified and minimised, whilst still providing an appropriate level of protection.

This work led to the formation of a Tees Estuary Partnership ('TEP') in January 2016, made up of business, industry, regulators, local government and environmental organisations.

The TEP recognises the benefits of working together to secure enhanced environmental protection /while offering greater certainty to industry. It is recognised that through joint understanding, data exchange, best practice, advice and guidance, the joint deployment of resources, efficient consultation and agreement on procedures, a significant contribution can be made to both the delivery of conservation objectives of the SPA and increasing confidence to industry for sustainable economic growth.

The TEP agreed aspirations are for

- any proposed SPA extension boundary to be based on sound evidence
- regulators to set out a Memorandum of Understanding ('MoU') for the Tees Estuary in relation to the provision of advice, consent and assent for current activities linked to the SPA and taking account of other considerations such as SSSI designations and Water Framework Directive ('WFD') requirements
- a Tees Estuary habitat enhancement framework to be developed (see section 3.6)

Specific to the MoU, the TEP expressed a desire that:

- If an operation/activity meets criteria set out in the MoU then it is considered to have without prejudice advice from Natural England (NE) relating to the SPA or proposed SPA (pSPA).
- The MoU can be used for current operations but also for future ones. This would be concise guidance which is consistent and signed up to by all parties.

### 2.2 MoU objectives

This MoU builds on the commitment and strengthened partnership working gained through the TEP. This MoU applies to the Teesmouth and Cleveland Coast SPA or pSPA.

The MoU is based on the principles of the Coastal Concordat<sup>1</sup> and gives up front advice to regulators on current activities that can continue at current levels before the review of consents process is required (once the pSPA has been classified). The MoU signatories are Natural England (NE), Marine Management Organisation (MMO) and the Environment Agency (EA).

It provides a proactive mechanism that can shape spatial development and regulated development proposals alongside a Tees Estuary Habitat Enhancement Framework ('the Framework')<sup>2</sup>, as well as react efficiently to specific applications for development or regulated activity.

The Framework identifies opportunities to protect and enhance the SPA, deliver measures that mitigate heavy modification of the estuary and so contribute to the objectives of the Water Framework Directive (WFD), the Habitats and Bird Directives and satisfy planning requirements.

A guidance note is included within this MoU (Annex 1) and includes:

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<sup>1</sup> A Coastal Concordat for England, 11 November 2013, Department for Environment, Food and Rural Affairs [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256234/coastal-concordat-20131111.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256234/coastal-concordat-20131111.pdf)

<sup>2</sup> See glossary in Section 8

- A sensitivity map highlighting sensitive areas for all features of the current and proposed site (Appendix 2);
- A list of current activities which are deemed not to be having an impact on the proposed new features of the site (i.e. vessel movements, maintenance of jetties, vehicle movements etc.) (Table 1);
- A list of potential activities that will require further assessment i.e. piling, new harbours etc (Table 1).
- Links to the NE conservation advice to give industry greater certainty and confidence in delivering their day to day activities.

Low risk activities (jetty maintenance and outfall maintenance) have been screened by NE in 2017 to standardise NE responses to regulators for activities that, if they meet a defined criteria will merit without prejudice NE advice (with conditions, if required) in order to streamline the regulatory process and give assurance to industry on future activities in non-sensitive areas of the site (Annex 1, Section 7).

**THIS MOU IS NOT LEGALLY BINDING. IT DOES NOT FETTER THE PARTIES IN THE CARRYING OUT OF THEIR STATUTORY ROLES.**

## 2.3 Where the MoU applies

The MoU applies to an area focused on the Tees Estuary and where operations/activities have the potential to impact on the pSPA, SPA and SSSIs (see boundary map in Appendix 1).

## 2.4 Signatories to the MoU

The signatories are:

- Marine Management Organisation (MMO)
- Environment Agency (EA)
- Natural England (NE)

## 2.5 The Coastal Concordat

The key principles of this MoU are based on the The Coastal Concordat<sup>3</sup> and associated implementation document<sup>4</sup>.

The Coastal Concordat 2013 is an agreement between the Department for Environment, Food and Rural Affairs (DEFRA), the Department for Communities and Local Government, the Department for Transport, the Marine Management Organisation (MMO), the Environment Agency (EA), Natural England (NE) and the Local Government Association's Coastal Special Interest Group. It sets out the principles according to which the regulatory and advisory bodies propose to work with local planning authorities to enable sustainable growth in the coastal zone, providing a more effective and efficient service.

The principles and arrangements within the Concordat can be directly applied to the Tees Estuary and provides a framework for further, supplementary local agreements.

The 5 key principles of the Concordat are:

1. Applicants seeking regulatory approval should be provided with a single point of entry into the regulatory system, guiding them to the organisations responsible for the range of consents, permissions and licences that may be required for their development.

<sup>3</sup> A Coastal Concordat for England, 11 November 2013, Department for Environment, Food and Rural Affairs [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256234/coastal-concordat-20131111.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256234/coastal-concordat-20131111.pdf)

<sup>4</sup> A coastal concordat for England: implementation document, 1 October 2014, Department for Environment, Food and Rural Affairs; <https://www.gov.uk/government/publications/a-coastal-concordat-for-england>

2. Signatories should agree a single lead authority for coordinating the requirements of the Environmental Impact Assessment (EIA) Directive or Habitats Regulations Assessments (HRA)<sup>5</sup>.
3. Where opportunities for dispensing or deferring regulatory responsibilities are legally possible and appropriate, they should be taken.
4. Where possible, at the pre-application stage, competent authorities and statutory advisors should agree the likely environmental assessment evidence requirements of all authorities at all stages of the consenting process.
5. Where possible regulators and statutory advisors should each provide coordinated advice to applicants from across their respective organisations.

Following the approach set out in the Coastal Concordat will deliver the aspirations of TEP. A MoU implementation document has been collated which further defines the process of adoption and implementation<sup>6</sup>.

## 3. MoU Principles

### 3.1 Single point of entry to the regulatory system

The regulatory landscape at the coastal zone is complex. There are at least four main regulators (the local planning authority, the MMO, NE and the EA) with many other public bodies having regulatory powers in specific locations or circumstances (e.g. Department of Business, Energy and Industrial Strategy, Coast Protection Authorities, harbour authorities, Maritime and Coastguard Agency, Trinity House, Inshore Fisheries and Conservation Authorities).

Signatories will adhere to the MoU implementation plan in order to deliver the principle of having a single point of entry. This will mean an applicant proposing to develop in the area should only need to contact one of the regulatory or advisory bodies who are signatories to this agreement who would then signpost the applicant to other relevant signatories, and where appropriate, would themselves make contact with relevant consenting bodies. The concept of a single point of entry is not intended to place additional demands on any party, rather it is a means of providing a more efficient and effective way of working for all. The single point of entry can be further detailed as:

- When someone applies for a consent, licence or permission from , the MMO, EA or NE, or requests information regarding a consent, licence or permission from any of these bodies, the single point of entry to the regulatory system should be whichever one of these bodies the person first approaches.
- The body acting as the single point of entry does not necessarily have to take the role of the lead authority for the Environmental Impact Assessment (EIA) or Habitats Regulations Assessment (HRA) (see section 3.2 below).
- Upon entry to the regulatory system, based on the information submitted by the applicant at that time, the body acting as the single point of entry should inform the applicant they are likely to need further consents, licences or permissions from other bodies as relevant. However, it remains the ultimate responsibility of the applicant to obtain all necessary consents.
- Where appropriate, the body acting as the single point of entry should inform all other MoU signatories and, where they can be identified other consenting bodies, that an application or an advice request has been received.

<sup>5</sup> This will be agreed on a case by case basis.

<sup>6</sup> To be input once completed

- In order to deliver effectively upon this principle, all MoU signatories will need to be aware of each other's regulatory responsibilities and have established notification processes, which will ensure that the principle is implemented effectively.
- Where relevant, the body acting as the single point of entry should inform the applicant of the MoU.

## 3.2 One lead authority

The aim of this principle is to reduce the duplication of evidence requirements and to streamline the regulatory process, in particular production of Environmental Statements (ES) under the EIA Regulations or HRA under the Habitats Regulations for the same project by different regulators. This principle does not remove any of the statutory responsibilities or duties of any regulatory authority, but it does set out a mechanism by which the production of evidence supporting decision-making can be streamlined. In summary, upon identifying that applications for more than one consent, licence or permission require an EIA or HRA a lead authority for coordinating relevant assessment processes should be identified and, where appropriate, parallel tracking<sup>7</sup> of assessments should be recommended.

### 3.2.1 Environmental Impact Assessment

This principle can be further detailed as:

- The signatories who are relevant competent authorities with respect to a particular proposal should reach agreement on who is the most appropriate lead authority for coordinating a shared response on the ES.
- The following guidance, which is based upon Defra guidance on determining a lead competent authority under the Habitats Regulations<sup>8</sup>, should be applied when determining a lead authority to coordinate an EIA:
  - Where a single technical issue is more important than any other in assessing the impacts of a plan or project, the competent authority with the required technical expertise should lead;
  - Where there are a large number of complex cross-cutting issues, the competent authority with greatest capacity to undertake the work should lead;
  - Where a plan or project cuts across administrative boundaries, the competent authority with the principal interest should lead.

The lead authority will then coordinate a decision on whether a shared ES can be produced for consideration by all authorities and what the respective roles and responsibilities are, a timetable for work, and how work will be resourced. Each competent authority will need to be satisfied that the ES contains the information that it requires.

To reduce duplication of effort for all parties during the EIA process, where there is no legal mechanism to defer decision making formally from one competent authority to another, one of the competent authorities should be appointed on a case by case basis as the administrative lead. This means that consultation and assessment at the screening and scoping stages of the process is only carried out once and one ES covers all relevant EIA requirements. Each competent authority will need to be satisfied that the ES contains the information that it requires. The MoU implementation plan documents the process<sup>9</sup>.

<sup>7</sup> This is in line with the principles set out in the Environment Agency's "Guidance for developments requiring planning permission and environmental permits" <http://www.environment-agency.gov.uk/business/regulation/139378.aspx>

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69580/pb13809-habitats-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf)

<sup>9</sup> TO BE INPUT

### 3.2.2 Habitat Regulations Assessment

This principle can be further detailed as:

- The relevant competent authorities should reach agreement on who is the most appropriate lead authority for coordinating an HRA on a case by case basis.
- In line with Defra guidance on determining a lead competent authority under the Habitats Regulations<sup>10</sup>, the following guidance should be applied to determination of a lead authority to coordinate a HRA:
  - Where a single technical issue is more important than any other in assessing the impacts of a plan or project, the competent authority with the required technical expertise should lead;
  - Where there are a large number of complex cross-cutting issues, the competent authority with greatest capacity to undertake the work could lead;
  - Where a plan or project cuts across administrative boundaries (e.g. between planning authorities), the competent authority with the principal interest should lead.

The lead competent authority will then coordinate a decision on whether a shared HRA can be produced, what the respective roles and responsibilities are a timetable for work, and how work will be resourced. Each competent authority will need to be satisfied that the HRA contains all the information that it required.

The lead competent authority for HRA does not necessarily need to be the same lead competent authority for an EIA. For example, there may be a mainly terrestrial project where the only effects that need assessing under the Habitats Regulations are on a European Marine Site. In this instance the technical expertise needed to lead an EIA and HRA will be different, and this should be reflected in the lead competent authorities for different regimes.

## 3.3 Dispensing with, or deferring regulatory responsibilities

The signatories will ensure that they explore the legal options available for streamlining within the regulatory process. Where opportunities for dispensing or deferring regulatory responsibilities are legally possible and appropriate, they should be taken (e.g. Under sections 82 and 84 of the Marine and Coastal Access Act, dispensing with flood defence consents where the terms and conditions of a marine licence mean that the requirement of such consent can be dispensed with by issuing a notice).

NE has been using information gathered by Industry Nature Conservation Association (INCA) directly from individual businesses to identify current operations that do not require consent and others that will not have a likely significant effect on the features of the site. A sensitivity map (Appendix 2) is linked to this MoU to identify more sensitive areas in assessing impact. In developing this we will also explore benefits to EA's permitting regime.

EA and MMO will apply existing arrangements that set out how to dispense the requirement for Flood Risk activity permits for works covered by a Marine Licence where issuing such a permit will not add to the management of flood risk.

Proposals will be considered on a case by case basis should other areas be identified that allow for the dispensing or deferring of regulatory responsibilities then the signatories agree to explore these and provide a response.

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<sup>10</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69580/pb13809-habitats-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf)



## 3.4 Certainty on evidence requirements

Applicants should be encouraged to undertake early engagement to identify common evidence needs across different consenting regimes and enable the parallel tracking of any work required to satisfy evidence requirements where appropriate. Wherever possible, the information contained within any regulatory assessment should be sufficient for both the marine licence and the planning application approvals and may inform other relevant consents, licences and permissions.

The work of the TEP and its partners identified evidence needs and the SPA review process has gathered additional evidence to inform the regulatory process.

A review of this evidence may identify strategic gaps that a potential developer would otherwise have to fill in order for an application to be assessed. If this was the case it offers the opportunity for strategic gaps in evidence to be proactively filled, potentially supporting and embedding academia and environmental institutions. In such a way the assessment timescales of development proposals could be significantly reduced, particularly where multiple seasonal evidence collection would otherwise be required.

- Signatories will assess the level of support they can provide to ensure any identified strategic gaps in evidence are proactively filled, to ensure this does not feature as a factor that discourages investment in the area. This will include consideration of the multi seasonal nature of some ecological monitoring requirements.
- It is an ambition to have a baseline of evidence which can be shared between stakeholders in order to minimise costs and streamline the regulatory process.
- The signatories will encourage developers, regulated businesses and those developing forward plans, to commit to speak to regulatory authorities as early as they can, so signatories have the best understanding of potential activity on sites and cumulative impact for the estuary overall. This will enable better regulation through an understanding of potential schemes, and allowing business planning to provide capacity for assessing proposals.

This will provide efficiency of resources in coordinated commissioning where external sources are required.

## 3.5 Co-ordination of advice

Where any of the signatories are acting in a regulatory or advisory capacity for a coastal development project, each body should ensure that it is providing coordinated advice between organisations within agreed timescales.

NE has a responsibility to provide Conservation Advice for all Marine Protection Areas (MPAs) within England's inshore waters (out to 12 nautical miles) to support sites to achieve their conservation objectives and to guide effective management. It is primarily produced for management authorities and stakeholders and it is also used by Natural England to support casework, management advice and as the framework for site monitoring planning.

NE is improving the structure, content and provision of its conservation advice for MPAs in England's inshore territorial waters. New advice will eventually replace all existing marine conservation advice packages, but in the interim, these should be used as a basis for informing our advice to Competent Authorities and in response to plans and projects. NE has collated the conservation advice package for Teesmouth and Cleveland Coast SPA and for the new features of the pSPA with the aim of reducing the regulatory effort required during the assessment of individual proposals, to the benefit of the developer.

## 3.6 Tees Estuary Habitat Enhancement Framework

A Tees Estuary Habitat Enhancement Framework is being developed for the area (Appendix 3) to identify new and innovative conservation and enhancement schemes and mechanisms to deliver such schemes. The Framework will also identify opportunities for mitigation measures that deliver WFD objectives and protect and enhance priority habitats and species<sup>11</sup>. The process will also allow for strategic sites to be identified for future developments and will encourage inward investment.

It is an ambition that operators within the Tees Estuary work to identify habitat enhancement opportunities that can be delivered proactively, either individually or through projects, or reactively to offset environmental impacts. Regulators will have regard to the Framework when considering proposals and seek to establish the framework as a formal supplementary planning document.

A working group of TEP will develop the Framework. The group will work together to encourage or facilitate the delivery of habitat enhancement through a TEP action plan.

As a consequence, the signatories to this MoU agree:-

- (i) To support the TEP in order to:-
  - (a) Set key strategy and objectives
  - (b) Secure appropriate funding for habitat enhancement projects
- (ii) Support the TEP to meet on a 6 monthly basis in order to:-
  - a) Agree an Action Plan;
  - b) Monitor progress of the Action Plan;
  - c) Review key environmental evidence gaps;
  - d) To identify any required amendments to the Action Plan.

## 4. Other considerations

### 4.1 Costs

Implementation of the MoU should generate long term efficiency savings for regulators, advisors and applicants. But overall they will benefit from making the regulatory process more coordinated and efficient for all parties within their current processes.

The costs to the applicant are expected to decrease through better working; there should be less time needed for individual discussions with all the bodies concerned. Where an applicant parallel tracks applications, evidence may only need to be produced once, rather than many times. This is currently being tested in Tees at present and will be reviewed by the regulatory group in 12 months after formal signing.

### 4.2 Charging

The MoU will not have any implications for the charging regimes of any of the signatories, who will each charge for any services within their own legal remits.

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<sup>11</sup> UK BAP priority species and habitats were those that were identified as being the most threatened and requiring conservation action under the UK Biodiversity Action Plan (UK BAP). More information can be found on the Joint Nature Conservation Committee website at <http://jncc.defra.gov.uk/page-5718>

## **4.3 Regulation and Enforcement**

This MoU does not affect or remove the regulatory or enforcement responsibilities of any signatory party.

## **5. Interactions with coastal planning processes**

Coastal development consenting needs to be undertaken with due regard to the relevant policies, plans and programmes that apply in the coastal area. These may include the National Planning Policy Framework, the Marine Policy Statement and other national policy statements, marine plans, local and neighbourhood plans, shoreline management plans, river basin management plans and coastal change management areas.

## **6. Review of effectiveness**

This MoU, by virtue of the nature of its objectives and the methodology for achieving those objectives, will require regular review and assessment. This exercise may of itself lead to formal amendment of the MoU.

The effectiveness of the MoU will be reviewed by the signatories 12 months after formal signing.

## 7. MoU Signatures

Each Party hereby confirms its agreement to the terms contained in this Memorandum.

Signed on behalf of



Marine Management Organisation (MMO):

Print Name: SHAUN NICHOLSON

Date: 31/10/17

Signed on behalf of



Environment Agency (EA):

Print Name: OLIVER HARMAN

Date: 31/10/17

Signed on behalf of



Natural England (NE):

Print Name: BRAD TOOZE

Date: 31/10/17