

Facilitating marine nature restoration through legislation

Consultation Document

March 2024

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Overview

Why we are consulting

Over the last few years we have seen a strong groundswell of interest from local communities across Scotland who want to take part in nature restoration in the marine environment. Restoration activity comes in many shapes and sizes, but most projects currently in the water in Scotland are small, community-led initiatives that undertake some form of habitat (re)creation or species reintroduction, for example by planting seagrass and placing native oysters on the seabed.

Community groups and stakeholders interested in undertaking restoration have highlighted two key challenges to the sector developing further:

- a difficult and complicated regulatory environment of licences, permits and consents needed for restoration activity; and
- lack of a clear mechanism to protect the habitats and species that are being restored.

We have listened to these concerns, and recognise that promoting and enabling communities to undertake responsible restoration in their local marine environment will be absolutely vital to reversing biodiversity decline in our seas and coasts. We also recognise that restoration activity needs to happen with due consideration for other uses of the sea. To address these issues, we are consulting on two legislative proposals:

- 1) To take powers to introduce a registration process for marine nature restoration projects that fall below a threshold of environmental impact, instead of having to apply for a marine licence
- 2) To enable Scottish Ministers to apply Marine Conservation Orders to protect habitats or species under restoration from potentially damaging activities.

In addition to these two proposals, we are consulting on two further amendments to the existing provisions for Marine Conservation Orders (MCOs). One would address an existing shortcoming with the provisions which means that currently MCOs can be used to protect a type of protected area known as a 'European marine site' only if such a site overlaps or adjoins a Marine Protected Area (MPA). European marine sites covers Special Areas of Conservation for habitats and species, and Special Protection Areas for wild birds, and not all overlap/adjoin MPAs. The other would simplify a technical element of the consultation procedure for these Orders.

We have developed these proposals in response to concerns from community groups around the difficulty of navigating the regulatory environment and the lack of protection available for restored habitats and species. We believe these concerns deserve to be taken seriously, and that supporting restoration is crucial for the health of our seas. That notwithstanding, we are aware that 'communities' are not one group with a single voice, but are made up of complex and diverse groups of people and interests. This is why we are consulting at a crucial stage of

the policy development, and the views expressed in this consultation will be fundamental in allowing us to reach a decision on whether these proposals should be taken forward.

Structure

This consultation is structured into two Parts:

Part 1: Registration for restoration projects

Part 2: Amendments to the use of Marine Conservation Orders

Each part has an introductory section which sets out the general proposal, followed by sections with more detail and questions.

Throughout this consultation we will talk about primary and secondary legislation. Primary legislation is an Act of the Scottish Parliament. While being developed, an Act is referred to as a Bill; it becomes an Act of Parliament when it is passed. Secondary legislation is 'delegated legislation' made under the authority of primary legislation. Secondary legislation includes regulations and Orders, including Scottish Statutory Instruments. Scottish Ministers need powers in primary legislation to be able to make secondary legislation, and both are subject to consultation and Parliamentary scrutiny.

The proposals in this consultation will require some amendments to primary legislation, specifically the Marine (Scotland) Act 2010. These proposals will include powers to enable further implementation, with the details contained in secondary legislation. In this consultation we set out our current thinking about how these proposals would work in practice. We will make it clear in the relevant sections which part of the proposals will be developed further in secondary legislation and subject to further consultation.

The Marine (Scotland) Act 2010 covers Scotland's marine inshore waters, meaning any area which is underwater at mean high spring water tide, out to 12 nautical miles (nm), and this is the area these proposals relate to.

How your views will be used

The feedback you provide in this consultation will help to decide whether these legislative proposals will be taken forward, and will influence further policy development on how the proposals can be best implemented.

There will be further opportunities to input into the development process. For the registration proposals the outcomes of this consultation, if supportive, will inform the first step of implementation, which is to introduce powers in primary legislation to enable the establishment of a registration process. We would then need to develop the secondary legislation which would set out the detail of how such a process is to be delivered. There will be another consultation in the future to inform that second step in the process.

For Marine Conservation Orders (MCOs), the changes we are proposing are also for primary legislation. There already exists a requirement to consult with users of the sea before any

MCO can be put in place. In future, any MCO made using the proposed new powers would be subject to the same consultation requirement on the specifics of the proposal.

Setting the scene

Before we set out the proposals in detail in Part 1 and 2 below, we want to provide an overview of how these fit into the wider context of marine nature restoration and other legitimate uses of the sea.

What is restoration and why do we want more of it?

Scotland has an amazing diversity of animals, plants and organisms in our marine environment. Clean, healthy and productive seas are essential to our prosperity as a nation and livelihoods of our coastal communities. However, our natural environment is increasingly under pressure. Restoring marine habitats and species, for example by planting seagrass meadows or restoring native oyster beds, is an important tool to try and reverse environmental decline. Thriving ecosystems are crucial in improving our resilience to climate change.

Restoration can improve not only the species and habitats targeted, but can also have wider ecosystem benefits for example by providing nursery habitats for other species, and improve the overall abundance of fish and other organisms in the sea. Restoration ensures that we can continue to benefit from the sea for our food security and economic opportunities through sustainable fisheries.

The purpose of restoration is to improve the quality, size or geographic distribution of a habitat or species. Seagrass planting and native oyster restoration are the two most popular types of restoration in Scotland in the moment. However, there is also interest in other kinds like saltmarsh replanting and restoring mussel beds. We expect the variety of species and methods to restore them to develop further in the next decade as the sector develops.

Restoration of habitats and species is recognised internationally as a necessity for restoring the health of our natural capital and the ecosystem services we rely on for our benefit and welfare. It is a vital ingredient in our efforts to reverse biodiversity decline and is expressly undertaken to benefit the environment.

Restoration plan: where should restoration happen?

While there is significant and growing interest in undertaking restoration in the marine environment, only a relatively small number of projects are currently taking place across Scotland. We want this sector to scale up significantly in the next decade to help improve and support the quality of our coastal and marine ecosystems.

We are very aware that the marine environment is already a busy place, and understand other users of the sea like fisheries may have concerns that this represents yet another demand for use of marine space. Restoration is currently very small scale, can in many cases be co-located with other uses of the sea, and often takes place in shallow intertidal areas.

However, this may not be the case for all restoration as it develops further, so it is important to consider how this may in future impact other uses of the sea.

There is an increasing ask from the restoration sector itself, as well as other public bodies and industries, for better data and guidance to inform regionally and nationally where restoration can best take place. This would help identify the best geophysical conditions for successfully restoring species and habitats, and avoid where possible spatial conflict with other sea users.

To support this, we have committed to develop a Restoration Plan in the next few years for marine and coastal ecosystem restoration, including prioritising habitats and locations, as part of the five year [Delivery Plan for the Scottish Biodiversity Strategy](#).

The Restoration Plan will be key in guiding restoration activity. Taking action now through the proposals outlined in this consultation document would help ensure the correct legislative levers are in place to support the Restoration Plan.

Regulatory context for restoration projects

Groups looking to undertake restoration are subject to a wide range of regulations, licences and permits depending on where, how and what they are restoring.

For example, projects may need:

- planning permission from the Local Authority
- a [marine licence](#) administered by Scottish Government's Marine Directorate on behalf of Scottish Ministers. A marine licence is generally required for each licensable marine activity carried out by the project.
 - In addition to a site layout plan, applicants are required to submit: Biosecurity plan, Navigational risk assessment, Monitoring plan, and a description how their project meets any relevant plans or policies such as Scotland's National Marine Plan.
 - If the restoration activity has the potential to affect protected features in a European marine site, a Habitat Regulations Assessment will be carried out by Marine Directorate as part of considering the marine licence application.
- a [lease from Crown Estate Scotland](#) for use of the seabed – if the foreshore or seabed are owned locally, permission from the owner will be needed. There can be cases where the intertidal area of restoration is owned by a local owner but a subtidal area by Crown Estate Scotland, meaning agreement is needed from both.
- a conservation translocation licence from NatureScot if species or habitats are being re-introduced/re-established outwith their current native range. For example restoring native oyster populations where there is historical evidence they occurred in the past.
 - if the translocation activity has the potential to affect protected features in a European marine site, a Habitat Regulations Assessment will be carried out by NatureScot as part of considering the translocation license application.
- an authorisation to operate an [Aquaculture Production Business \(APB\)](#) or a registration for [non-commercial installations \(NCB\)](#) from the Fish Health Inspectorate

may be needed if cultivating shellfish. For example when maturing native oysters or mussels prior to placing them on the seabed.

- Operators of APBs must establish, maintain and comply with a Biosecurity Measures Plan (BMP) that must be provided when requested by an inspector.

Not every project will need every licence or consent, but separate elements of a restoration project may require one or more of the above. It is clear even from the examples set out above that the sector operates in a complex patchwork of regulatory requirements. Despite this high level of regulation, we do not currently have a good overarching picture of where restoration activity is taking place in Scotland.

This is in contrast to the limited mechanisms that exist to protect species and habitats undergoing restoration. The only powers currently available to Scottish Ministers to protect natural assets that have been or are being restored are through fisheries management measures, or by designating a Demonstration and Research Marine Protected Area (D&R MPA). There are specific criteria for D&R MPAs, which means they may not be a suitable tool for all restored assets. The current mechanisms mean there is a gap whereby restored habitats and species cannot be protected from other potentially damaging activities. For example construction, extraction or deposition of material.

Our legislative proposals seek to address two sides of this equation: on the one hand, we will simplify one element (marine licensing) of that complicated regulatory environment for restoration projects that have a low environmental impact (Part 1), and on the other hand we propose that Scottish Ministers should be able to protect, if necessary, habitats and species under restoration (Part 2).

What will these proposals mean for other users of the sea?

This question is addressed in further detail in Parts 1 and 2, but this section sets out some overarching points.

In the wake of the strong public reaction to the consultation on proposals for Highly Protected Marine Areas (HPMAs), we are very conscious of the concerns of many people who depend on the seas for their livelihood about the potential for any further restrictions on activities in the marine environment. It is important therefore to be clear about the checks and balances that would be put in place to ensure these proposed changes are fair and proportionate.

Marine Conservation Orders (MCOs) are a fine-tuned protection mechanism that is tailored to the specifics and needs of each location they are applied to. They are not blanket restrictions on activity – and would be applied on the basis of advice from NatureScot to protect habitats or species under restoration, or European marine sites from potentially damaging activities.

Extending the existing MCO provisions in this way would not in practice significantly change the ability for Scottish Ministers to restrict fishing activity in the inshore marine environment, as this is already possible via fisheries management measures under other pieces of

legislation. Similarly, in relation to standalone European marine sites, marine licensable activities are already subject to environmental assessment processes under the 1994 Habitats Regulations. What this proposal would provide is a single, comprehensive and flexible mechanism, which would also allow for protection from activities by other marine users if necessary. Scottish Ministers can keep Orders under review and could, for example, revoke them where despite best efforts restored habitats or species have failed to establish, to ensure restrictions are only in place where they are truly needed.

As with the current MCO provisions, any Marine Conservation Orders proposed in future in relation to the proposals set out in this consultation would be subject to consultation requirements as well as socio-economic and environmental impact assessments, to ensure local interests have a voice.

Through the Restoration Plan, supported by the proposed registration process, we can develop better oversight of where activity is happening and guide where it is most appropriate and likely to succeed (from both environmental and socio-economic perspectives). This will help ensure that restoration as it expands happens in appropriate locations and minimises spatial conflict with other legitimate uses of the sea. As set out above, the proposed registration process would simplify only one element of the regulatory requirements for restoration projects, and only for projects that come under a threshold of environmental impact.

Part 1 – Registration process for marine nature restoration projects

Overview

In this section we will set out proposals to introduce a registration process for marine nature restoration projects, instead of having to apply for a marine licence. We will start with a general introduction as to why we think such a process is needed, and how it would hopefully help projects overcome some of the challenges they are facing. Following that are a few subsections that set out more details on how a registration process could work, with questions on specific aspects of the proposals. Then at the end of the section there will be questions on the proposal as a whole and whether you think this should be taken forward, to ensure you have had a chance to look at the detail before answering.

Introduction

There is a growing interest around Scotland in undertaking nature restoration projects in the marine environment. Scotland is unique among the devolved nations in that the vast majority of restoration projects currently taking place in our waters are community-led.

Community groups and other restoration stakeholders have raised concerns over the last few years that the regulatory environment - the permissions they need to undertake restoration - is complex, difficult and costly to navigate. The proposals set out in this consultation were developed in response to these concerns, and address one aspect of that regulatory landscape in particular: marine licensing.

As we have set out in the general introduction to this consultation, we are conscious that marine licensing is only one part of a jigsaw of licences, permits and consents needed by restoration projects. The number of restoration projects taking place around Scotland is currently still quite small. While this new sector needs to grow to help meet outcomes in the [Scottish Biodiversity Strategy](#), we do not think a total overhaul of the entire regulatory system is a proportionate approach at this stage.

Marine licensing is the main element we think we can reasonably address in the short to medium term, while maintaining environmental safeguards, and will enable the restoration sector to grow in the marine environment. There are existing powers to establish a registration process in the Marine Scotland Act 2010. Under Section 33 Scottish Ministers may by regulations provide that licensable marine activities which fall below a specific threshold of environmental impact do not need a marine licence but are instead to be registered. Our intention is use this model to provide for a tailored registration process for marine restoration activity. A registration process would not just cover activities which are currently marine licensable activities, but also restoration activities which currently do not require a marine licence.

The purpose of this consultation is to understand whether a registration process for restoration projects is desirable and workable. In particular, if it would simplify rather than add complexity, and whether it would better support restoration projects while maintaining environmental safeguards.

Outline of the proposal

What are we proposing?

We are exploring whether it is feasible to establish a registration process for restoration projects that fall under a threshold of environmental impact. For those projects under the threshold this would replace the marine licensing process (where applicable) for their restoration activity or activities.

Currently projects may have to apply for a marine licence, or licences, if they undertake any construction like an artificial reef, or use a boat to deposit something on the seabed, for example oysters or bags of seagrass seeds. This applies no matter how big or small the project is, and whether or not it is likely to have a negative environmental impact. To avoid the costs and time involved in a marine licence application, some projects choose to instead undertake activity by hand, wading in from the shore, which can hinder their ability to develop and scale up. It also means we do not have very good oversight of where restoration is happening.

With a registration process, a threshold of likely environmental impact would be set out via secondary legislation. Projects that go over the threshold will still need to apply for a marine licence, but projects under the threshold(s) could instead register their activity, through a simpler process. At the moment, we are only consulting on the powers which would allow us to develop this approach. So while we do set out our current thinking about how a threshold

of environmental impact might be set, this would be subject to a separate consultation process in future.

How would a registration process work?

A restoration project would need to be registered and provide information like the location and extent of their project, what restoration activity is being undertaken with what methods, and whether biosecurity measures are in place. A project would have to be registered before putting anything physically 'in the water', which is similar to when they would have to apply for a marine licence.

We intend that this would be a mandatory self-declaration process. It will be the responsibility of restoration projects to ensure they are under the threshold to be able to register. There would be no application or decision from Scottish Ministers or a other public body to 'approve' the registration. However, carrying out restoration activities over the threshold of likely environmental impact without a marine licence (i.e. registering a project which should instead be subject to marine licensing) would be an offence and subject to penalties.

We would develop the detail of the threshold in secondary legislation, and work closely with restoration groups, nature conservation bodies and other marine users to ensure this is set at a level that is easy to understand, but also meaningful in terms of preventing environmental harm. We would make guidance available to help projects understand when they might be over the threshold. We set this out in more detail under 'Threshold(s) of environmental impact' further on in this document.

We propose that there would be a mechanism post-registration enabling Scottish Ministers to intervene if they had or were made aware of concerns about a project. This could cover a range of scenarios. For example: if they became aware that a project was not operating according to the information provided at registration, was causing environmental harm (even unintentionally), should have applied for a marine licence or licences, or poses a significant navigational, human health or biosecurity risk.

Projects that go over the threshold would not need to register as they would be required to apply for a marine licence if they undertake marine licensable activity. We expect that many projects may start out small and grow over time, and the registration should allow for registrations to be updated by projects. If a project expands over time to the point of going above the threshold of environmental impact, they would have to apply for the necessary marine licence or licences at that point. We would set out in more detail and consult on how the link between the registration and marine licensing processes would work in the secondary legislation.

What is restoration?

Restoration activity takes place in many different ways. Generally a distinction is made between 'active' restoration: (re)creating new or lost habitats and reintroducing species; and 'passive' restoration which can include pressure removal like cleaning up marine litter or

improving water quality. The proposals in this consultation are aimed at ‘active’ restoration projects, which typically undertake things like native oyster restoration and seagrass planting. We anticipate further species and habitats will have potential for restoration as methods and technologies evolve.

The reason these legislative proposals are targeted at restoration projects making ‘active’ interventions is that these generally may require marine licences (and other permits), and would benefit from easing the administrative burden resulting from this. This is not to suggest that ‘passive’ restoration is not in itself a very beneficial approach to restoring and protecting the marine environment.

Potential impacts of restoration on the environment

While the aim of marine nature restoration is to benefit the environment, there is the potential for unintended consequences. As these are typically projects that actively cause changes in the marine environment, there is a risk of negative environmental impact as well as positive effects. We need to strike a balance between enabling restoration to take place and making sure the marine environment is not harmed in the process.

A registration process would enable us to have a better overview of where restoration is taking place while also reducing the regulatory burden. It recognises that while the intentions behind restoration are good, we need to guard against negative side-effects, which is why we propose the use of a threshold of environmental impact to ensure we can maintain appropriate environmental safeguards.

Protecting restored areas

In Part 2 of this consultation, we set out proposals to extend existing Marine Conservation Order (MCO) provisions so they can be applied for the protection of habitats and species that are undergoing or have undergone restoration. Marine Conservation Orders are comprehensive and flexible tools which can be used to restrict potentially damaging activity to protect particular habitats or species in particular locations. The full detail of this proposal is set out in Part 2. However, it is worth noting here that while we envisage that MCOs could be applied on the basis of information submitted as part of the registration process or through marine licensing, this would not be an automatic process. Registering would not ‘entitle’ a restoration project to protection through an MCO. All MCOs are, and will remain including for restoration, a tool applied by Scottish Ministers if considered necessary, subject to public consultation, and based on advice from NatureScot.

How would a registration process make things easier?

All restoration projects that fall under the environmental threshold would have to be registered. If the project includes activities that are marine licensable activities, the registration process would replace the requirement to apply for a marine licence, and the project would also not have to conduct a pre-application consultation and comply with public notice requirements. This would, for example, enable such projects to carry out an activity

from a vessel - especially small-scale activities to trial or test methods and viability of their siting and approach – providing the threshold of environmental impact was not reached.

This approach would mean that restoration projects which do not involve marine licensable activities – for example because they place oysters or seagrass by hand rather than using a vessel – will also need to register. This will help improve our oversight of where restoration activities are happening, while ensuring that there is not a significant regulatory burden on such projects.

Non-legislative measures to support restoration

Exploring legislative solutions is not the only route through which we are looking into how we can better support communities and groups interested in undertaking restoration in their local area. As noted in the general introduction to the consultation, the [Scottish Biodiversity Strategy Delivery Plan](#) already includes a commitment to develop a plan for coastal and marine restoration through prioritisation of habitats and locations.

Scottish Government and bodies like NatureScot are continually working to provide and improve guidance and information available to groups interested in restoration, on how to undertake restoration and how to comply with regulatory requirements. Restoration is also a relatively new and pioneering sector to us as regulators, and we will learn more and improve awareness of regulatory requirements as the sector matures.

The [Scottish Marine Environmental Enhancement Fund](#) (SMEEF) supports restoration projects across Scotland through grants from private sector donations and public sector funding. SMEEF also provides information and resources to help restoration projects and raise awareness of what is involved in undertaking restoration.

These are all important support mechanisms which will continue to be developed alongside any legislative measures.

Proposal details and questions

Definitions of marine nature restoration and who would be able to make use of a registration process

A key question surrounding the implementation of a registration process is who would be able (or not) to use such a process. As a general principle, we want to prevent creating a regulatory loophole for commercial operations to carry out for-profit activities under the guise of ‘restoration’. However, we are conscious that some restoration projects operate, or may wish to in future, a mixed model of non and for-profit activities to generate self-sustaining funding. We want to support innovative models to fully realise the potential of restoration projects to provide jobs and generate income in coastal and island communities. There is therefore a need to explore where to draw the line in legislation between what can be registered and what should remain subject to the licensing requirements as they currently exist.

We would also need to be able to define what we mean by marine restoration. There are several definitions of marine restoration in the public domain which could form a basis for framing a definition of marine restoration and what activities projects can register, with further details being provided in secondary legislation.

The Society for Ecological Restoration (SER) characterises restoration as an “intentional activity that initiates or accelerates the recovery of an ecosystem with respect to its health, integrity and sustainability” and describes it as “the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Restoration seeks to initiate or accelerate ecosystem recovery.”

NatureScot considers the term “restoration” to be applicable to projects entailing a high level of intervention. Such as those rebuilding a habitat or reintroducing an ecosystem engineering species to assist with enhancing a habitat into a location from which it has been extirpated and where re-establishment could not occur without assistance.

Outwith Scotland, Natural England states in their Marine and Coastal Habitat Restoration Principles that the “primary aim of restoration is to (re)create natural habitats and functions and enhance resilient habitat features or biotopes within a land and seascape. Requirements for repeated interventions and management should be minimised where possible by restoring underpinning natural processes and allowing them to function freely”.

Our preferred model for framing a definition in primary legislation is a combination of the NatureScot and Natural England definition of restoration as involving high level intervention and habitat (re)creation outlined for framing, while further detail would be provided in secondary legislation.

Question 1

Do you think the example definitions provided are a suitable basis to frame a definition of marine nature restoration for the purpose of this legislation?

- Yes
- No
- Unsure
- Other – Please explain

If you selected ‘Other’ then please use this space to expand on your answer.

Question 2

Are there any other considerations or examples we should consider in formulating a definition for marine nature restoration?

Please provide examples and any information which you think would be useful to support your views.

What is being registered?

In addition to a general definition of marine nature restoration, we will need to specify what is being registered. In marine licencing, the key legal concept is 'activity' that is licensed, i.e. the depositing of something from a vessel onto the seabed, undertaking works or removing articles from the seabed. This can mean that a restoration project will require more than one marine licence, to cover different activities which are being undertaken. For the purposes of the registration process, we are instead proposing to use restoration 'project' as the key entity to which the registration applies.

This would mean that, provided they are under the threshold and thus do not need a marine licence or licences, activities being undertaken would be registered as a whole project rather than having to register for each individual activity undertaken. We would still expect that the registration would provide information on where restoration is being done, what habitat or species are being restored and what methods or materials are being used, but the registration can be entered and maintained for the project as a whole.

Registered restoration projects could range from very small areas focusing on restoring a single habitat or species, to much larger projects for restoring multiple habitats/species and a variety of methods. This potential for wide variation in projects means we do not think it would be appropriate for Scottish Ministers to implement (if considered necessary) a Marine Conservation Order to the project itself – this would need to be more targeted to the specific habitats or species under restoration as part of the project. More detail is provided on this in Part 2.

A description would be needed in legislation of what constitutes a marine nature restoration ‘project’. We want to gather views on how this could be done. There are several possible concepts that a definition of restoration projects could be anchored to for the purposes of this legislation, either individually or in combination. For example:

- Primary intent of the project: to benefit or restore the marine environment
- Commercial basis: use of the registration process could be restricted to not-for-profit activities
- Use of restored ‘assets’: restoration projects typically do not ‘own’ the features (habitat/flora/fauna) they restore (for example a seagrass meadow) and have no rights over the feature (for example to harvest the seagrass).

Question 3

Do you think registration should be based on the restoration ‘project’, rather than each individual ‘activity’?

- Yes
- No
- Unsure
- Other – Please explain

If you selected ‘Other’ then please use this space to expand on your answer.

Question 4

Please share any considerations you have in relation to tying the registration process to a 'restoration project' rather than each individual activity.

Please provide examples and any information which you think would be useful to support your views.

Threshold(s) of environmental impact

Setting a meaningful and workable threshold of environmental impact would be key to making a registration process viable. The detail of the threshold would be specified in secondary legislation and developed in further consultation with stakeholders. At this stage we want to gather views on how this could be done, as it is important that it will be possible to develop a meaningful threshold which maintains environmental safeguards without adding unnecessary complexity.

There are several approaches possible:

1. a threshold based on a single criterion, for all restoration projects;
2. a set of thresholds, or a 'checklist' of multiple criteria that address different elements of environmental concern, that applies to all restoration projects;
3. several thresholds for different types of restoration project. For example based on target species such as a threshold for native oyster restoration, and a different threshold for seagrass planting.

Thresholds of environmental impact under the proposed approaches could be set across a range of factors, and should be informed by best available evidence and advice from NatureScot. As noted, this would be subject to further consultation as part of developing secondary legislation.

Examples of environmental risk factors that could be considered include:

- scale of the restoration activity, for example up to a specified number of hectares or depth which is a simple but crude measure of environmental impact; and/or
- proximity or potential to affect sensitive/designated sites and priority marine features; and/or
- biosecurity, for example risk of unintended release of invasive non-native species (INNS), or transfer of pathogens and parasites; and/or
- restoration method, for example if using mechanised planting.

We think a threshold should be developed based on a few core principles:

- it should be meaningful in terms of reducing the risk of negative environmental impacts;
- it should be easy enough to understand for non-expert audiences looking to undertake restoration; and
- it should not simply replicate criteria for marine licensable activities and/or thresholds for pre-application consultation (PAC)

As noted, secondary legislation would also include further detail on how projects transition from registration to the marine licensing process if they develop over time and go above the threshold.

Question 5

Please share any reflections you have on how we could set appropriate threshold(s) of environmental impact.

Please provide examples and any information which you think would be useful to support your views.

In addition to the considerations above, we want to gather views on how we could consider and minimise navigational risks under a registration process. One way of achieving this could be that elements of a restoration project that could present a navigational risk, such as placing moorings, anchors or below surface mooring lines (for example through propeller entanglement) etc. should not be covered by the registration process. They would instead require a marine licence as under the current process. The detail of this would be set out in secondary legislation.

Question 6

Do you agree with the principle that placement of moorings/anchors, lines or other objects that may present a navigational risk (for example through propeller entanglement) should not qualify for registration, and should remain subject to current marine licencing laws, even if they are part of a restoration project?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 7

Please share any reflections you have on how we can minimise navigational risks under a registration process.

Please provide examples and any information which you think would be useful to support your views.

Administration of the process

As noted in previous sections, detail on how a registration process would be administered would be articulated in secondary legislation. However, we do think it would be desirable for Scottish Ministers to have the power to delegate administration of the process to an existing public body, for example a Statutory Nature Conservation Body like NatureScot. This would enable the registration process to tie in with other forms of advice, guidance and support that such bodies may already be providing to restoration projects.

Question 8

Do you agree Scottish Ministers should have the option to devolve the administration of a registration process to another public body?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Nature of the process

Based on discussions with restoration groups we currently think a registration process would work best as a self-declaration process, allowing projects that fall under the threshold of environmental impact to notify Scottish Government/the administrator via registering.

The alternative would be an approval/application process, however we do not want to effectively replicate the marine licensing process in a different format. At this stage, we want to gauge whether there is a preference to one model or the other.

Under a self-assessment process it would be the responsibility of the applicant to make sure their project is under the threshold of environmental impact. We would make available guidance to support this assessment, and would aim to make any environmental threshold easy enough to understand for non-experts.

A self-assessment process would not involve waiting times for a registration to be 'approved'. We propose that there would need to be a way for Scottish Ministers to intervene post-

registration if there were concerns about a project – see questions 15 - 17. However, the registration itself would be ‘automatic’ once an applicant submitted the required information. However, we understand that a self-assessment process could generate a degree of uncertainty about whether projects meet the registration requirements, as the person or group registering would have to work out for themselves whether they were over the threshold of environmental impact or not.

An approval/application based process would give the administrator of the registration – whether that were Scottish Government or a body to which the administration is delegated – greater control over who could register what. It would enable the administrator to assess whether a project was under the threshold of environmental impact and whether the information provided as part of their application was correct. In an approval/application process it would also be possible to attach tailored conditions to the registration, for example around what methods can be used for the restoration, siting of the project or monitoring requirements. The use of conditions is a common approach used in granting licences and permits. An application/approvals process could provide projects with more certainty about whether they are under or over the threshold. However, this would also make the process more involved, it might require a fee to cover the greater amount of resource needed to administer the register, and would make the process similar to applying for a marine licence. As this approach would apply to all restoration projects under the threshold it would potentially make the regime more onerous on the sector as a whole.

Question 9

Should a registration process be based on a self-declaration/self-assessment model or would you prefer an ‘approval/application’ based process?

- Self-declaration/self-assessment
- Approval/application
- Unsure
- Other – Please explain

If you selected ‘Other’ then please use this space to expand on your answer.

Question 10

If you answered 'approval/applications process' for question 9, should the administrator of a registration process be able to apply conditions to the registration?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 11

Please share any considerations or concerns you have on the nature of the registration process and whether it should be based on self-assessment or approval/application.

Please provide examples and any information which you think would be useful to support your views.

Information provided in the registration and publication of the register

As part of the registration process, we propose that restoration projects would have to provide essential items of information, details to be determined in secondary legislation.

This information would at a minimum need to include the location and extent of the restoration project, the target habitats and/or species, details of the activity or activities being undertaken, what methods are used, and a contact address (email or postal) for enquiries about the project. We are exploring whether it would also be desirable to request information on how the project has considered aspects like biosecurity, monitoring of impact (positive and negative), navigational risk, and considerations about interactions with other sea users.

The purpose of gathering this information is two-fold. First, it would enable Scottish Ministers (or the administrator of the registration process) to check the information provided for a registered project as part of a post-registration intervention if concerns were raised about a project's activity. For example Scottish Ministers might want to verify, if a concern is raised, whether a project is in fact under the environmental threshold. The information provided in the registration process and held in the register would be the first port of call to compare what was registered to what is happening in reality. We also think Scottish Ministers would need to be able to ask for the provision of additional information for this purpose.

Secondly, gathering and holding this information would improve oversight of where restoration activity is happening. This would help Scottish Government to better understand how restoration is contributing towards meeting our environmental targets and commitments. It would also allow Scottish Ministers to make decisions about whether a Marine Conservation Order (MCO) might be appropriate to protect habitats or species which are undergoing or have undergone restoration, as set out in Part 2 of this consultation.

We anticipate that the administrator of the registration process would need powers to share this information with other relevant public bodies, especially if they also have a regulatory role that touches on restoration work. This could include Scottish Environmental Protection Agency (SEPA), Fish Health Inspectorate, Marine Directorate Licensing and Operations Team, Crown Estate Scotland and NatureScot.

We also propose that at least some of this information would be made publicly available, to provide transparency and ensure that local communities, including other users of the sea, are aware of where projects are taking place. We are conscious that there may be issues around publishing data on the location of sensitive habitats and species. We would not intend to publish all information provided as part of the registration process, but basic information like location, type of restoration being undertaken and how to contact the project. The detail of this would be set in secondary legislation, but we want to gauge whether there are any particular sensitivities around making (some of) this information available.

Question 12

What are the key types of information you think projects should be required to provide as part of their registration? Please select all that apply.

- Location
- Activity being undertaken
- Methods
- Biosecurity
- Monitoring
- Navigational risk
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 13

Do you think the register should be made publicly available? By publicly available we mean published online.

- Yes, all information
- Yes, but only some information
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 14

Please share any concerns or considerations you may have with regards to providing information in the registration process and/or making information on the register publicly available.

Please provide examples and any information which you think would be useful to support your views.

Post-registration intervention and offences/penalties

As noted previously, we think that Scottish Ministers would need powers to intervene post-registration if there were concerns about a registered project. While restoration is undertaken with aim of restoring the marine environment, there is a risk of unintended and unforeseen consequences, especially as our marine environment changes and adapts in response to climate change and other pressures. While the registration process should be light-touch, there would need to be safeguards in place to ensure Scottish Ministers could still fulfil their duties to have due regard to environmental protection, human health and legitimate uses of the sea.

Scenarios in which Ministers or the administrator might wish to intervene could include:

- a project has registered but is undertaking restoration in a different location;
- a project is at risk of damaging the marine environment; or
- the project poses a navigational or other risk to human health.

To allow Scottish Ministers to intervene in such unforeseen circumstances we propose that Scottish Ministers should be provided with a broad power and discretion to intervene for any reason.

We also propose that Scottish Ministers would be able to amend, update or remove a registered project, for example if a project has ceased to exist without notifying the administrator.

Question 15

Do you agree Scottish Ministers should have a broad post-registration power to intervene and amend/update/remove projects from the register?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 16

Please share any comments you may have on instances where Scottish Ministers should be able to intervene post-registration.

Please provide examples and any information which you think would be useful to support your views.

Offences

We think Scottish Ministers would need powers to create offences, in order to deter misuse of the registration process.

Detail on the offences would be set out in secondary legislation. We consider the basic premise to be that registration would be mandatory, unless projects secure a marine licence for the associated activity or activities instead. In other words, it would be an offence to undertake restoration without either registering a project or obtaining a marine licence (if licensable activity is undertaken). There may be instances where projects know they will develop in a way that would take them over the environmental threshold fairly quickly, and may wish to apply for a marine licence from the start rather than register. We intend that this would be possible.

The Marine (Scotland) Act 2010 already sets a framework and upper limits to powers to create offences. For example under Section 33 Scottish Ministers are able to create offences in secondary legislation. These include the ability to provide that such offences be triable summarily or on indictment, and provide that offences would be punishable (on summary conviction) by a fine not exceeding £50,000 or (on conviction by indictment) a fine, imprisonment for a period not exceeding 2 years, or both. We consider these existing powers provide an appropriate model of powers and upper limits on the offences. This means penalties set in secondary legislation could be lower but cannot exceed these limits.

There are a number of scenarios which might arise in future and we want to ensure that there would be futureproof mechanisms in place to handle these. The main instances of non-compliance that would need to be dealt with are most likely to be scenarios where:

Scenario A

A restoration project is undertaking activity but has not registered.

Projects will have to register at the point of physically undertaking restoration, and Scottish Ministers will wish to specify that doing so without registering would be an offence (unless the project has secured a marine licence or licences instead).

Scenario B

A restoration project has registered but their activity is above the threshold of environmental impact.

This could mean that the project is undertaking a marine licensable activity (or activities) without a licence, in which case it could be dealt with through the existing mechanisms for dealing with non-compliance in marine licensing.

Scenario C

False information has knowingly been provided for a registered project.

This could coincide with any of the above scenarios, however Scottish Ministers may wish to specify additional offences to act as a strong deterrent to not misuse the process.

Question 17

Do you agree Scottish Ministers should be able to create offences and penalties in relation to the registration process?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 18

Do you agree with the limits we propose as a model for the framework and upper limits on offences and penalties?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Concluding questions for Part 1

In the preceding sections we have outlined how a registration process could work, and discussed some of the considerations that would need to be explored further as part of developing secondary legislation. Having considered these, we want to know if you are supportive of the proposals outlined in this part of the consultation.

Question 19

Do you support bringing forward legislation to enable Scottish Ministers to develop a registration process for marine nature restoration projects?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 20

Do you think a registration process would help to reduce the administrative burden on restoration projects?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 21

Do you think a registration process would help encourage more restoration projects to come forward and/or scale up?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 22

Please share any further considerations you have about the proposals as a whole.

Please provide examples and any information which you think would be useful to support your views.

Part 2 – Marine Conservation Orders

Overview

In this part of the consultation we set out proposals for amendments relating to an existing mechanism in Part 5 of the Marine (Scotland) Act 2010, Marine Conservation Orders (MCOs).

The proposed amendments cover three elements:

- to extend the existing MCO provisions so they can be used to protect habitats or species which are undergoing or have undergone marine nature restoration
- to extend the use of MCOs to allow for the protection of standalone European marine sites: Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) which are not adjacent to or do not overlap with existing marine protected areas (MPAs).
- to adjust the requirement to consult on the draft Order/wording of an MCO to a requirement to consult on the draft proposal.

We cover each of these elements and associated questions in turn. For these proposals a Strategic Environmental Assessment (SEA) has been undertaken, details of which are set out in a separate Environmental Report. Questions relating to the SEA have been included at the end of the consultation paper.

Introduction

Marine Conservation Orders (MCO) are a statutory mechanism under the Marine (Scotland) Act 2010. The existing MCO provisions are set out in sections 85-94, and 97-98 of the 2010 Act, and in general terms are used to restrict activity that may damage a marine protected area (MPA).

Scottish Ministers can make a Marine Conservation Order to:

- protect any type of MPA (as designated under section 67-73 of the Marine (Scotland) 2010 Act) for the purpose of furthering a stated purpose or conservation objective; and
- to protect any overlapping or adjoining European Marine Site, comprising either Special Areas of Conservation (SAC) or Special Protection Areas (SPA) under the Conservation (Natural Habitats, &c.) Regulations 1994.

Marine Conservation Orders are a protection mechanism that is tailored to the context and requirement of each individual case and location they are applied to. An MCO can be applied to the whole or parts of these designated protected areas, and can place specific restrictions on a range of activities to protect the natural or cultural heritage features. An MCO is not the same as a MPA or European marine site designation. MCOs are currently a mechanism to protect these sites from activities where that is deemed necessary to further the conservation objective of a MPA or protect an European marine site. It is possible to revoke or amend an MCO, which provides a level of flexibility to adapt to new circumstances and evidence.

The existing provisions set out the procedure for Marine Conservation Orders. MCOs cannot be made without consulting anyone likely to be interested in or affected by the proposed Order, such as local users of the sea in the area where the MCO is proposed. These groups and individuals have a say in what activity is restricted in the waters which they may rely on for their livelihoods. There is also a duty on Scottish Ministers to assess the impact or potential impact of restricting activities, in relation to economic interests, social interests and the environment.

Scottish Ministers can also apply urgent orders, where they consider there is a critical need to protect an area, for instance where delay in making an order could result in harm to the features, the marine historic asset, or the stated purpose of the area. This allows for an accelerated process, without the need to publicise in advance that the order is to be made. An urgent order can only remain in force for 12 months, but may be extended for a further 12 months if deemed necessary where Ministers intend to make a permanent MCO.

The existing provisions allow Scottish Ministers to issue permits authorising activities which have previously been prohibited by a MCO. They also set out offences and fines in relation to contravening a MCO (a fine not exceeding £50,000 for an offence on summary conviction, or a fine for convictions on indictment).

We are proposing to extend the existing MCO provisions within the 2010 Act so that MCOs could be applied for two additional purposes:

1. to protect habitats and species which are undergoing or have undergone marine restoration; and
2. to protect standalone European marine sites.

This would provide a mechanism to apply appropriate protection if required. We recognise that there are increasing spatial demands on our marine environment, so any MCOs proposed in future would need to be applied in a proportionate way. Further consideration is set out below.

Protecting marine nature restoration projects

There is growing interest from local communities and various groups in marine nature restoration projects. We are aware that there is increasing concern within the sector, particularly around how restoration projects can be protected from other activities that might damage the restoration work being undertaken.

In order to meet our 2030 and 2045 domestic and international biodiversity commitments to become [Nature Positive](#) we will need to provide longer term security and protection for habitats and species undergoing restoration. This will be a key enabler to grow and expand the restoration sector.

Currently initiators of some marine restoration projects have chosen to prepare cases for their projects to be designated as a Demonstration and Research MPA in the hope that Scottish Ministers will safeguard habitats and species they are trying to restore. Demonstration and Research MPAs can be designated by Scottish Ministers for the purposes

of demonstration of suitable methods of marine management or exploitation, and research into such matters. Whilst some of these projects may meet the selection guidelines and merit Demonstration and Research MPA status, this will not be suitable for all projects.

We propose that MCOs could be used, if considered necessary by Scottish Ministers based on advice from NatureScot, to protect habitats or species which are undergoing or having undergone restoration. An MCO could not be used pre-emptively or take effect before restoration activity is being undertaken. However, we propose that management measures under an MCO could be put in place at the time when physical restoration activity takes place.

This proposal ties in with that set out in Part 1 to establish a registration process for marine nature restoration projects. Having projects register would give Scottish Ministers better oversight of what is taking place where, and where the habitats or species being restored might merit protection. For projects that have not registered but have applied for a marine licence instead, an MCO could be applied using information about the location and/or spatial extent of the habitat or species provided as part of their marine licencing application process.

We do not think it would be appropriate to link the ability to apply MCOs to the entirety of a registered 'restoration project' as covered under Part 1. This is because a registered project could cover a larger area than where protection is necessary and could encompass restoration activities being undertaken for multiple habitats or species using a variety of methods. An MCO would instead need to be applied in relation to specific habitats or species being restored within the project, on an evidenced basis.

The ability to implement MCOs would ensure Scottish Ministers could protect habitats or species undergoing or having undergone restoration. However, this would not be necessary if there is no risk of damage from human activities. This might be because the target habitats or species are located in an area that doesn't overlap with potentially damaging activities, or because other activities can be carried out in a manner which does not cause damage. Marine restoration is currently localised and small, and the requirement for any MCOs to protect habitats or species in future would always be considered on a case-by-case basis, taking into account advice from statutory nature conservation bodies and developed in consultation with all community and wider interests. This will be critical where local communities and projects may not wish for activities to be restricted to protect the natural assets being restored.

We propose to extend the existing MCO provisions in the Marine Scotland Act 2010 (as described in the introduction to Part 2) so that they could be applied, if considered necessary, to habitats or species that are undergoing or have undergone marine restoration. This would include the existing ability to revoke or amend an MCO. In this case, an MCO could be revoked if restoration of a target species or habitat was not successful, to ensure that restrictions did not remain in place unnecessarily. The ability to amend an MCO would allow for updates to the Order if, for example, a new activity had the potential to damage the habitat or species being restored, or if advances in technology meant a restricted activity could be carried out in a way that was not damaging.

In addition to the existing provisions in relation to MCOs, we could introduce a requirement for Scottish Ministers to review MCOs in place for restoration on a regular basis, for example 5 or 10 years.

Question 23

Do you support the extension of existing Marine Conservation Order provisions under the Marine (Scotland) Act 2010 to be applicable to habitats and species undergoing restoration or which have been restored?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 24

Do you think there should be a requirement on Scottish Ministers to review any Marine Conservation Orders implemented for habitats or species undergoing restoration or which have been restored?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 25

Do you think that any of the existing Marine Conservation Order provisions outlined in this section should not be extended to be applicable to habitats or species undergoing restoration or which have been restored?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 26

Do you have any other views you would like to share in relation to the proposal to extend the existing Marine Conservation Order provisions to habitats and species undergoing restoration or which have been restored?

Please provide examples and any information which you think would be useful to support your views.

Standalone European marine sites

‘European marine sites’ is a collective term for protected areas designated under the Conservation (Natural Habitats, &c.) Regulations 1994. The term refers to marine Special Areas of Conservation (SACs) and marine Special Protection Areas (SPAs), which are designated to protect certain species and habitats, and wild birds respectively. Nature conservation MPAs, Demonstration and Research MPAs and Historic MPAs are designated under the Marine (Scotland) Act 2010. European marine sites and MPAs all contribute to Scotland’s MPA network.

Section 85 of the Marine (Scotland) 2010 Act sets out that Ministers can make a Marine Conservation Order (MCO) for the purpose of protecting a European marine site which overlaps with or adjoins a MPA. This means that MCOs cannot currently be used to protect standalone European marine sites. We use the term ‘standalone European marine sites’ to refer to sites which do not overlap or adjoin designated marine protected areas. As a result, there is a mismatch between the powers available to Scottish Ministers to protect European marine sites which overlap or adjoin a MPA, and those standalone sites. This is an anomaly in the legislation rather than an intentional disparity. MCO powers to protect standalone European marine sites in England and Wales have existed since 2010.

Therefore we are proposing to fix this to enable Scottish Ministers to apply an MCO to standalone European marine sites, if this were necessary in future to further the conservation objectives of European marine sites.

We have explored whether standalone European marine sites should instead be designated as MPAs under the Marine (Scotland) Act 2010, however this would not be a suitable solution as it would mean “double-badging” designation types. The selection criteria and guidelines for MPAs and European marine sites differ, and there are different lists of features which these designation types are designed to protect.

- For European marine sites these are:
 - habitats listed in Annex I of the EU Habitats Directive,
 - habitats of species listed in Annex II of the Directive; or
 - for birds listed in Annex I of the EU Birds Directive.
- For MPAs there is a list of MPA “search features” which was developed by NatureScot and the Joint Nature Conservation Committee (JNCC).

While there is some overlap, the designation types are designed to complement each other in forming a coherent network of MPAs. The intention is not for these to duplicate each other, as an European marine site might not meet the selection guidelines for MPAs.

The process and purpose of making an MCO for a standalone European marine site would be exactly the same as it is for such sites that overlap or adjoin MPAs. The purpose of applying the MCO for European marine sites is proposed to be ‘the protection of the natural feature by reason of which the site is considered to be of significance in relation to the Habitats Directive and the Wild Birds Directive’. This means MCO powers for European marine sites

can be used to protect flora/fauna/habitat protected by the European marine site. This also includes a requirement to consult before any MCO is introduced.

The primary purposes of the proposed MCO amendment is to fix the current disparity in the legislation and ensure Scottish Ministers have equal powers to protect different types of protected areas across our marine environment, if required. We do not currently have specific European marine sites in mind where an MCO would be needed.

Marine licensable activities that are not directly connected with the management of a European marine site are already subject to the assessment processes set out under the 1994 Habitats Regulations, if they are likely to have a significant effect on a site. Management measures for MPAs (including nature conservation MPAs, SACs and SPAs) have to date primarily focused on implementing necessary fisheries management measures. This is because fishing activity is not covered by the marine licensing process. The proposed extension to the existing MCO provisions would not impact on this ongoing work because the current proposed fisheries measures will be taken forwards under existing powers to restrict fishing activity via other legislation (or via existing MCO provisions under the 2010 Act for European marine sites that overlap or adjoin an MPA). We are not proposing any changes or additions to those proposed measures, or to the wider proposals for fisheries management relating to inshore MPAs and PMFs. The proposals also do not mean further protected area designations are being considered.

MCOs provide a single, more comprehensive and flexible mechanism than is currently available for standalone European marine sites, which would also allow for protection from activities by other marine users, if this was ever considered necessary in future. We propose that existing provisions in the Marine Scotland (Act) 2010 applying to MCOs would also be applicable to standalone European marine sites.

Question 27

Do you agree that MCO powers should be extended as outlined to be applicable to standalone European marine sites?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 28

Do you think that any of the existing MCO provisions within the Marine (Scotland) Act 2010 should not be extended to be applicable to standalone European marine sites?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Removing duplication in consultation requirements for MCOs

There is currently an obligation for Scottish Ministers to consult on a draft MCO under section 87 of the Marine (Scotland) Act 2010. If a draft MCO is subsequently changed after representations have been made, there may be a need to re-consult before the order can be made and take effect. This is the case even if the changes are minor corrections rather than actioning issues raised by representations. This need to re-consult on the draft order even in the case of minor changes can result in delays and lead to an inefficient process which can delay the protection of the marine environment.

We propose to change the requirement to consult on the 'draft order', as it is now, to a requirement to consult on the 'draft proposal'. This would bring the provisions more in line with those for the designation of MPAs under the Marine (Scotland) Act 2010, which carry a requirement to publish notice of the proposal to make a designation order, and consult persons considered likely to be interested in or affected by the making of the order.

An obligation to consult on draft orders is rare in legislation. Consultation is usually carried out on draft proposals with orders being drafted following consultation outcome. This provides greater flexibility and there is therefore a lower risk that a further consultation round has to be carried out, resulting in time consuming processes for both stakeholders and government.

Question 29

Do you agree with our proposal to change the requirement to consult on the 'draft order' to a requirement to consult on the 'draft proposal'?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Impact assessments

In Scotland, public bodies including the Scottish Government are required to assess, consult on, and monitor the likely impacts their plans, programmes and strategies will have on the environment, businesses, island communities and equalities. This helps to better protect the environment, aims to ensure that any development is sustainable and equitable, and increases opportunities for public participation in decision-making.

In this section we are asking questions to gather evidence and lived experience to inform our impact assessments.

The proposals set out in this consultation are mostly for changes to primary legislation, and will be consulted on again before they are implemented. This means that it is hard to assess the detailed impacts of these policies, as they will be further developed at a later stage. At that point there will be further assessments of the impact(s) of the proposals.

Businesses

A Business and Regulatory Impact Assessment (BRIA) is used to analyse the costs and benefits to businesses and the third sector of any proposed legislation or regulation.

The proposals set out in this consultation concern enabling powers and are therefore unlikely to impact directly on the costs and burdens placed on businesses, the public sector, voluntary and community organisations at this stage. We want to get an early idea of how these proposals might impact businesses at the point of implementation, so any views you can share on this will be helpful.

Your comments will help to inform a BRIA which examines the impact that the proposed changes may have on businesses. Any secondary legislation which flows from the primary enabling powers, as sought, will be subject to a full BRIA and consultation at that time.

Question 30

Do you think that any of the proposals will have an impact directly or indirectly on the costs and burdens placed on businesses, the public sector voluntary and community organisations?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Island communities

Scotland's islands face particular challenges around distance, geography, connectivity and demography. It is therefore important that this is considered when developing policy and legislative proposals. Section 7 of the Islands (Scotland) Act 2018 states that a relevant authority – which includes Scottish Ministers – must have regard to island communities when carrying out its functions.

Question 31

Do you think that any of the proposals will have an impact that is significantly different for island communities than for mainland communities?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Equalities

An Equality Impact Assessment (EQIA) is a tool to help anticipate the needs of diverse groups when making decisions about projects, policy or service delivery, and helps us to meet our duties under the Equality Act 2010.

We think that the legislative proposals set out in this consultation will not impact on the protected characteristics as set out under the Act. We nevertheless want to provide an opportunity to raise any concerns you may have about these proposals in relation to the protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Question 32

Do you agree with our assessment that the proposals set out in this consultation will not impact on people with protected characteristics as set out under the Equality Act 2010?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Environment

The Environmental Assessment (Scotland) Act 2005 ("the 2005 Act") requires that certain public plans, programmes and strategies be assessed for their potential effects on the environment. Strategic Environmental Assessment (SEA) is the process used to fulfil this

requirement and includes consultation with the public and the Consultation Authorities, which results in an Environmental Report.

A screening and scoping exercise was undertaken by Scottish Government's Marine Directorate in accordance with the requirements of the 2005 Act. The outcome from the Screening and Scoping Report concluded a SEA was needed for the proposals related to Marine Conservation Orders. This is because there is potential for significant environmental effects to occur as a direct result of the proposals. While MCOs are subject to further assessment and consultation before they can be applied to restrict activity, this is done at a localised scale. The SEA was needed to consider what impacts of the proposal may be at a plan/national level. No SEA has been conducted for the registration process for restoration projects, as the likely environmental impact of that element of the proposals will only come once secondary legislation is developed to implement it.

An Environmental Report has been prepared in relation to the proposed changes to Marine Conservation Order (MCO).

[Read the full SEA Environmental Report](#)

The main conclusions from the report were that the proposals:

- are likely to have beneficial impacts on the environment overall
- may in some cases produce some negative impact due to displacement of other activities, however this impact is likely to be limited as the natural assets they will be applied to are generally small in scale.
- will have a greater positive than negative impact on the environment, in other words, the likely beneficial impact was deemed to outweigh the (limited) potential for any negative impact.

Question 33

Do you agree that the Strategic Environmental Report is an accurate representation of the potential impacts, positive and negative, on the environment from the proposed MCO changes?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Question 34

Do you agree with the findings of the Strategic Environmental Report that overall, the likely beneficial effects of the proposals outweigh the potential negative impacts?

- Yes
- No
- Unsure
- Other – Please explain

If you selected 'Other' then please use this space to expand on your answer.

Further comments

Question 35

Do you have any further comments you wish to add?

Please provide any further comments.

Thank you for providing your views

Should you wish to provide further information you can contact us via email at marinerestoration@gov.scot or write to:

Marine Nature Restoration policy team
Area 1B North
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Responding to this Consultation

We are inviting responses to this consultation by 16 May 2024.

Please respond to this consultation using the Scottish Government's consultation hub, [Citizen Space](#). Access and respond to this consultation online at <https://consult.gov.scot/marine-scotland/marine-restoration-and-marine-conservation-order>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 16 May 2024.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and send to:

Email: marinerestoration@gov.scot

By post:
Marine Nature Restoration policy team
Area 1B North
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

Please see [our privacy policy](#) to find out how we handle your personal data.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public on [our website](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at marinerestoration@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our [consultations online on our website](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Facilitating marine nature restoration through legislation



Respondent Information Form and Consultation Questionnaire

Please Note this form **must** be completed and returned with your response.

Please see [our privacy policy](#) to find out how we handle your personal data.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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