Scottish Government
Riaghaltas na h-Alba

Marine Scotland

Proposal to Designate Red Rocks and Longay as a MPA – Government Response to the Public Consultation

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This document outlines the Scottish Government's response to the public consultation, including addressing any issues in relation to the advice from NatureScot or the assessments produced as part of the consultation. Numbers of responses under each theme are not quantified as this is covered in the consultation analyses report.

A single response may include multiple themes. Most comments raised by one or more response have been included, as long as the comment was relevant to the consultation and requires clarification or answer. General comments with no specific theme or query and not specific to the consultation questions have not been included here.

1. Question 1: Do you support the designation of Red Rocks and Longay as a permanent Marine Protected Area (MPA)

1.1 It was considered that the creation of an MPA at Red Rocks and Longay does not address the principle of 'replication' in Scotland's MPA network and a more 'holistic' approach to designating MPAs was needed to protect all life stages of endangered species, not just spawning areas

There are two sites for flapper skate within the Scottish MPA network, and so replication is achieved for this feature in the Scottish MPA network and within OSPAR Region III[1]. We recognise the focus of protection in the two sites is on different stages of the flapper skate life cycle, however they are complementary: the Red Rocks and Longay MPA protection focusses on the eggs and the habitat that supports them and complements the existing Loch Sunart to the Sound of Jura MPA which focusses on resident adults.

The MPA selection guidelines for mobile species is to provide key linkages between relevant features within the network which will likely focus on important locations in the life stages of the species. This is demonstrated in the designation of Red Rocks and Longay for eggs of flapper skate and hatched juvenile skate whilst in the MPA. This is complimented by the Loch Sunart to the Sound of Jura MPA for adult flapper skate, as well as wider fisheries measures for protection of the species. This includes prohibiting retention or landing of flapper skate (catch & release).

1.2 Concerns were raised that the proposed boundary for the Red Rocks and Longay MPA was insufficient, that there have been observations of flapper skate eggs in nearby locations outside the proposed boundary and the site should be larger to protect adjacent spawning habitats.

During survey work, the proportion of the sea floor checked to date to determine egg presence is relatively modest and further records are anticipated both within the MPA and outside the proposed boundary. The current boundary of the MPA

[1] Guidelines on the selection of MPAs and development of the MPA network, Page 56

encompasses a large number of eggs and egg-laying habitat and therefore makes a significant contribution to the MPA network and to flapper skate conservation. The boundary has been drawn to focus on the areas of highest density of eggs rather than single records.

2. Question 2: Do you agree that the scientific evidence presented supports and justifies the case for the designation of the site?

2.1 The evidence was unclear about whether egg-laying by flapper skate occurs in the same places every year.

There are still gaps in our knowledge about flapper skate reproduction, however it is clear from the large numbers of eggs and range of stages of their development that multiple females are using the site for laying. In addition, the range in stages of egg development indicates the area has been used for egg-laying for at least two years. We cannot tell currently if individuals are returning to the same places each year, however, other skate species do exhibit this behaviour of using the same egg nursery. We recognise there are knowledge gaps on flapper skate ecology and are supporting work to help fill these either directly through funding and collaboration, or through influencing others' research interests.

3. Question 3: Do you agree with the list of proposed protected features?

3.1 Respondents wanted to see additional adjacent features (Maerl beds and flame shell beds) added to the list of protected features. Specifically, they argued that the adjacent muddy seabed should be included within the MPA because of the association between such habitats and juvenile flapper skate and some adult flapper skate.

NatureScot's advice recommended that flapper skate and Quaternary of Scotland should be the protected features of the Red Rocks and Longay MPA. Management proposals for Priority Marine Features will be consulted on in 2023.

Currently, there is limited information on the behaviour and or habitat preferences of adult flapper skate (other than where they are laying eggs) or hatched juveniles in the area of Red Rocks and Longay. The evidence of adults using the MPA is solely based on egg presence. Whilst flapper skate do use deep mud habitat, evidence of adults and juveniles using the deep mud adjacent to the egg-laying habitat within the MPA is lacking. Therefore, there is insufficient evidence to support extending the boundary to encompass the adjacent deeper mud habitat.

3.2 There was also a call to include areas adjacent to the Red Rocks and Longay MPA within any monitoring programme, as this would provide an opportunity to monitor the impacts of protection on these features.

Monitoring for the site will follow principles set out in Scottish MPA Monitoring Strategy and take into account the specific knowledge gaps for flapper skate.

4. Question 4: Do you have any comments on the Conservation and Management Advice (CMA) for the Red Rocks & Longay Marine Protected Area (MPA)?

4.1 Respondents suggested that a conservation objective of 'recover' (rather than 'conserve') for flapper skate eggs and their egg-laying habitat might be justified, given the critically endangered status of flapper skate in the north-east Atlantic.

Flapper skate is listed as critically endangered globally by the International Union for Conservation of Nature (IUCN), although since 2020, there have been reports of increasing trends in relative abundance for flapper skate by the International Council for the Exploration of the Sea (ICES). The feature is considered to be in a favourable condition in the Red Rocks and Longay MPA, based on the evidence of flapper skate egg presence.

The 'conserve' objective has been used as this is the broad purpose of designating an MPA as set out in the Marine (Scotland) Act 2010. The 'recover' objective is used where there is evidence to suggest a decline or damage to features within the MPA. NatureScot is not aware of any evidence to suggest a decline in flapper skate eggs within the site. The 'conserve' objective still allows management measures to be put in place where it is considered there may be a risk to achieving the conservation objectives of the site.

4.2 There were calls from respondents for restrictions to cover pelagic fishing (i.e. fishing above the seabed) in the prohibitions. Respondent argued that flapper skate have been seen at the surface so a ban on all mobile fishing at all depths was needed to protect them.

Studies of bycatch in pelagic fisheries have given no indication of skate or ray species being taken and so are not considered a risk for flapper skate.

4.3 Respondents expressed concern about the possible impact on water quality from fish farming activities in the area surrounding the MPA (particularly if such activities were to increase) and called for future monitoring of this issue.

Sections 82 and 83 of the Marine (Scotland) Act 2010 impose a legal duty on public authorities to ensure that their functions do not hinder the site objectives, and to not place MPAs at significant risk when consenting activities that they regulate. These provisions took effect when the site was urgently designated. Management advice for aquaculture activities within the site is to avoid potential impacts from farms by avoiding overlap with flapper skate egg-laying habitat. SEPA is responsible for regulating waste deposition from aquaculture, including cumulative effects, and individual farm monitoring and auditing takes place.

4.4 There was a call for a more regulated approach including the development of best practice resources and mandatory training for recreational and commercial divers, a permit system and partnership working with diving schools.

Any individual wishing to undertake scientific survey operations (including citizen science) which would involve any activities prohibited by the MCO will need to apply for a permit under the provisions of the MCO, which will allow an assessment of the risks of each activity against the Conservation Objectives for the site.

4.5 It was suggested that the noise associated with bi-annual military exercises in the vicinity of the MPA should be covered by the MPA management plan, and that further research should be undertaken on the impact of noise on skate to address current evidence gaps.

The MOD undertakes assessment processes to ensure they meet MPA management requirements before undertaking exercises.

Management advice for military planned exercises is to reduce the risks of potential disturbance to flapper skate through careful assessment via existing processes. Regular meetings are held between JNCC and MOD, allowing a two-way exchange of up-to-date information and ensuring all assessments meet environmental requirements. All statutory nature conservation bodies are consulted on military planned exercises.

4.6 More generally respondents often wished to see (i) a precautionary approach taken towards the development of advice and management recommendations, particularly in the light of the evidence gaps in relation to flapper skate lifecycles and behaviours and the potential impact of different activities, and (ii) an approach that sought to protect flapper skate at all stages of the lifecycle within and beyond the boundaries of the proposed MPA.

i) The management measures in the urgently designated MPA included a ban on all fishing, except for pelagic, was implemented using the precautionary approach. After further surveys and research, NatureScot provided updated management advice (included in the CMA) for the site. After careful consideration Scottish Ministers have decided that the prohibition on diving can be removed, to allow observational recreational diving and scallop diving.

ii) We recognise there are gaps in knowledge for all life stages of flapper skate. Some of these gaps are highlighted in the CMA which we hope will inform future discussions with the scientific community and help direct research to aid monitoring priorities.

4.7 Respondents wished to see diving (recreational and commercial) similarly restricted in the MPA on the grounds that it posed a risk (albeit low) to flapper skate eggs and that the activities in the MPA should be restricted solely to those with a scientific purpose in order to protect the skate nursery.

Recreational diving involving observation of marine life is not considered to pose a risk to flapper skate provided the eggs or habitat are not handled/disturbed. For activities such as scientific survey involving handling eggs or alteration of habitat - the management advice is that these pressures should be reduced or limited and that an assessment of risk (including cumulative) is carried out. Any individual wishing to undertake scientific survey operations (including citizen science) which would involve any activities prohibited by the MCO will need to apply for a permit under the provisions of the MCO, which will allow an assessment of the risks of each activity against the Conservation Objectives for the site.

4.8 Respondents queried the classification of the flapper skate population as endangered or the justification for the creation of the proposed MPA.

Flapper skate were assessed as being critically endangered in 2021 on the IUCN Red List of threatened species. A recent ICES report has indicated some increasing trends in relative abundance for flapper skate since 2020, and we consider the condition of the feature within the site as favourable due the evidenced numbers of eggs. Whilst there are signs of potential recovery for the species, their life history characteristics (e.g. are only sexually mature at 9 – 26 years for females or 7-16 years for males) make then vulnerable and limit their ability to recover.

5. Question 5: Do you agree with the list of prohibited activities included in the draft Marine Conservation Order (MCO) which may impact flapper skate eggs?

5.1 Respondents who expressed broad support for the list of prohibited items generally also went on to call for an integrated spatial approach/risk based approach to marine management, informed by further research that took account of conservation priorities and fishing interests.

Sites in the MPA network are managed to achieve the conservation objectives for their protected features, whilst still allowing activities to take place where possible. We have taken an evidence-based approach to developing fisheries management measures for MPAs. The approach called for by respondents is the approach that has been taken when designating this MPA.

5.2 Respondents also called for effective enforcement of MPA management measures, and monitoring of the impact of the measures.

Protection of the marine environment is taken seriously and any illegal activity is completely unacceptable. We thoroughly investigate any allegations of illegal activity and encourage people to report concerns or incidents to the relevant authorities. All reports of suspected breaches of MPAs are assessed and, where possible, aircraft or vessels are tasked to gather evidence and detain suspect boats. Fishing vessels are allowed to enter and transit through MPAs as long as they comply with any licence conditions and do not deploy gear where not permitted and relevant gear is lashed and stowed. Reports of suspected incursions do not confirm illegal activity has taken place and each report is fully investigated.

The Scottish MPA Monitoring Strategy sets out how monitoring of the network should be prioritised and carried out. The results of monitoring are also used to inform future decisions on management of MPAs. There is a requirement for Scottish Ministers to report to Parliament every six years on the extent to which, in their opinion, the conservation objectives have been achieved. The last of these reports was published in 2018.

5.3 Respondents questioned the ban on all fishing methods from this area suggesting it was not evidence based, that that the management measures proposed by Marine Scotland did not reflect the advice with respect to local creel fishing and expressed concern on how the area will be managed.

Not all fishing methods are banned from the area. The measures proposed in the consultation allow hand diving for scallops and pelagic fishing to occur within the MPA.

NatureScot recommended considering limiting or reducing creel numbers within the MPA. We have been engaging further with fisheries stakeholders on this matter and a proposal was submitted during the public consultation for creeling to take place within the MPA. The proposal is addressed separately in this document in section 5.7. Advice from NatureScot informed the final decision on management as well as other factors such as the enforceability of measures.

5.4 Respondents suggested that fishermen had not been adequately consulted about the proposals related to the establishment of a permanent MPA.

In line with the Marine (Scotland) Act 2010 when urgently designating a site public engagement prior to designation is not a statutory obligation. However at all stages of the process (urgently designating, extending the MPA and pre- public consultation launch), stakeholder engagement was conducted. In stakeholder meetings on the extension of the MPA socio-economic information was requested and information was sought from stakeholders as to how this extension may disproportionately affect any industry financially. All affected fishing industry representatives were present at these meetings. The stakeholder meeting summaries have been published on the Scottish Government website. A public consultation was conducted on the proposals which gave a further opportunity for any fishers who hadn't had their say, as well as any other member of the public, to express their views and provide any further evidence in relation to how the designation of the MPA or making of the MCO would or could affect them.

5.5 Respondents questioned the ban on angling stating this was a low-risk activity and could even have a positive impact if any flapper skate caught by anglers were tagged and returned.

We acknowledge the value anglers have brought to tagging projects for work elsewhere in Scotland to support flapper skate conservation. As part of this work, there has been some useful collation of flapper skate behavioural responses to catch and release angling. Whilst mostly this shows flapper skate are relatively resilient to this pressure – there is some evidence to show that short-term behaviour changes

can occur post-release in some individuals, as well as occasional premature egg deposition. To avoid any potential impacts to females most likely to be egg-laying within the site, exclusion of angling is being maintained in the permanent MPA.

5.6 Some respondents called for a stricter approach to be taken – with diving either prohibited completely in the MPA or only allowed with greater regulation.

Underwater presence of commercial or observational recreational divers is not considered to cause significant disturbance in light of available video evidence (from elsewhere) of apparent normal skate behaviour captured by recreational divers whilst in close proximity. The risk from diver presence is considered low and the MCO prohibits the killing, taking, destruction, molestation, touching or disturbance of flapper skate or the eggs of flapper skate.

Any individual wishing to undertake scientific survey operations (including citizen science) which would involve any activities prohibited by the MCO will need to apply for a permit under the provisions of the MCO, which will allow an assessment of the risks of each activity against the Conservation Objectives for the site.

5.7 The inclusion of creel fishing on the list of prohibited activities was the issue that attracted most comment. i) Respondents stated that this prohibition was not justified by the scientific evidence and did not reflect the advice from NatureScot that management measures to reduce or limit the intensity of this type of fishing should 'be considered', ii) that it was not proportionate to ban creeling and the proposals would prejudice the interests of local creel fisherman. iii) A detailed proposal was also submitted for creeling to be permitted within the MPA.

i) Management advice from NatureScot focusses on activities which cause pressures that flapper skate are sensitive to and where there may be a risk to achieving the Conservation Objectives. For creel fishing the advice is phrased using the term 'should be considered' and this highlights there is still cause for concern about the fishery/feature interaction, but due to some unknowns, a specific recommendation cannot be given. Creels do have the potential to cause impacts as a result of abrasion/contact with the seafloor during fishing and recovery of gear. The impacts will be related to fishing intensity (e.g. numbers of creels), however, there is no current research or evidence available to enable NatureScot to provide advice on a threshold for this risk. NatureScot also advised, where the eggs are found in crevices and cracks of boulder and cobble substrate, this will likely mitigate some effects of disturbance, but other eggs found on top of substrates will be more at risk.

ii) The decision on keeping the prohibition on creeling has been made in line with the requirements of the Marine (Scotland) Act 2010, taking into account the advice from NatureScot and consultation responses, leading Scottish Ministers to decide that the prohibition is justified and proportionate.

iii) The proposal submitted was assessed against the conservation objectives of the site and NatureScot advised, in principle, that fishing by creel for prawns in depths greater than 40 m over mud habitat in this part of the Inner Sound is unlikely to

present a significant risk to the conservation objectives of the site if the creels can be deployed and recovered such that overlap with eggs and egg-laying habitat can be avoided.

NatureScot also advised that, given the intricate nature of the seabed bathymetry and mosaic of habitat types throughout the MPA, and in particular the size and shape of the prawn grounds/habitat highlighted in the proposal it is unclear if creeling for prawns could occur without posing a risk to the known egg locations and egg-laying habitat which lie close by. The intensity of proposed creeling may also influence the potential risk to the protected feature and supporting habitat. However, there is no current research or evidence available to provide advice on a threshold for this risk. There is no indication from the scientific literature to suggest that bycatch or entanglement of flapper skate in pot/creel fisheries is a concern.

Having considered options, zonal approaches and boundary reductions following and not following the 40m contour, we do not consider that the approach for creeling proposed would be able to be effectively enforced to ensure creels can be deployed and recovered such that overlap with eggs and egg laying habitat can be avoided.

The use of vessel tracking and Remote Electronic Monitoring (REM) was also considered as an option to allow creeling within the site. This could provide a better understanding of where creels are in the site with some types of technology being able to monitor accurately where they are placed on the seabed as well as being able to monitor creel types being used. Marine Scotland Directorate is trialling vessel tracking and REM systems that may be suitable for our inshore vessels but this will not be in place by the time of designation. This could be a consideration for future management of the site once there is a better understanding of the different systems and how they can be used.

Taking into account the points above Scottish Ministers have concluded that the prohibition on creeling is being maintained at this time.

6. Question 6: Do you have any comments on the partial Business and Regulatory Impact Assessment (BRIA)?

6.1 Respondents argued that the management proposals put forward would have a disproportionate impact on the creel or static fishing industry (the partial BRIA did not differentiate between different types of fishing in the analysis presented) and the proposed restrictions on creeling are not supported by the evidence therefore the costs to local communities are not justified.

The estimates of costs are explicitly based upon conservative assumptions to ensure an appropriate degree of caution. For example:

- It is assumed that where fishing activity is impacted, it ceases altogether as opposed to relocating elsewhere. In reality, some activity is likely to be displaced rather than lost entirely.
- Activity is assumed to be evenly distributed across ICES rectangles.

- Costs are not offset against any improvement in stocks that may occur over time as a result of the MPA designation.
- They do not factor in the possible opportunity for fishers to trade quota or effort to mitigate the direct impact.

The BRIA analysis does differentiate between vessels based on gear type (and size). The analysis then goes on to present the combined impact on all fishing types.

The decision taken is that the prohibition on creeling is proportionate therefore the costs presented in the BRIA are justified.

6.2 Some thought that the document was insufficiently detailed given the size of the site under consideration. One respondent specifically called for greater clarity on the risks associated with the potential displacement of fishing activities to other areas, and suggested that temporary mitigation measures to support affected industries may be merited.

The BRIA made use of the best available data for this analysis. Businesses identified as being impacted by the proposed MPA and management measures were also asked to provide any additional data to show if the MPA and subsequent management measures would affect them. No additional evidence was received through the consultation which resulted in change to the BRIA. Where it has not been possible to quantify costs and benefits, a qualitative assessment has been included instead.

On the risks associated with potential displacement, the BRIA acknowledges that displacement could lead to costs including conflict with other fishing vessels, environmental impacts in targeting new areas, longer steaming times and increased fuel costs, changes in costs and earnings, gear development and adaptation costs, and additional quota costs. Due to a lack of data and uncertainty, it has not been possible to quantify these costs and they have therefore been included in the non-quantified costs section of the BRIA. As the analysis and consultation with stakeholders has indicated that there is likely to be a relatively small impact on industries with a high potential for activity to be displaced into other areas close by, temporary mitigation measures are not considered necessary.

6.3 Some said that the requirement to consult with stakeholders as part of the BRIA process had not been met. There was a view that such consultation would have allowed the development of management measures that met the concerns of all parties.

A Partial BRIA was consulted on as part of the public consultation, and any relevant information provided by stakeholders during this process could have been taken into consideration in finalising the BRIA.

On pre-consultation engagement we had meetings with stakeholders, including industry that would be directly impacted financially by the measures being proposed. All the business identified as potentially being impacted by the proposed MPA and management measures were consulted with at various times throughout the development of the site. Specific questions were asked of these stakeholders before

meetings, including providing any additional information or data to show if the MPA and subsequent management measures would affect them.

All of the businesses identified as being directly impacted were fishing industry who were included in all pre-consultation meetings. Some other businesses may be indirectly affected by the MPA but these could not be identified or quantified prior to public consultation.

7. Question 7: Do you have any comments on the draft Island Communities Impact Assessment (ICIA) screening?

7.1 There was too great a focus on the negative impacts of MPA designation and respondents called for greater consideration of the possible benefits of MPA status (in terms of eco-friendly tourism and recreational diving). They also thought the draft ICIA should consider cumulative impacts (both pressures and benefits), and be clearer about the risks (environmental as well as socio-economic) of the potential displacement of fishing activities) for island communities.

The purpose of an ICIA is to assess whether an island community is likely to be disproportionately affected. The draft ICIA considered positive and negative impacts. There was a section on ecosystem benefits that would arise from the designation of the MPA. These ecosystem benefits can provide positive socio-economic benefits to business possibly through increased tourism but these numbers aren't quantifiable and it is not the aim of an ICIA to focus on this. The BRIA included a larger section on ecosystem benefits.

The draft ICIA also followed the current Scottish Government guidance and template and also determined a full ICIA was not needed.

7.2 There was a view that insufficient effort had been made to assess the impact on the local static gear sector and another respondent was concerned that the draft ICIA may have underestimated the impact on the fishing industry if the analysis had not taken account of the fact that vessels from Skye log their catch at Kyle on the mainland.

The fishing data used in the draft ICIA was taken from the BRIA and all ports registered as home ports and landing ports of local fishers that fished in, or in the vicinity of, the MPA were included. Ports used in the analyses were not stated but were accounted for together under the estimated annual value of commercial fisheries. Kyle was a port included in this overall value.

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This publication is available at **www.gov.scot**

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St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-914-3 (web only)

Published by The Scottish Government, December 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1151642 (12/22)

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