

CONSULTATION

Response Document



Scottish Highly Protected Marine Areas (HPMAs)

17 April 2023

Scottish Government

Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 7,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Scottish Environment Link
- Wildlife and Countryside Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

CIEEM has approximately 720 members in Scotland who are drawn from across the private consultancy sector, NGOs, government and SNCOs, local authorities, academia and industry. They are practising ecologists and environmental managers, many of whom regularly provide input to and advice on land management for the benefit of protected species and biodiversity in general.

This response was coordinated by Members of our [Scotland Policy Group](#).

We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy) at JasonReeves@cieem.net with any queries.

1. What is your view of the aims and purpose of Highly Protected Marine Areas as set out in sections 2 and 3 of the draft Policy Framework?

Strongly support

Please explain your answer:

Evidence shows that strict levels of protection where all uses are limited in order to ensure protection as laid out in the draft Policy Framework can create ocean recovery zones, helping ecosystems recover and providing benefits to society^{1, 2, 3}. HPMAs have been shown worldwide to support ocean recovery, with benefits overspilling into surrounding waters. The links between HPMAs and the existing marine protected area network and the importance of buffer zones needs to be considered within a wider spatial management framework to ensure maximum ecological benefit and a just transition.

2. What is your view of the effectiveness of the proposed approaches to manage the activities listed below, as set out in section 6 of the draft Policy Framework, in order to achieve the aims and purpose of HPMAs?

		Strongly support	Support	Neutral	Oppose	Strongly oppose
1	Commercial fishing (of any kind)		x			
2	Recreational fishing (of any kind)		x			
3	All other recreational activities		x			
4	Finfish aquaculture	x				
5	Shellfish aquaculture	x				
6	Seaweed harvesting	x				
7	Oil and gas sector	x				
8	Renewable energy	x				
9	Carbon capture, utilisation and storage	x				
10	Subsea cables	x				
11	Aggregate extraction	x				

¹ Strictly Protected Marine Protected Areas: International Policy and National Practice. Saving our Seas through Law Policy Brief Series | Briefing No. 5. University of Edinburgh Law School.

<https://www.law.ed.ac.uk/sites/default/files/2021-04/Marine%20Briefing%205%20%28updated%29%20-%20ACC.pdf>

² Dudley, N. (Editor) (2013). Guidelines for Applying Protected Area Management Categories. IUCN. Best Practice Guidance. <https://portals.iucn.org/library/sites/library/files/documents/PAG-021.pdf>

³ Stewart, B.D., Howarth, L.M., Wood, H., Whiteside, K., Carney, W., Crimmins, E., O'Leary, B.C., Hawkins, J.P. & Roberts, C.M. (2020). Marine Conservation Begins at Home: How a Local Community and Protection of a Small Bay Sent Waves of Change Around the UK and Beyond. *Frontiers in Marine Science*, 7, 1-14. <https://doi.org/10.3389/fmars.2020.00076>

12	Ports and harbours	x				
13	Shipping and ferries	x				
14	Military and defence	x				
15	Hydrogen production	x				
16	Space Ports	x				

Please explain your answer and if you think we have missed any activities, please suggest them here:

Approaches that involve licensing of developments are likely to be effective. Others may be ineffective without monitoring and enforcement, which is likely to be difficult and expensive. Licensing may not always involve rigorous monitoring, or at least it may be difficult to enforce compliance, especially if there is no funding to support recruiting and training people to meet the ambitions laid out in section 7.2 of the policy framework. Further information and examples need to be provided on what 'non-damaging' levels of activities means in reality, how these activities will be managed and monitored as proposed in the draft policy framework. Stakeholder support is crucial.

Tourism, including the cruise liner sector and possibly marine events, should have been included. The large increase in the number of cruise liners visiting Scotland in the foreseeable future is likely to impact HPMAs. In 2023 there will be a 50% hike in the number of cruise ships (150 compared to 100 in 2022) docking at Edinburgh, Fife and Dundee. As well as increases in the number of ships on existing routes there are also new cruise liner destinations including Aberdeen where the newly-expanded harbour is set to welcome more than 25 cruise ship visits in the coming months⁴. And on the west coast, a new deep-water terminal on the Isle of Lewis will allow cruise ships to come ashore for the first time with 60,000 visitors expected to arrive every year⁵.

With the planned expansion of offshore renewables, there are spatial implications for marine protection and industries and the proposed approaches will need to be reviewed as the findings from research such as the EcoNex project⁶ become available so that decisions are informed by research and evidence-based.

3. What is your view of the proposed additional powers set out in section 8.3.2 of the draft Policy Framework: "Allow for activities to be prohibited from the point of designation to afford high levels of protection."

Strongly support

Please explain your answer:

⁴ <https://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-64390147>

⁵ <https://www.scotsman.com/heritage-and-retro/heritage/scottish-island-gears-up-to-welcome-60000-cruise-ship-passengers-4013093>

⁶ <https://ukerc.ac.uk/project/the-marine-energy-biodiversity-and-food-nexus-econex/>

Legal backing is important to help ensure compliance. Legislation must include proportionate sanctions (fines and possible confiscation of equipment) and clear enforcement capabilities by the appropriate agencies to ensure compliance and the enforcement of new legislation for the protection of the marine environment.

There needs to be clarification on how the consenting process for activities in HMPAs will operate where the HPMAs overlap with SACs, SPAs already designated under the Habitats Regulations. Habitats Regulations designations (SAC and SPA) give a high level of legal protection, including through a legal requirement to assess potential impacts on protected sites (Habitats Regulations Assessment or HRA).

4. What is your view of the proposed additional powers set out in section 8.3.3 of the draft Policy Framework: “Establish processes to permit certain limited activities within a HPMA on a case-by-case basis for specified reasons.”

Strongly support

Please explain your answer:

There may well be activities that do not impact biodiversity or the provision of ecosystem services adversely and it is important to develop a mechanism for allowing them. Indeed, it is conceivable that there are activities that might enhance biodiversity and ecosystem functioning.

See previous comment where sites are already designated as part of the Habitat Regulations (SACs and SPAs).

5. What is your view of the proposed additional powers set out in section 8.3.4 of the draft Policy Framework: “Activities which are not permitted in a HPMA but are justified in specified cases of emergency or *force majeure*.”

Strongly support

Please explain your answer:

These cases are covered by international law. Action may need to be taken rapidly to prevent pollution after a vessel grounding.

6. What is your view of the proposed additional powers set out in section 8.3.5 of the draft Policy Framework: “Measures for activities allowed and carefully managed in HPMAs.”

Strongly support

Please explain your answer:

There have to be measures in place for the management of permitted activities in case the impact is greater than had been assumed. This might, for example, apply to some types of recreation. New equipment or technology, such as mapping apps, might allow people to go further into sensitive areas than is currently the case. However, publicising existing or new codes of practice should be used as a

pre-emptive approach. This would need to be a continuing process. It is important to work with sports governing bodies to minimise adverse impacts of recreation although there is not currently a recognised governing body for Stand Up Paddle Boarding.

7. Do you have any further comments on the draft Policy Framework, which have not been covered by your answers to the previous questions?

No

Site Selection Guidelines

8. What is your view of the proposal that HPMAs site identification should be based upon the “functions and resources of significance to Scotland’s seas,” as listed below and set out in Annex B of the draft Site Selection Guidelines?

		Strongly support	Support	Neutral	Oppose	Strongly oppose
1	Blue Carbon	x				
2	Essential Fish Habitats	x				
3	Strengthening the Scottish MPA network	x				
4	Protection from storms and sea level rise	x				
5	Research and education			x		
6	Enjoyment and appreciation	x				
7	Other important ecosystem services	x				

Please explain your answer, including any suggested changes to the list:

Strengthening the Scottish MPA network is the most important criterion. Although the provision of ecosystem services was not a criterion for designating the existing MPAs, they already go some way towards protecting blue carbon stores and sinks, essential fish habitats, and enjoyment and appreciation. In the latter case see the MarPAMM Argyll project⁷. Whatever sites are ultimately designated there will be opportunities for research and education.

There needs to be a review of marine sites that already have SAC or SPA designation under the Habitats Regulations and the risk of the breadth of protections for protected sites diminished, by the potential removal of the underpinning SAC or SPA designation under the Retained EU Law Bill and the Levelling Up and Regeneration Bill⁸. In some cases, where marine SAC and SPA sites are not underpinned by another designation, protections would be removed entirely.

⁷ https://www.mpa-management.eu/?page_id=863

⁸ Wildlife and Countryside LINK Briefing: The Habitat Regulations: Risks and Opportunities. <https://www.wcl.org.uk/docs/Link%20briefing%20on%20Habs%20Regs%20risks%20and%20opportunities%20Jan%202023.pdf>

9. What is your view of the general principles that are intended to inform the approach to HPMa selection, as listed below and set out in section 4.1 of the draft Site Selection Guidelines?

		Strongly support	Support	Neutral	Oppose	Strongly oppose
1	Use of a robust evidence base	x				
2	HPMA scale and the use of functional ecosystem units	x				
3	Ensuring added value	x				
4	Delivering ecosystem recovery	x				

Please explain your answer, including any suggested changes to the list:

The selection of protected areas should be guided by existing best practice principles. The above listed criteria are all important although there may be cases where the precautionary approach requires designation in the absence of complete knowledge.

A crucial element in selecting where HPMAs are located is how they are linked to the existing marine protected area network such as the existing network of SACs and SPAs which is crucial in protecting migratory species. Also, evidence demonstrates the greatest marine benefits are achieved where core high protection zones are surrounded by buffer zones, nested within a wider spatial management framework⁹. In Scotland, the Lamlash Bay Community Marine Conservation Area designated in 2008 on the east coast of Arran (a no-take zone with similar protection levels to the proposed HPMAs, at least for prohibiting extraction of biological resources), in combination with the wider South Arran Marine Protected Area acting as a buffer zone with fisheries management measures, has proven to significantly improve marine life¹⁰.

10. What is your view of the proposed five-stage site selection process, found in sections 4.2 and 4.3 as well as figure 2 and Annex A of the draft Site Selection Guidelines?

Strongly support

Please explain your answer:

⁹ Day, J.C., Kenchington, R.A., Tanzer, J.M. & Cameron, D.S. (2019). Marine zoning revisited: How decades of zoning the Great Barrier Reef has evolved as an effective spatial planning approach for marine ecosystem-based management. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 29(S2): 9– 32.
<https://doi.org/10.1002/aqc.3115>

¹⁰ <https://www.arrancoast.com/no-take-zone/>

Involving stakeholders at an early stage is essential for success. Early engagement with relevant regulators who have responsibilities around other designated sites which are listed under Habitat Regulations.

A range of community engagement events is essential in Scottish coastal communities to hear any concerns, discuss potential areas of designation and highlight the economic and social benefits of recovered and well-managed marine ecosystems in Scotland. These should not be one-off events but a rolling programme to provide a forum for community involvement and put communities at the heart of the decision making. This continued engagement will help increase compliance and reduce enforcement demands. The designation of HPMAs also provides an opportunity to increase public awareness of, and engagement with, the marine environment in Scotland. There also needs to be early engagement with regulators with responsibility for existing designated sites as well as bodies that exercise powers over areas of sea. These will include Crown Estate Scotland, Statutory Harbour Authorities where the area over which they have power goes beyond the immediate port or harbour area, and Regional Marine Planning Partnerships.

11. Do you have any further comments on the draft Site Selection Guidelines, which have not been covered by your answers to the previous questions?

Initial Sustainability Appraisal

12. What is your view of the **Strategic Environmental Report**, summarised within sections 3 and 4 of the Sustainability Appraisal, as an accurate representation of the potential impacts, issues and considerations raised by the introduction of the draft Policy Framework and Site Selection Guidelines?

Support

Please explain your answer:

More should have been made of the difficulty of preventing banned activities.

13. What is your view of the **Socio-Economic Impact Assessment**, summarised within sections 3 and 4 of the Sustainability Appraisal, as an accurate representation of the potential impacts, issues and considerations raised by the introduction of the draft Policy Framework and Site Selection Guidelines?

Support

Please explain your answer:

The actual impacts will only become clear when candidate sites are confirmed and will need to be assessed on a site-by-site basis.

Partial Island Communities Impact Assessment (ICIA) Screening Report

14. What is your view of the partial ICIA screening report as an accurate representation of potential impacts, raised by the implementation of the draft Policy Framework and Site Selection Guidelines?

Neutral

Please explain your answer: This is not in our area of expertise.

- 15.** Do you think that the implementation of the draft Policy Framework and Site Selection Guidelines will have any significantly differential impacts – positive and/or negative - on island communities?

Not sure.

Please explain your answer, including any additional impacts that have not been identified in the partial ICIA screening report:

Partial Business and Regulatory Impact Assessment (BRIA)

- 16.** What is your view of the partial BRIA as an accurate representation of the potential impacts, issues and considerations raised by the implementation of the draft Policy Framework and Site Selection Guidelines?

Neutral

Please explain your answer: This is not our area of competence but see the answer to the next question.

- 17.** Do you think that the implementation of the draft Policy Framework and Site Selection Guidelines will have any financial, regulatory or resource impacts – positive and/or negative - for you and/or your business?

Some of our members are likely to become involved in advising clients on developments that may need regulation under these plans - so clear guidance on the regulatory interactions with other legislation would be essential. The same would go for those of our members involved in regulation and development control.

- 18.** If you answered “yes” to the previous question, please specify which of the proposals/actions you refer to and why you believe this would result in financial, regulatory or resource impacts for your business.

The amount of support that is required will depend on the final form of the plans. We might need to consider developing good practice guidelines for our members.

Our Commitment

- 19.** Do you have any further thoughts on the Scottish Government’s commitment to introduce HPMAs to at least 10% of Scottish waters?

It is a good target, but it is important not to let developments be driven by that figure. There are areas within the Scottish seas where activity levels are low with a consequent low impact on biodiversity and ecosystem services. Designating these areas would be easy but have little effect

on increasing ecosystem health as they presumably do not contain significant amounts of PMFs although the designation would prevent any future activities that might be damaging.

Highly protected MPAs offer ‘insurance against environmental or management uncertainty’¹¹, an important consideration given the significant pressures on our marine environment due to a range of factors, including climate change. Reducing cumulative impacts and pressures on our oceans increases resilience ¹².

The value of protecting, enhancing and restoring natural processes in these designated areas should also be incorporated into national carbon and climate change accounting despite the complexities of assessment. Protection and restoration of coastal and marine habitats has an important part to play in mitigating human induced climate change^{13, 14}. However, this should not be seen in isolation. There are many benefits, for both biodiversity and human society, in enhancing coastal and marine ecosystem services. This has been increasingly recognised in recent publications, including a recent report by Penny Anderson¹⁵. We know that natural capital accounting is seen as important by the Scottish Government, which we welcome.

Effective monitoring and evaluation of not just environmental indicators but also social and economic measures must be in place prior to designation and in the long-term. This body of evidence and case studies should be widely available and disseminated to interested parties.

There should be clear links made with Scotland’s Biodiversity Strategy, the EU Biodiversity Strategy and the upcoming Natural Environment Bill and with existing legislation including the Habitat Regulations.

¹¹ Lubchenko, J., Palumbi, S.R., Gaines, S.D. & Andelman, S. (2003). Plugging a Hole in the Ocean: The Emerging Science of Marine Reserves. *Ecological Applications*, 13, 3-7.

¹² Benyon Review into Highly Protected Marine Areas: Final Report (June 2020), 30-31.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890484/hpma-review-final-report.pdf

¹³ Stafford, R., Chamberlain, B., Clavey, L. et al. (eds) (2021). Nature-based Solutions for Climate Change in the UK: A Report by the British Ecological Society. Available at www.britishecologicalsociety.org/naturebased-solutions. Accessed 8 March 2023

¹⁴ Marine Scotland (2020). New Blue Carbon Resource for Marine Scientists. Available at <https://blogs.gov.scot/marine-scotland/2020/02/24/new-blue-carbonreports/>. Accessed 8 March 2023.

¹⁵ Anderson, P. (2021). Carbon and Ecosystems: Restoration and Creation to Capture Carbon. Available at <https://cieem.net/resource/carbon-andecosystems-restoration-and-creation-to-capturecarbon/>. Accessed 8th March 2023.